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Tuesday
May 17, 1988

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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 3 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.

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Laurice Clark, 202–523–3517

KANSAS CITY, MO

WHEN: June 10; at 9:00 a.m.
WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
RESERVATIONS: Call the St. Louis Federal Information Center;
Missouri: 1–800–392–7711
Kansas: 1–800–432–2934

NEW YORK, NY

WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 5823 of May 13, 1988

National Safe Kids Week, 1988

By the President of the United States of America

A Proclamation

During National Safe Kids Week parents, relatives, teachers, and everyone responsible for the care and safety of children should take notice of the many ways in which we can help youngsters avoid accidents and grow up safely. Children themselves should also become increasingly aware of ways to protect themselves and other young people. Each year accidents take a tragic toll of perhaps 8,000 young lives lost and 50,000 children disabled. We need to recall that we can prevent the majority of these incidents—and we need to do as much as we can about it, in homes, schools, places of work and recreation, on the highways, and throughout our communities.

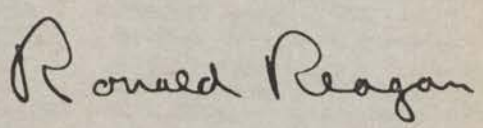
Much has been done already. Americans continue to take responsibility by exercising extra care around the house, as well as by using items such as infant and toddler car seats and seat belts, smoke detectors, flame-retardant clothing, and child-proof packaging; and emergency medical services are developing still greater capacities in the prevention of death and of serious aftereffects of injury.

As more and more of us understand that accidental injuries are avoidable, and as we act accordingly, we will substantially reduce this major source of death, disability, and injury to our hope for the future—our "safe kids." That is a goal to which we can all look forward.

The Congress, by Senate Joint Resolution 240, has designated the period of May 16 through May 22, 1988, as "National Safe Kids Week" 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 the period of May 16 through May 22, 1988, as National Safe Kids 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 thirteenth day of May, 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.



[FR Doc. 88-11142
Filed 5-13-88; 4:11 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of May 13 on signing Proclamation 5823, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 19).

Rules and Regulations

Federal Register
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Tuesday, May 17, 1988

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 242

[INS No. 1035-88]

Detention and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds a new § 242.24 and revises existing § 212.5(a)(2)(ii). The purpose of this regulation is to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Ruth Calhoun, Detention Specialist, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-4120.

SUPPLEMENTARY INFORMATION: Since 1980 the Immigration and Naturalization Service has witnessed a dramatic increase in the number of juvenile aliens it encounters, particularly on the Southern border of the United States. In most cases the juvenile is not accompanied by a parent, legal guardian, or other adult relative. As with adults, the decision of whether to detain or release a juvenile depends on the likelihood that the alien will appear for all future proceedings. However, with respect to juveniles a determination must also be made as to whose custody the juvenile should be released. On the one hand, the concern for the welfare of the juvenile will not permit release to just any adult. On the other hand, the Service has neither the expertise nor the resources to conduct home studies for placement of each juvenile released. This rule strikes a balance by providing a list of appropriate custodians while maintaining the discretion of the District Director or Chief Patrol Agent to release a juvenile to an adult other than those listed individuals in unusual and compelling circumstances.

The Immigration and Naturalization Service published a notice of proposed rulemaking on the Detention and Release of Juveniles in the **Federal Register** on October 15, 1987. Twelve comments were received in response to the proposed rule. The provisions of the proposed rule which received significant comment will be discussed separately.

The final rule amends 8 CFR Part 242 by adding a new § 242.24 dealing with detention and release of juveniles. The rule also amends 8 CFR Part 212 by revising § 212.5(a)(2)(ii) to provide that parole determinations regarding juveniles will be made pursuant to the criteria set out in § 242.24. This rule thus provides a single policy for juveniles in both deportation and exclusion proceedings.

Several commenters suggested that the list of custodians in the proposed rule is restrictive and should be expanded to include any responsible adult. The Service has attempted to provide for release to those individuals considered responsible for the juvenile's welfare. Release to others beyond these individuals on a routine basis, would require the performance of home studies for which the Service is neither adequately funded nor qualified. Furthermore, the rule permits the District Director or Chief Patrol Agent to exercise his discretion to release to a responsible adult other than those listed in unusual and compelling circumstances.

We agree with comments that the juvenile's interests are best served when the juvenile is placed in a home or shelter-care environment. In fact, the regulations contemplate placement in a shelter care facility as the preferred detention alternative. However, juveniles placed in shelter-care will still be considered to be in INS detention because of issues of payment and authorization of medical care. This preference in the regulations for shelter-care facilities is consistent with provisions of 18 U.S.C. 5035 for detention of juveniles prior to a disposition of delinquency charges.

Based on the foregoing, the Service has determined that the list of suitable custodians shall remain as listed in the proposed rule.

One commenter suggested that the use of the word "may" in § 242.24(b)(1) should be changed to "shall" to indicate that release to such adults should be a matter of course. This suggestion has been incorporated. However, to maintain the discretion of the Service on a case-by-case basis the language "unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others" has been added in the final rule.

Several commenters requested that § 242.24(b)(2) be amended to clarify that the term "adult relatives" are the same as those set out in § 242.24(b)(1)(iii). This has been clarified in the final rule.

Several commenters criticized the fact that the rule contains no guidance regarding the term "unusual and compelling circumstances." This omission was intentional. The intent of the regulation is to provide Service officials with the broadest possible discretion so that each case may be viewed based on a totality of the juvenile's circumstances. Any attempt to define the term would only serve to limit that discretion and thus limit its favorable exercise. Accordingly, this suggestion has not been adopted.

One commenter indicated confusion regarding the release of a juvenile to a detained person as set forth in § 242.24(b)(2). The intention of the rule is to provide for a simultaneous release of the juvenile and the detained adult. This point has been clarified in the final rule.

One commenter indicated that the proposed rule would require a parent or guardian who is lawfully residing in the United States to travel to a distant location far from his home to secure the juvenile's release. This was not our intention. The final rule has been amended to permit a parent or guardian seeking a juvenile's release pursuant to § 242.24(b)(1) to secure release at an INS office located near the parent's or guardian's residence when the juvenile is being detained at a distant location.

One commenter suggested that the requirement in § 242.24(b)(3) for an affidavit to be sworn before an immigration officer or a consular officer is unrelated to concerns for the child's

welfare or the child's appearance at INS proceedings and affidavits executed before a notary public should be accepted. To the contrary, this requirement is imposed for the purpose of ensuring that the INS is actually receiving the wishes of the parent or guardian. Because of the seriousness with which we view release of a juvenile to an unrelated adult, the Service is unwilling to simply rely on notarized documents for this assurance.

One commenter indicated that the proposed rule does not provide prompt notice to juveniles of restrictions on their release. The INS is developing a simplified form for this purpose which will be provided within twenty-four (24) hours of arrest to each juvenile apprehended who has not been released.

One commenter suggested that the proposed rule failed to consider the court's order in *Perez-Funez* v. *District Director, INS,* 619 F. Supp. 656 (D.C. Cal. 1985). In that case, the court ordered the Service to provide access to telephones and (except for class members residing permanently in Mexico or Canada) ensure that the class member has in fact communicated by telephone or otherwise, with a parent, close adult relative, friend, or a free legal services organization prior to presentation of the voluntary departure form. The proposed rule provided for a Notice and Request for Disposition ("Perez-Funez Advisal") be given to the juvenile upon apprehension. In order to clarify the responsibilities of the INS with respect to *Perez-Funez* class members, the language of the court's order has been incorporated in the final rule.

Several commenters requested the Service to consider permitting an individual or an organization to act as an intermediary between the INS and the parent, guardian, or other custodian to facilitate the release of juvenile aliens. According to the comments, parents or guardians who are unlawfully present in the United States are unwilling to come forward to the INS to secure release of the child for fear of being apprehended. This proposal raises some of the same concerns that release to any reliable adult raises, for example, the inability of the Service to perform home studies. However, while the proposal has not been incorporated into the final rule at this time, it has not been rejected. The Service will continue to consider the proposal, but it was felt that such further review should not delay publication of this final rule.

Two commenters recommended that the term "state or local juvenile facilities" not encompass "juvenile correctional facilities." The Service shares the concern that administrative juvenile detainees not be placed in detention with convicted offenders. For this reason the Service is developing contracts with shelter-care facilities in all locations. However, in certain areas shelter-care facilities are not yet available. This may necessitate the use of a secure facility for a short term period. In all cases where this is necessary, INS juvenile detainees will not be mixed with the general population of the facility. If we were to limit the use of secure facilities at this point, the Service would be required to move juveniles to other locations in order to detain them. This would not serve the juveniles' best interest.

Two commenters suggested that the preamble to the final rule should include a statement that release of minors to parents or adult relatives is the preferred method of dealing with juvenile offenders. We agree. The paramount concern of the INS with respect to minors in custody is the welfare of the minor. In this regard it is the position of the Service that reunification of the juvenile with his or her family is in the best interest of all concerned. Accordingly, the final rule provides that the minor "shall" be released to a parent, legal guardian or adult relative "unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others." Thus, under the final rule reunification represents Service policy, with detention being the exception.

One commenter questioned the nature of the agreement to be signed by the designated adult. The agreement is a written statement made under oath that the adult will care for the juvenile and ensure the juvenile's presence at all future proceedings before the Service or the immigration court. This agreement may, in any given case, be required to be accompanied by an appearance bond.

Another commenter requested that the final rule incorporate standards of detention and other conditions of confinement for juvenile detainees. Standards of confinement are beyond the scope of this particular rule which is limited to processing and release. However, the Service has developed standards of confinement which are incorporated in its contracts for shelter-care facilities.

Finally, one commenter suggested that the position of "juvenile coordinator" be outside the supervision of the Enforcement Branch. This strictly administrative decision is outside the scope of the rulemaking. However, the Service is considering this recommendation in its decision.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Parole, Juveniles.

8 CFR Part 242

Administrative practice and procedure, Aliens, Juveniles.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1182b, 1182c, 1184, 1225, 1226, 1228, 1252.

2. Section 212.5(a)(2)(ii) is revised to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) * * *

(2) * * *

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set forth in § 242.24(b) in determining under what conditions a juvenile should be paroled from detention.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, 1362.

4. A new § 242.24 is added to read as follows:

§ 242.24 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (18) years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to: (i) A parent; (ii) legal guardian; or (iii) adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention, unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others.

In cases where the parent, legal guardian or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at an INS office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in INS detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) *Juvenile Coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile apprehended in the immediate vicinity of the border who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. Each other juvenile apprehended shall be provided access to a telephone and must in fact communicate with either a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If the juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact the requirements of this section are satisfied.

(h) *Notice and Request for Disposition.* When a juvenile alien is apprehended, he or she must be given a Notice and Request for Disposition. If the juvenile is under fourteen years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language the juvenile understands. In the event a juvenile who has requested a hearing pursuant to the Notice subsequently decides to accept voluntary departure, a new Notice and Request for Disposition shall be given to, and signed by the juvenile.

Date: May 10, 1988.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 88-11001 Filed 5-12-88; 2:30 pm]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 88-043]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances in Texas. A commuted traveltime allowance is the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8513.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, Chapter I, Subchapter D, and 7 CFR, Chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular

duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime allowances between certain locations in Texas. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

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

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

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within tl e knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Add:			
* * * * *			
Texas:			
* * * * *			
Hidalgo	Harlingen		2
Hidalgo	Lyford		2
* * * * *			

Done in Washington, DC, this 12th day of May, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-10975 Filed 5-16-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3227]

Multiple Listing Service Mid County, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Brooklyn, NY, real estate firm from participating in various practices that have allegedly restrained price and service competition among residential real estate brokers. Respondent is prohibited from: Requiring that any applicant or member operate a full time office; fixing, maintaining or recommending any division of commission between selling and listing brokers; adopting any policy that has the purpose or effect of exclusive agency listings; requiring any member to inform Mid County or any of its members of the commission agreed to between any listing broker and homeowner; and adopting any policy having the purpose or effect of delaying the solicitation of a listing agreement.

DATE: Complaint and order issued April 20, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Michael J. Bloom or Alfred J. Ferrogari, New York Regional Office, Federal Trade Commission, 2243 Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264-0459.

SUPPLEMENTARY INFORMATION: On Wednesday, December 30, 1987, there was published in the Federal Register, 52 FR 49167, a proposed consent agreement with analysis In the Matter of Multiple Listing Service Mid County, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Combining or Conspiring:* Section 13.384 *Combining or conspiring;* § 13.405 *To discriminate unfairly or restrictively in general;* § 13.430 *To enhance, maintain or unify prices;* § 13.470 *To restrain and monopolize trade.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–45 *Maintain records;* § 13.533–45(k) *Records, in general;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific or contractual constrictions, requirements, or restraints.* Subpart—*Dealing On Exclusive And Tying Basis:* § 13.670 *Dealing on exclusive and tying basis;* § 13.670–20 *Federal Trade Commission Act.*

List of Subjects in 16 CFR Part 13

Multiple listing service, Real estate, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11010 Filed 5–16–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3228]

Florence Multiple Listing Service, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Florence, S.C. firm from conspiring to exclude certain licensed real estate brokers from membership in and use of the multiple listing service, and from restricting competition among multiple listing service members in the services they individually provide to the public. Respondent is also prohibited from requiring new members to have owned and operated a business for six months before application for membership and from insisting on a vote of FMLS members as a condition of membership.

DATE: Complaint and order issued April 20, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Jacques Feuillan, FTC/S–3115, Washington, DC 20580. (202) 326–2739.

SUPPLEMENTARY INFORMATION: On Wednesday, December 30, 1987, there was published in the **Federal Register** 52 FR 49164, a proposed consent agreement with analysis In the Matter of Florence Multiple Listing Service, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—*Combining Or Conspiring:* Section 13.384 *Combining or conspiring;* § 13.405 *To discriminate unfairly or restrictively in general;* § 13.470 *To restrain and monopolize trade.* Subpart—*Corrective Actions And/Or Requirements:* § 13.533 *Corrective actions and/or requirements;* § 13.533–20 *Disclosures;* § 13.533–45 *Maintain records;* § 13.533–45(e) *Correspondence;* § 13.533–50 *Maintain means of communication;* § 13.533–60 *Release of general, specific, or contractual constrictions, requirements, or restraints.* Subpart—*Dealing On Exclusive And Tying Basis:* § 13.670 *Dealing on exclusive and tying basis;* § 13.670–20 *Federal Trade Commission Act.*

List of Subjects in 16 CFR Part 13

Multiple listing service, Real estate, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 88–11009 Filed 5–16–88; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Media Relations; Information and Public Affairs

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect an organizational change made since the changes published December 29, 1987, 52 FR 48969. The change is the elimination of the Office of Media Relations and the consolidation of its functions into the Office of Information and Public Affairs.

DATES: May 17, 1988.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–492–6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (Government Agencies).

Dated: May 10, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, Part 1000 is revised to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)) The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)).

(b) The Flammable Fabrics Act (Pub. L. 90–189, 67 Stat. 111, as amended (15 U.S.C. 1191, *et seq.*)).

(c) The Federal Hazardous Substances Act (Pub. L. 86–613, 74 Stat. 380, as amended (15 U.S.C. 1261, *et seq.*)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, 84 Stat. 1670, as amended (15 U.S.C. 1471, *et seq.*)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84–930, 70 Stat. 953, 15 U.S.C. 1211, *et seq.*)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1–800–638–CPSC (1–800–638–2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1–800–638–8270. The teletypewriter number for use in Maryland is 1–800–492–8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westbard Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the states indicated:

(1) Central Regional Center, 230 South Dearborn Street, Room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery Street, Room 401, San Francisco, California 94111; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Products Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides written advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Requests for such interpretations should be sent to the Associate Executive Director for Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westbard Avenue, Bethesda,

Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR Part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR Part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;

(2) Office of Congressional Relations;

(3) Office of the Secretary;

(4) Office of Internal Audit;

(5) Office of Equal Employment Opportunity and Minority Enterprise;

(6) Office of Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;

(2) Office of Planning and Evaluation;

(3) Office of Information and Public Affairs;

(4) Directorate for Epidemiology;

(5) Directorate for Economic Analysis;

(6) Directorate for Engineering Sciences;

(7) Directorate for Health Sciences;

(8) Directorate for Compliance and Administrative Litigation;

(9) Directorate for Administration;

(10) Directorate for Field Operations.

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register**.

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It performs liaison duties for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at official meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other official documents, including **Federal Register** notices, for and on behalf of the Commission and controls the use of the Commission seal. The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 8(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.17 Office of Internal Audit.

This Office reviews, analyzes, and reports on Commission programs and organization to assess compliance with relevant laws, regulations, and principles of efficiency, effectiveness, and economy.

§ 1000.18 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan

before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.20 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-related programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international standards coordination and liaison. As an extension of the Office of the Executive Director, it is responsible for assuring the implementation of Commission decisions. Program Managers assigned to the Office provide overall direction to all hazard program projects, including those involving voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.21 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills its mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.22 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.23 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the fields of consumer product-related injuries. It maintains an injury data clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.24 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, the National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.25 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate's functional responsibility includes development and evaluation of product safety standards and test methods based on engineering and other physical sciences and the conduct and relevant evaluation of specific product testing to support general agency regulatory

activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products and provides scientific and technical expertise to the Commission. It conducts and evaluates engineering tests and test methods, participates in the engineering development of product safety standards, and provides advice on proposed mandatory standards and industry voluntary standard efforts. It performs or monitors research in the engineering sciences and manages the Commission's engineering laboratory and engineering test facility and provides analytical services in support of the Commission's enforcement activities. The Directorate for Engineering Sciences conducts studies of the safety of consumer products. It coordinates engineering research testing and evaluation activities with the National Bureau of Standards and other Federal agencies, private industry, and consumer interest groups. The Directorate gives statistical support for the engineering aspects of standards development, certification programs, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including tests and analyses conducted in the field. The Directorate provides engineering technical support to all Commission organizations, activities and programs. The Directorate analyzes accident data, develops accident scenarios, and recommends solutions. This information is applied to develop standards and corrective action plans. The Directorate provides appropriate analytical representation to the Office of Program Management and Budget.

§ 1000.26 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilites include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The D.rectorate also provides scientific and medical expertise to the Commission and it develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical and physical hazards in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on manufacturing practices and quality assurance for chemical consumer products and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all Commission organizations, activities, and programs. The Directorate provides scientific liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards. It also manages activities of the Commission's advisory committees such as Chronic Hazard Advisory Panels.

§ 1000.27 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It provides advice and case guidance to field offices and participation in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products and gives public warning to consumers where appropriate. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.28 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general administrative policy; maintenance of timeliness, quality, and efficiency of services; and planning input, review, and administrative control within its functional area of responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, personnel, training, automated data systems, telecommunications, the reference library, and the physical plant. The Directorate is responsible for the execution of payment, financial control, accounting, and reporting of all expenditures within the Commission. It is responsible for all aspects of personnel management for the Commission, including recruitment and placement, classification standards and policies, and employee and labor-management relations. It evaluates the need for, develops, and implements all training programs for the Commission, including employee training, executive development, and training programs involving outside parties. The Directorate designs, implements, and operates all automated data systems and telecommunications. It provides support services for space management, supply and property management, security, printing and reproduction.

records management, transportation, warehousing, utilities, and mail. It is responsible for all CPSC contracts and procurement of services and supplies. It develops, implements, and maintains management information systems and distributes summary reports on data accumulated by those systems. The Directorate also maintains and updates the reference library, performs data and bibliographic research for the agency and its constituency, and administers the ordering, receiving, and distribution of all publications requested by or for CPSC personnel.

§ 1000.29 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative and compliance activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government offices.

[FR Doc. 88-10918 Filed 5-16-88; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 240, 250, and 260

[Rel. Nos. 33-6775; 34-25683; 35-24640; 39-2164; IA-1116; IC-16396]

Delegation of Authority to the Office of General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The General Counsel will be delegated authority to approve non-expert, nonprivileged, factual staff testimony and the production of nonprivileged documents by Commission employees pursuant to validly issued subpoenas in private litigation. The purpose of the delegation is to save time for both the staff and the Commission on matters that can most efficiently be handled by the General Counsel.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Humes, Assistant General Counsel, 272-2454, Jeri Cohen, Attorney, 272-2453.

SUPPLEMENTARY INFORMATION: The Commission finds in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register.**

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 230, 240, and 260

Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

Text of Amendments

Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A is amended by adding the following citation:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 79sss, 80a-37, 80b-11).

* * * Section 200.30-14 also issued under Pub. L. 94-29, 89 Stat. 163, Pub. L. 87-592, 76 Stat. 395, 15 U.S.C., 78d-1, 78d-2, 5 U.S.C. 552a(d)(2) (B)(ii).

2. The authority citation following § 200.30-14 is removed and a new paragraph (f) is added as follows:

§ 200.30-14 Delegation of authority to the General Counsel.

* * * * *

(f) Approve non-expert, nonprivileged, factual staff testimony and the production of nonprivileged documents when validly subpoenaed in private litigation.

3. The authority citation for Part 200, Subpart M continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 79sss, 80a-37, 80b-11; E.D. 11222); 3 CFR, 1964-65 Comp., 5 CFR 735.104, unless otherwise noted.

4. Section 200.735-3 is amended by revising paragraph (b)(7)(ii), and the last sentence of paragraph (b)(7)(iii) as follows:

§ 200.735-3 General provisions.

* * * * *

(b) * * *

(7) * * *

(ii) Except where the General Counsel has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall, unless the Commssion or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal on this paragraph.

(iii) * * * The Commission or the General Counsel, pursuant to delegated authority, shall authorize the disclosure

of nonprivileged information or documents.

* * * * *

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

5. The authority citation for Part 230, §§ 230.100 through 230.215, is revised to read as follows:

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted.

6. The second and fourth sentences of § 230.122 are revised as follows:

§ 230.122 Non-disclosure of information obtained in the course of examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * * Any officer or employee who is served with such a subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

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

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

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted.

8. The second and fourth sentences of § 240.0–4 are revised as follows:

§ 240.0–4 Nondisclosure of information obtained in examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * * Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

9. The authority citation for Part 250 continues to read in part as follows;

Authority: Secs. 5, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless othewise noted.

10. Section 250.104 is amended by revising the second sentence of paragraph (c) and revising and designating the concluding paragraph as paragraph (d) as follows:

§ 250.104 Public disclosure of information and objections thereto.

* * * * *

(c) *Information obtained in the course of examinations, studies, and investigation.* * * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. * * *

(d) Any officer or employee who is served with such a subpoena, shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

11. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

12. The second and fourth sentences of § 260.0–6 are revised as follows:

§ 260.0–6 Non-disclosure of information obtained in the course of examinations and investigations.

* * * Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the Office of the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interests. * * * Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

By the Commission.

May 10, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10881 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of Cathine ((+)-norpseudoephedrine), Fencamfamin, Fenproporex and Mefenorex Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the Controlled Substances Act (21 U.S.C. *et seq.*). This temporary scheduling action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. As a result of this rule, the regulatory controls and criminal sanctions of a Schedule IV substance under the Controlled Substances Act (CSA) will be applicable to the manufacture, distribution and possession of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex or mefenorex. The temporary scheduling order for each substance shall remain in effect until the process of permanent scheduling, pursuant to section 201 (a) and (b) (21

U.S.C. 811 (a) and (b)) of the CSA, is completed.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to place cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the CSA was published in the **Federal Register** On October 30, 1987 (52 FR 41736). As stated in that proposal (52 FR 41736), the Administrator, in order to satisfy treaty obligations under the 1971 Convention on Psychotropic Substances, has found that the placement of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex in Schedule IV of the CSA is necessary. In order to satisfy said treaty obligations in a timely manner, cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex will be controlled on a temporary basis in Schedule IV of the CSA, pursuant to 21 U.S.C. 811(d)(4)(A).

In the October 30, 1987 notice of proposed rulemaking, comments were solicited from persons interested in the proposed control action. DEA received comments regarding the proposed control of cathine ((+)-norpseudoephedrine) and its impact on the use of the plant known as khat. Following a review of the information available on the chemical constituents found in khat, it has been determined that khat will be subject to the same Schedule IV controls as cathine ((+)-norpseudoephedrine), one of the psychoactive substances found in khat. Such a position is consistent with the controls imposed on many other plants containing controlled psychoactive substances.

It is the position of the Administrator that the temporary placement of the above substances into Schedule IV is consistent with the obligations of the United States under the Convention on Psychotropic Substances of 1971, namely that control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the CSA (21 U.S.C. 811(d)(4)(B)).

Regulations that are effective on or after June 16, 1988, and imposed on all of the above listed substances are as follows:

1. Registration

Any person who manufactures, distributes, engages in research, imports or exports any of the above listed substances or who proposes to engage in the manufacture, distribution, importation, exportation or research on such substances shall obtain a registration to conduct that activity by June 16, 1988, pursuant to Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. Security

The above listed substances must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling Packaging

All labels on commercial containers of, and all labeling of, the above listed substances which are packaged on or after June 16, 1988, shall comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. Inventory

Registrants possessing the above listed substances are required to take inventories pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

5. Records

All registrants must keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations.

6. Importation and Exportation

All importation and exportation of the above listed substances shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

7. Criminal Liability

Any activity with the above listed substances not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after June 16, 1988, shall be unlawful.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the placement of cathine ((+)-norpseudoephedrine), fencamfamin, fenproporex and mefenorex into Schedule IV of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). None of the substances listed above are marketed in the United States. This action is required in order to fulfill United States international treaty obligations.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by United States obligations under an international convention, namely the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, based upon the notification of the Secretary-General of the United Nations, and in accordance with the recommendations of the Assistant Secretary for Health, Department of Health and Human Services, under the authority vested in the Attorney General by 21 U.S.C. 811(d)(4) (A) and (C) and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.14 is amended by redesignating paragraph (e)(2) as (5), paragraph (e)(1) as (2), paragraphs (e)(3) through (6) as (e)(7) through (10) and by adding new paragraphs (e)(1), (3), (4) and (6) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(e) * * *

(1) Cathine ((+)-norpseudoephedrine).....1230

* * * * *

(3) Fencamfamin.....1760

(4) Fenproporex.....1575

* * * * *

(6) Mefenorex.....1580

* * * * *

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: May 12, 1988.

[FR Doc. 88–11014 Filed 5–16–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8201]

Income Taxes; Section 904(f) Transition Rules; Foreign Tax Credits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to transition rules for implementing the changes made to section 904(f) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986. The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The regulations provide the public with the immediate guidance needed to comply with that Act and will affect individuals and entities claiming the foreign tax credit. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations apply to taxable years beginning after December 31, 1986, and are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3896 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains Temporary Income Tax Regulations (26 CFR Part 1) under section 904 of the Internal Revenue Code of 1986.

Need for Temporary Regulations

The proper application of section 904(f) is dependent upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulation either with notice and public comment procedure under section 553(b) of Title 5 of the United States Code, or under the effective date limitation of section 553(d) of Title 5.

Explanation of Provisions

Prior Law

Prior to 1987, if a taxpayer sustained a foreign source loss with respect to income in a separate limitation category, the loss was treated as offsetting the taxpayer's U.S. source income before offsetting foreign source income subject to another separate limitation. A foreign tax credit was allowed for the taxpayer's other foreign source income if that income was subject to foreign tax. Thus, it was possible for a taxpayer to enjoy a double benefit in a single taxable year in the form of reduced U.S. source income and a foreign tax credit.

Statutory Provision

Section 1203 of the Tax Reform Act of 1986 amended section 904(f) by adding paragraph (5) at the end thereof which requires that a foreign source loss with respect to any income category first offset the taxpayer's foreign source income subject to other separate limitations for the taxable year on a proportionate basis before the loss offsets the taxpayer's U.S. source income.

Explanation of Temporary Regulations

The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The Temporary Regulations contained in this document provide transition rules for the treatment of overall foreign losses incurred by a taxpayer in taxable years beginning before January 1, 1987 (pre-effective date years), that are recaptured in taxable years beginning after December 31, 1986 (post-effective date years). In addition, transition rules are provided for an overall foreign loss that is part of a net operating loss incurred in a pre-effective date year which is carried forward to a post-effective date year and for an overall foreign loss that is part of a net operating loss incurred in a post-effective date year which is carried back to a pre-effective date year.

Section 1.904(f)–13T Transition Rules.

Paragraph (a)(1) provides that an overall foreign loss incurred in a pre-effective date year shall be recaptured in post-effective date years by recharacterizing income received in the income category described in section 904(d) as in effect for post-effective date years that is analogous to the income category for which the overall foreign loss account was established. For example, an overall foreign loss incurred with respect to the income category described in section 904(d)(1)(B) (Dividends from a DISC or former DISC) as in effect for pre-effective date years shall be recaptured from income earned in the income category described in section 904(d)(1)(F) (Dividends from a DISC or former DISC) as in effect for post-effective date years.

Paragraph (a)(2)(i) provides, in general, that an overall foreign loss incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date years, shall be recaptured from the taxpayer's post-effective date general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer's general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the pre-effective date overall foreign loss to be recaptured, then the amount of each type of separate limitation income that will be treated as U.S. source income is determined pursuant to a formula set forth in paragraph (a)(2)(i).

Paragraph (a)(2)(ii) provides an exception to the general rule for recapture of an overall foreign loss in the general limitation category of section 904(d)(1)(E) as in effect for pre-effective date years if a taxpayer can demonstrate to the satisfaction of the Internal Revenue Service that the loss is attributable, in sums certain, to one or more separate categories of section 904(d)(1), as in effect for post-effective date taxable years. In such a case, the taxpayer may recapture the loss (in the amounts demonstrated) from those limitation categories only.

Paragraph (a)(3) provides that an overall foreign loss incurred by a taxpayer in a pre-effective date year shall be recaptured to the extent thereof before recapture of post-effective date overall foreign losses.

Paragraph (b) provides that an overall foreign loss that is part of a net operating loss incurred in a pre-effective date taxable year which is carried forward to a post-effective date year will be allocated first to income in the income category analogous to the income category set forth in section 904(d) as in effect for pre-effective date taxable years in which the loss occurred. If the loss exceeds income in the analogous income category, the loss shall be allocated to other foreign source

income earned by the taxpayer in accordance with the rules set forth in section 904(f)(5). Losses remaining after application of section 904(f)(5) shall be allocated to the taxpayer's U.S. source income, which will create an addition to the taxpayer's overall foreign loss account.

Paragraph (c)(1) provides that an overall foreign loss that is part of a net operating loss incurred by the taxpayer in a post-effective date taxable year which is carried back to a pre-effective date taxable year shall be allocated first to income in the pre-effective date income category analogous to the income catetgory set forth in section 904(d) as in effect for post-effective date taxable years in which the loss occurred. The general limitation income category for pre-effective date years shall be treated as the income category that is analogous to post-effective date general limitation income, financial services income, shipping income, dividends from each noncontrolled section 902 corporation and high withholding tax interest income.

Paragraph (c)(2) provides that if an overall foreign loss carred back to a pre-effective date taxable year exceeds the foreign source income in the analogous category for the carry back year, the remaining loss shall be allocated against U.S. source income as set forth in § 1.904(f)–3. An addition to an overall foreign loss account resulting from the carry back of a net operating loss shall be treated as having been incurred by the taxpayer in the year in which the loss arose and shall be subject to recapture pursuant to section 904(f) as in effect for post-effective date years.

Paragraph (c)(3) provides that to the extent that an overall foreign loss carried back as part of a net operating loss exceeds the separate limitation income to which it is allocated and the U.S. source income of the taxpayer for the taxable year, the loss shall be allocated pro rata to other separate limitation income of the taxpayer for the taxable year. However, there shall be no recharacterization of separate limitation income pursuant to section 904(f)(5) as a result of the allocation of the net operating loss to other separate limitation income of the taxpayer.

Paragraph (d) provides that for taxable years beginning after December 31, 1986, and before January 1, 1991, the rules set forth in § 1.904(f)–6 shall apply for purposes of recapturing general limitation and foreign oil related income (FORI) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983). For taxable years beginning after December 31, 1990, the rules set forth in § 1.904(f)–13T shall apply for purposes of recapturing pre-1983 general limitation and FORI overall foreign losses.

Paragraph (e) provides that the rules set forth in paragraph (a)(2) shall apply for purposes of recapturing overall foreign losses incurred in taxable years beginning before January 1, 1983, that were computed on a combined basis in accordance with § 1.904(f)–1(c)(1).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of this regulation is Willard W. Yates of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

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

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

§§ 1.904(f)–7 through 1.904(f)–12 [Reserved]

Par. 2. New § 1.904(f)–13T is added immediately after § 1.904(f)–6. Sections 1.904(f)–7 through § 1.904(f)–12 are reserved. The added section reads as follows:

§ 1.904(f)–13T Transition rules.

(a) *Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987*—(1) *In general.* If a taxpayer has a balance in an overall foreign loss account at the end of its last taxable year beginning before January 1, 1987 (pre-effective date years), the amount of that balance shall be recaptured in subsequent years by recharacterizing income received in the income category described in section 904(d) as in effect for taxable years beginning after December 31, 1986 (post-effective date years), that is analogous to the income category for which the overall foreign loss account was established, as follows:

(i) Interest income as defined in section 904(d)(1)(A) as in effect for pre-effective date taxable years is analogous to passive income as defined in section 904(d)(1)(A) as in effect for post-effective date years;

(ii) Dividends from a DISC or former DISC as defined in section 904(d)(1)(B) as in effect for pre-effective date taxable years is analogous to dividends from a DISC or former DISC as defined in section 904(d)(1)(F) as in effect for post-effective date taxable years;

(iii) Taxable income attributable to foreign trade income as defined in section 904(d)(1)(C) as in effect for pre-effective date taxable years is analogous to taxable income attributable to foreign trade income as defined in section 904(d)(1)(G) as in effect for post-effective date years;

(iv) Distributions from a FSC (or former FSC) as defined in section 904(d)(1)(D) as in effect for pre-effective date taxable years is analogous to distributions from a FSC (or former FSC) as defined in section 904(d)(1)(H) as in effect for post-effective date taxable years;

(v) For general limitation income as described in section 904(d)(1)(E) as in effect for pre-effective date taxable years, see special rule in paragraph (a)(2) of this section.

(2) *Rule for general limitation losses*—(i) *In general.* Overall foreign losses incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, that are recaptured in post-effective date taxable years shall be recaptured from the taxpayer's general limitation income, financial services income, shipping income, and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer s general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the overall foreign loss to be recaptured,

then the amount of each type of separate limitation income that will be treated as U.S. source income shall be determined as follows:

$$\text{Overall foreign loss subject to recapture} \times \frac{\text{Amount of income in each separate category from which the loss may be recaptured}}{\text{Sum of income in all separate categories from which the loss may be recaptured}}$$

This allocation shall be made after application of section 905(f)(5).

(ii) *Exception.* If a taxpayer can demonstrate to the satisfaction of the Internal Revenue Service that an overall foreign loss in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, is attributable, in sums certain, to one or more separate categories of section 904(d)(1), as in effect for post-effective date taxable years, then the taxpayer may recapture the loss (in the amounts demonstrated) from those separate categories only.

(3) *Priority of recapture of overall foreign losses incurred in pre-effective date taxable years.* An overall foreign loss incurred by a taxpayer in pre-effective date taxable years shall be recaptured to the extent thereof before the taxpayer recaptures an overall foreign loss incurred in a post-effective date taxable year.

(4) *Examples.* The following examples illustrate the application of paragraph (a).

Example (1). X corporation is a domestic corporation which operates a branch in Country Y. For its taxable year ending December 31, 1988, X has $800 of financial services income, $100 of general limitation income and $100 of shipping income. X has a balance of $100 in its general limitation overall foreign loss account which resulted from an overall foreign loss incurred during its 1986 taxable year. X is unable to demonstrate to which of the income categories set forth in section 904(d)(1) the loss is attributable. In addition, X has a balance of $100 in its shipping overall foreign loss account attributable to a shipping loss incurred during its 1987 taxable year. X has no other overall foreign loss accounts. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $500. X's overall foreign loss incurred during its 1986 taxable year is recaptured before the overall foreign loss incurred during its 1987 taxable year as follows: $80 ($100 x 800/1000) of X's financial services income, $10 ($100 x 100/1000) of X's general limitation income, and $10 ($100 x 100/1000) of X's shipping income will be treated as U.S. source income. The remaining $90 of X corporation's shipping income will be treated as U.S. source income for the purpose of recapturing X's $100 overall foreign loss attributable to the shipping loss incurred in 1987. $10 remains in X's shipping overall foreign loss account for recapture in subsequent taxable years.

Example (2). The facts are the same as in *Example (1)* except that X has $800 of financial services income, $100 of general limitation income, a $100 dividend from a noncontrolled section 902 corporation and a ($100) shipping loss for its taxable year ending December 31, 1988. Pursuant to paragraph (a)(2) of this section, the rules of section 904(f)(5) apply before recapture of overall foreign losses. Therefore, the ($100) shipping loss incurred by X will be allocated to its separate limitation income as follows: $80 ($100 x 800/1000) will be allocated to X's financial services income, $10 ($100 x 100/1000) will be allocated to its general limitation income and $10 ($100 x 100/1000) will be allocated to X's dividend from the noncontrolled section 902 corporation. Accordingly, after allocation of the 1988 shipping loss, X has $720 of financial services income, $90 of general limitation income, and a $90 dividend from its noncontrolled section 902 corporation. Pursuant to section 904(f)(1), the full amount in each of X corporation's overall foreign loss accounts is subject to recapture since $200 (the sum of those amounts) is less than 50% of X's foreign source taxable income for its 1988 taxable year, or $450. X's overall foreign loss incurred during its 1986 taxable year is recaptured as follows: $89 ($100 x 720/810) of X's financial services income and $11 ($100 x 90/810) of its general limitation income will be treated as U.S. source income. Accordingly, after application of section 904(f), X has $100 of U.S. source income, $631 of financial services income, $79 of general limitation income and a $90 dividend from its noncontrolled section 902 corporation for its 1988 taxable year. X must establish a separate limitation loss account for each portion of the 1988 shipping loss that was allocated to its financial services income, general limitation income and dividends from its noncontrolled section 902 corporation. X's overall foreign loss account for the 1986 general limitation loss is reduced to zero. X still has a $100 balance in its overall foreign loss account that resulted from the 1987 shipping loss.

Example (3). Y is a domestic corporation which has a branch operation in Country Z. For its 1988 taxable year, Y has $5 of shipping income, $15 of general limitation income and $100 of financial services income. Y has a balance of $100 in its general limitation overall foreign loss account attributable to its 1986 taxable year. Y has no other overall foreign loss accounts. Pursuant to section 904(f)(1), $60 of the overall foreign loss is subject to recapture since 50% of Y's foreign source income for 1988 is less than the amount of its overall foreign loss for 1986. Y can demonstrate that the entire $100 overall foreign loss was attributable to a shipping limitation loss incurred in 1986. Accordingly, only Y's $5 of shipping limitation income received in 1988 will be treated as U.S source income. Because Y can demonstrate that the 1986 loss was entirely attributable to a shipping loss, none of Y's general limitation income or financial services income received in 1988 will be treated as U.S. source income.

Example (4). The facts are the same as in *Example* (3) except that Y can only demonstrate that $50 of the 1986 overall foreign loss account was attributable to a shipping loss incurred in 1986. Accordingly, Y's $5 of shipping limitation income received in 1988 will be treated as U.S. source income. The remaining $50 of the 1986 overall foreign loss that Y cannot trace to a particular separate limitation will be recaptured and treated as U.S. source income as follows: $43 ($50 × 100/115) of Y's financial services income will be treated as U.S. source income and $7 ($50 × 15/115) of Y's general limitation income will be treated as U.S. source income.

(b) *Treatment of overall foreign losses that are part of net operating losses incurred in pre-effective date taxable years which are carried forward to post-effective date taxable years*—(1) *Rule.* An overall foreign loss that is part of a net operating loss incurred in a pre-effective date taxable year which is carried forward, pursuant to section 172, to a post-effective date taxable year will be allocated first to income in the category analogous to the income category set forth in section 904(d) as in effect for pre-effective date taxable years in which the loss occurred. The analogous category shall be determined under the rules of paragraph (a) of this section. If the loss exceeds income in the analogous income category (or categories) to which the loss is carried, the overall foreign loss shall be allocated to other foreign source income (if any) earned by the taxpayer in the carryover year in accordance with the rules set forth in section 904(f)(5). If a loss remains after application of section 904(f)(5), the loss shall be allocated to U.S. source income, which will create an addition to the taxpayer's overall foreign loss account.

(2) *Example.* The following example illustrates the rule of paragraph (b)(1).

Example. Z is a domestic corporation which has a branch operation in Country D. For its taxable year ending December 31, 1988, Z has $100 of passive income and $200 of general limitation income. Z also has a $60 net operating loss which was carried forward pursuant to section 172 from its 1986 taxable year. The net operating loss resulted from an overall foreign loss attributable to a general limitation loss. Z can demonstrate that the loss is a shipping loss. Therefore, the net operating loss will be treated as a shipping loss for Z's 1988 taxable year. Pursuant to section 904(f)(5), the shipping loss will be allocated as follows: $20 ($60 × 100/300) will be allocated to Z's passive income and $40 ($60 × 200/300) will be allocated to Z's general limitation income. Accordingly, after application of section 904(f), Z has $80 of passive income and $160 of general limitation income for its 1988 taxable year. Although no addition to Z's overall foreign loss account for shipping income will result from the NOL carryforward, shipping income earned by Z in subsequent taxable years will be subject to recharacterization as passive income and general limitation income pursuant to the rules set forth in section 904(f)(5).

(c) *Treatment of overall foreign losses that are part of net operating losses incurred in post-effective date taxable years which are carried back to pre-effective date taxable years*—(1) *Allocation to analogous income category.* An overall foreign loss that is part of a net operating loss incurred by the taxpayer in a post-effective date taxable year which is carried back, pursuant to section 172, to a pre-effective date taxable year shall be allocated first to income in the pre-effective date income category analogous to the income category set forth in section 904(d) as in effect for post-effective date taxable years in which the loss occurred. Except for the general limitation income category, the pre-effective date income category that is analogous to a post-effective date income category shall be determined under paragraphs (a) (i) through (iv) of this section. The general limitation income category for pre-effective date years shall be treated as the income category that is analogous to the post-effective date categories for general limitation income, financial services income, shipping income, dividends from each noncontrolled section 902 corporation and high withholding tax interest income. If the net operating loss resulted from separate limitation losses in more than one post-effective date income category and more than one loss is carried back to pre-effective date general limitation income, then the losses shall be allocated to the pre-effective date general limitation income based on the following formula:

$$\text{Pre-effective date general limitation income} \times \frac{\text{Loss in each post-effective date separate limitation category that is analogous to pre-effective date general limitation income}}{\text{Losses in all post-effective categories that are analogous to pre-effective date general limitation income}}$$

(2) *Allocation to U.S. source income.* If an overall foreign loss is carried back to a pre-effective date taxable year and the loss exceeds the foreign source income in the analogous category for the carryback year, the remaining loss shall be allocated against U.S. source income as set forth in § 1.904(f)–3. The amount of the loss that offsets U.S. source income must be added to the taxpayer's overall foreign loss account. An addition to an overall foreign loss account resulting from the carryback of a net operating loss incurred by a taxpayer in a post-effective date taxable year shall be treated as having been incurred by the taxpayer in the year in which the loss arose and shall be subject to recapture pursuant to section 904(f) as in effect for post-effective date taxable years.

(3) *Allocation to other separate limitation categories.* To the extent that an overall foreign loss that is carried back as part of a net operating loss exceeds the separate limitation income to which it is allocated and the U.S. source income of the taxpayer for the taxable year to which the loss is carried, the loss shall be allocated pro rata to other separate limitation income of the taxpayer for the taxable year. However, there shall be no recharacterization of separate limitation income pursuant to section 904(f)(5) as a result of the allocation of a net operating loss to other separate limitation income of the taxpayer.

(4) *Examples.* The following examples illustrate the rules of paragraph (c)(1).

Example (1). X is a domestic corporation which has a branch operation in Country A. For its taxable year ending December 31, 1987, X has a $60 net operating loss which is carried back pursuant to section 172 to its taxable year ending December 31, 1985. The net operating loss resulted from a shipping loss; X has no U.S. source income in the 1987. X had $20 of general limitation income, $40 of DISC limitation income and $10 of U.S. source income for its 1985 taxable year. The $60 NOL is allocated first to X's 1985 general limitation income to the extent thereof ($20) since the general limitation income category of section 904(d) as in effect for pre-effective date taxable years is the income category that is analogous to shipping income for post-effective date taxable years. Therefore, X has no general limitation income for its 1985 taxable year. Next, pursuant to section 904(f) as in effect for pre-effective date taxable years, the remaining $40 of the NOL is allocated first to X's $10 of U.S. source income and then to $30 of X's DISC limitation income for its 1985 taxable year. Accordingly, X has no U.S. source income and $10 of DISC limitation income for its 1985 taxable year after allocation of the NOL. X has a $10 balance in its shipping overall foreign loss account which is subject to recapture pursuant to section 904 (f) as in effect for post-effective date taxable years. X will not be required to recharacterize, pursuant to section 904(f)(5), subsequent shipping income as DISC limitation income.

Example (2). Y is a domestic corporation which has a branch operation in Country B. For its taxable year ending December 31, 1987, X has $200 net operating loss which is carried back pursuant to section 172 to its taxable year ending December 31, 1986. The net operating loss resulted from a ($100) general limitation loss and a ($100) shipping loss. Y had $100 of general limitation income and $200 of U.S. source income for its taxable year ending December 31, 1986. The separate limitation losses are allocated pro rata to Y's 1986 general limitation income as follows: $50 of the ($100) general limitation loss ($100 x 100/200) and $50 of the ($100) shipping loss ($100 x 100/200) is allocated to Y's $100 of 1986 general limitation income. The remaining $50 of Y's general limitation loss and the remaining $50 of Y's shipping loss are allocated to Y's 1986 U.S. source income. Accordingly, Y has no foreign source income and $100 of U.S. source income for its 1986 taxable year. Y has a $50 balance in its general limitation overall foreign loss account and a $50 balance in its shipping overall foreign loss account, both of which will be subject to recapture pursuant to section 904(f) as in effect for post-effective date taxable years.

(d) *Recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983.* For taxable years beginning after December 31, 1986, and before January 1, 1991, the rules set forth in § 1.904(f)–6 shall apply for purposes of recapturing general limitation and foreign oil related income (FORI) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983). For taxable years beginning after December 31, 1990, the rules set forth in this section shall apply for purposes of recapturing pre-1983 general limitation and FORI overall foreign losses.

(e) *Recapture of pre-1983 overall foreign losses determined on a combined basis.* The rules set forth in paragraph (a)(2) of this section shall apply for purposes of recapturing overall foreign losses incurred in taxable years

beginning before January 1, 1983, that were computed on a combined basis in accordance with § 1.904(f)–1(c)(1).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 22, 1988.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–10920 Filed 5–16–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–37]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Martin County Commission, the Coast Guard is modifying regulations governing the Roosevelt drawbridge at Stuart by permitting the number of openings to be limited during certain periods. This change is being made because of complaints received from both highway and waterway users. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: The original Notice of Proposed Rulemaking published on October 2, 1987 drew a significant number of comments from waterway users objecting to the 90 minute closed periods during the morning and evening commuter times. These comments were sent to Martin County who then proposed an opening at the midpoint of the commuter closed periods. On February 16, 1988 the Coast Guard published a Supplemental Notice of Proposed Rulemaking (53 FR 4423) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 1, 1988. In each notice, interested persons were given until April 1, 1988 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Twenty eight comments were received. Twenty-three supported the proposal including a petition signed by eleven persons. Five opposed the amendment and expressed support for the original proposal. One writer suggested the bridge should be kept in the closed position for emergency vehicles. This provision is covered by the general drawbridge requirements under 33 CFR 117.31. Three commenters suggested that signs describing the bridge opening schedule be posted on the bridges. The requirement for posting signs for waterway users is covered by 33 CFR 117.55. The Coast Guard will encourage the installation of larger signs as suggested, and will refer the comments about posting signs on the highway for motorists to the bridgeowner. Another commenter suggested a fee should be required for bridge openings, which would encourage vessel owners to modify their vessels so they would not need an opening. We are not implementing this suggestion because the requirement to lower unnecessary appurtenances is already covered under 33 CFR 117.11 After carefully reviewing all comments, the Coast Guard has determined that no new information has been presented which justifies changing the proposed regulation. The final rule is unchanged from the proposed rule published on February 16, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

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

2. Section 117.317(d) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(d) *Roosevelt (US1) bridge, mile 7.4 at Stuart.* The draw shall open on signal; except Monday through Friday, except federal holidays, from 7 a.m. to 6 p.m. the draw need open only on the hour and half hour. However, the draw need not open between 7:30 a.m. and 9 a.m. and 4 p.m. and 5:30 p.m. except at 8:15 a.m. and 4:45 p.m. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent railway bridge is in the closed position at the time of a scheduled opening the draw need not open, but it must then open immediately upon opening of the railroad bridge to pass all accumulated vessels. Exempt vessels shall be passed at any time.

* * * * *

Dated: April 29, 1988.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88–10951 Filed 5–16–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) has amended its National Service Life Insurance (NSLI) policy loan regulation to remove the reference to the initial variable policy loan interest rate of 8 percent. The intent of the regulation is to allow publication of new rates in the **Federal Register** without the requirement of periodic amendments to the loan regulation. The VA is removing reference in codified text to the initial 8 percent rate since that rate may vary annually. The VA will publish any future interest rate changes in the **Federal Register** but not as codified text. The effect of this amendment will be to reduce unnecessary regulatory burdens and publication costs while maintaining

an adequate method of advising the public of periodic changes in the loan rate through publication in the **Federal Register.**

EFFECTIVE DATE: This amendment is effective May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: On October 2, 1987, a VA regulatory amendment was published at 52 FR 36925 providing for a variable policy loan interest rate on all NSLI policy loans applied for on and after the effective date of the amendment. The regulation, which became effective on November 2, 1987, sets forth the method for determining the variable loan rate, and the initial rate of 8 percent is shown in the regulation as notice to the public. The regulation also provides that notice of future rate changes will be published in the **Federal Register.** In addition, direct notice of the prevailing interest rate will be provided to new borrowers at the time the loan is made, and existing borrowers will be sent direct notice in advance of any rate increases. By removing the reference to the initial 8 percent rate from the regulation itself, future changes may be published in the **Federal Register** without changes to the codified text. In this manner, policyholders will receive reasonable advance notice of any future rate changes, and the Government will save the administrative cost of continued regulatory amendments.

Because this amendment makes no substantive change, the VA finds, under 38 CFR 1.12, that prior notice and opportunity for public comment are unnecessary.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this final regulatory amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this final regulatory amendment imposes no regulatory burdens on small entities, and there will be no direct effect on claimants for VA benefits. In any case, this change does not come within the term "rule" as defined in, and made subject to, the RFA, 5 U.S.C. 601(2).

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this final regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Number is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: April 25, 1988.

Thomas K. Turnage,

Administrator.

PART 8—[AMENDED]

In 38 CFR Part 8, National Service Life Insurance, paragraph (d) of § 8.28 is amended by removing the first sentence so that paragraph (d) reads as follows:

§ 8.28 Policy loans.

* * * * *

(d) Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(Authority: 38 U.S.C. 706)

[FR Doc. 88–11020 Filed 5–16–88; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

Veterans Education; Clarification of Administrative Error

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law provides that the Veterans Administration (VA) will not create an overpayment against the account of a veteran or eligible person if the overpayment is created as a result of an erroneous award of benefits based solely upon administrative error or error in judgment. Increasingly, users of the regulations have relieved veterans of overpayments when the overpayments resulted from administrative errors by third parties such as school officials rather than from such errors in the award of benefits by the VA. This is contrary to the way in which the law has been implemented for several decades. Accordingly, the regulation which implements this provision of law for the education programs which the VA administers is amended to make it clear that the law applies only to administrative error by the VA.

EFFECTIVE DATE: April 25, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On page 46494 of the **Federal Register** of December 8, 1987, there was published a notice of intent to amend Part 21 to clarify that the use of the term "administrative error" when determining the correct date for discontinuance of educational assistance under the Vietnam Era GI Bill and dependents' educational assistance refers to administrative error by the VA.

Interested people were given 30 days to submit comments, suggestions or objections. The VA received two letters. Both were from university officials.

One official stated that he agreed with the clarification. The other neither offered suggestions nor raised specific objections to the proposed regulation. Instead, he provided comments on the general area covered by the amended regulation and asked questions concerning related subject matter. The VA responded personally to him. The VA is adopting the amended regulation.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of Sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e.,

small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 25, 1988.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, *Vocational Rehabilitation and Education,* §21.4135 is amended by revising paragraph (p)(2) and adding an authority citation to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(p) * * *

(2) Date of last payment on an erroneous award based solely on administrative error by the VA or error in judgment by the VA.

(Authority: 38 U.S.C. 3012(b)(10) and 3013)

* * * * *

[FR Doc. 88-11022 Filed 5-16-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 82-105]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising 46 CFR 67.03-5 to provide the basis for applying the phrase "controlling interest in the partnership" which was inserted in the Vessel Documentation Act by amendment just before the new vessel documentation regulations were published in the **Federal Register** on June 24, 1982 (47 FR 27490). The change in the regulation specifies when the controlling interest in a partnership is deemed to be owned by citizens of the United States for purposes of vessel documentation. This will reduce the number of inquiries concerning eligibility for documentation of a vessel owned by a partnership.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory L. Oxley, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal authors of this regulation are Gregory L. Oxley and Thomas L. Willis, Chief, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection.

Background

The regulations governing vessel documentation contained in Part 67 of Title 46, Code of Federal Regulations, were extensively revised in a final rule published on June 24, 1982. That rulemaking project simplified documentation procedures and implemented the Vessel Documentation Act (Pub. L. 96-594). In the supplementary information published with the final rule, the Coast Guard acknowledged that the recent amendment of the Vessel Documentation Act by section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97-136) created a definitional problem by introducing the new term "controlling interest" in the context of documentation of vessels owned by partnerships. The Coast Guard deferred resolution of the definitional problem due to the relative timing of the amendment to the statute and the publication of the final documentation regulations. An Advance Notice of Proposed Rulemaking (ANPRM) was published on November 12, 1982 (47 FR 51170) and the public was given until January 11, 1983 to comment. In response to the requests for extension, a notice was published extending the comment period for the ANPRM to January 24, 1983. A Notice of Proposed Rulemaking (NPRM) was published on July 16, 1984 (49 FR 28744) describing the Coast Guard's proposal for resolving the definitional problem. The public was given until September 14, 1984 to comment on the proposed change to the regulations. A correction document was published on August 16, 1984 (49 FR 32773) to correct minor errors in the published NPRM. A notice was published on September 13, 1984 (49 FR 35967) extending the NPRM comment period until October 15, 1984. Analysis of the comments concerning the proposed regulation is completed, and it is determined that publication of a final regulation is required.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239). This new law contains provisions which address American control of vessels which require a fishery license. Controlling interest requirements for a fishery license will be the subject of a future rulemaking project.

Discussion of Comments

Eleven substantive comments concerning the NPRM were received during the comment period. Comments and analyses were provided by law firms, merchant vessel owners and operators, industry associations, a maritime union, a non-profit research and education association, and others. Seven comments stated or implied some support for the regulation proposed by the Coast Guard, while four comments stated or implied objections to the proposed regulation.

Of the seven comments indicating some support for the proposed regulation, three supported it as published in the NPRM. One comment from a large independent marine transporter of petroleum products, which expressed strong support for the proposed regulation, said "it finally makes impossible the control of a United States domestic operator by foreign interests using 'shell' or 'dummy' U.S.-citizen owners." A comment from an association representing 15 member companies owning 103 bulk cargo vessels operating on the Great Lakes said the proposed amendment as published in the NPRM "promotes public policy as expressed by Congress." The third comment, from a law firm representing a fleet owner, said the approach adopted in the NPRM will enable the company it represents to include foreign investors in limited partnerships. The other four comments that indicated some support for the proposed regulation requested various changes. The suggested changes and the Coast Guard's position concerning each suggestion are as follows:

a. In order to prevent the regulation from being unduly restrictive and misleading in determining the question of control in fact, the legal department of a large chemical corporation suggested the phrase *"control* includes any right" in paragraph (e) of the proposed regulation should be changed to read *"control* may, in appropriate circumstances, include any right." The comment states the change allows the Coast Guard to continue to determine

the issue of control on an *ad hoc* basis. The Coast Guard concurs with the intent of the recommendation, and the final rule is modified to emphasize this point. The rights listed in paragraph (e) are factors that tend to reflect control, and they are considered when evaluating who actually controls a partnership; they are not dispositive. A limited partner may exercise his or her individual rights, but aliens, individually or collectively, may not dictate the business decisions of or "control" a partnership. The Coast Guard will continue to make *ad hoc* determinations; however, the Coast Guard wishes to make it clear that *no* control in fact by aliens is acceptable in a partnership seeking to document vessels under the laws of the United States.

b. A non-profit association, representing 174 member companies, indicated general support for the proposed regulation but said it should include the "controlling interest" test contained in section 2 of the Shipping Act, 1916, as amended (hereinafter cited as 46 App. U.S.C. 802). The Coast Guard disagrees with the specific recommendation but concurs with its intent. Although 46 App. U.S.C. 802 refers to partnerships, the substantive controlling interest test, as articulated by that section, only applies to corporations and is not conducive to citizenship evaluations for partnerships, where stock ownership is not at issue. The Shipping Act test contained in 46 App. U.S.C. 802 does imply that in determining controlling interest, scrutiny of both equity interest and actual control is appropriate. The final rule imposes an equity and control test, but one tailored to partnerships rather than corporations.

c. A law firm, commenting on behalf of a client engaged in shipping activities, indicated general support for the NPRM and the "control" methods in paragraphs (d)(1), (d)(2), and (e) of the proposed regulation, but it also said 46 App. U.S.C. 802 should apply to the basic documentation decision. The comment says the Coast Guard ignored the question of "who controls the partners" in an illegal way, i.e., contrary to the explicit requirements of the statutes. The Coast Guard disagrees. Although several comments provided useful analyses of 46 App. U.S.C. 802 and related legislative history, none provided any information which had not been considered by the Coast Guard before the proposed regulation was written. For that reason, the Coast Guard position remains as stated in the NPRM; that is, for purposes of vessel documentation decisions, 46 App. U.S.C. 802 is inapplicable. The comment also suggests the issue of whether 46 App. U.S.C. 802 controls the documentation of vessels under registry should be made the subject of a separate rulemaking. The Coast Guard sees no necessity for a rulemaking project to consider that issue at this time.

d. A comment by a maritime association that indicated limited support for the regulation also suggested various changes. For example, it suggested that the regulation contain the tests found in 46 App. U.S.C. 802. For the reasons already discussed, that suggestion is not adopted. It also suggested the phrase "partner or partners" in paragraphs (a)(2) and (d)(1) of the proposed regulations be changed to "person" or expanded to read "partner or partners *or any other person.*" The Coast Guard sees no need for such a change. The proposed regulation makes it clear that the documentation of a vessel by a partnership will be permitted if each general partner is a citizen and the controlling interest in the partnership is owned by citizens of the United States as defined by the vessel documentation regulations. The final rule makes it clear that a coastwise or Great Lakes license will not be granted for a vessel owned by a partnership unless all of the general partners are U.S. citizens and at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who could each qualify for a coastwise or Great Lakes license in their own right. This approach does not detract from the requirements of 46 App. U.S.C. 802 in any way and reflects the same policy which the Coast Guard and its predecessor agency have followed since the Shipping Act of 1916, as amended, was enacted.

The commenter also expressed concern that control of a partnership could be conferred upon or permitted to be exercised by non-citizen partners by virtue of the fiduciary duty a general partner owes a non-citizen limited partner. The commenter suggested that language be added which would include within the meaning of "control" the right to have partners stand in a fiduciary capacity. The Coast Guard feels that such language is neither necessary nor proper. The fiduciary duty owed by a general partner is inherent to the nature of the partnership entity. The language suggested would preclude any involvement whatsoever by non-citizen limited partners, a result clearly not within the contemplation of the statute. The right to stand in a position of fair dealing with respect to a general partner is not tantamount to control over that general partner or the partnership. It is simply the right to expect general partners to act in the best interests of the partnership as a whole, rather than acceding to any special interests of partners, be they general or limited. The comment further suggested deletion of the portion of paragraph (e) which reads "but does not include the right to receive a financing return, i.e., interest or the equivalent of interest, on a loan or other financing obligation." It suggested this clause invites abuse by separating investment from equity. The Coast Guard disagrees. The purpose of the phrase used in the proposed regulation is to show that while a variety of "control" indicia are recognized within the legal and business communities—the list in paragraph (e) is not intended to be exhaustive—the Coast Guard position is that a loan or other financing obligation provided to a partnership by an alien which merely gives the alien the right to receive interest or the equivalent of interest does not by itself mean the lender has "control" over the partnership. Of course, if the alien lender has control over the partnership through any other means the partnership cannot document its vessels. The Coast Guard believes the proposed regulation conveys this position clearly and sees no need for the suggested change. Any attempted abuse can be dealt with as it appears.

Four comments reflecting substantial opposition to the proposed regulation were received. The basis for the objections and the Coast Guard's response is as follows:

a. One comment from a law firm said it is not necessary to clarify the definition of "controlling interest" in the partnership context, that the purported "clarification" is really a change from previous Coast Guard rulings, and that use of *ad hoc* determinations as in the past provides a satisfactory approach. The Coast Guard partially agrees. The Coast Guard does not view the proposed regulation as a change from existing policy. However, the need for clarification of the existing policy was clearly established by the comments received in response to the ANPRM. While it is unlikely that any regulation defining "controlling interest" will eliminate *ad hoc* determinations, the regulation delineates what factors the Coast Guard believes are important in determining who controls a partnership. This should benefit the public and the Coast Guard by reducing the need for such determinations. The comment also suggested the criteria for determining the existence of "control" contained in the Revised Uniform Limited Partnership

Act (1976) should be incorporated into the proposed regulation. The Coast Guard considered this approach during the development of the proposed regulation and decided it was inappropriate. The Revised Uniform Limited Partnership Act has been enacted as law in only about one-fourth of the jurisdictions affected by the proposed regulation. Moreover, the criteria in the Revised Uniform Limited Partnership Act were developed to aid in deciding when limited partners may be held liable as though they were general partners. While this has some relation to the issue which our proposed regulation is designed to address, that is, whether control over a partnership seeking to document a vessel is in the hands of aliens, the issues are clearly not identical.

b. Two comments from companies involved in offshore shipping activities voiced strong objections to the proposed regulation on the grounds that it either violates 46 App. U.S.C. 802 or allows the statute to be circumvented through the use of several layers of partnerships. One of the comments states that under the Coast Guard definition "a combination of individuals, corporations, and partnerships could in fact result in a 99% alien-owned partnership and be entitled to document vessels under U.S. law (and flag) *and* operate those vessels in coastwise trade." The Coast Guard fails to see how this would be possible under the proposed regulation. In order to be issued a certificate of documentation endorsed with a coastwise license, a vessel must be eligible for documentation, built in the United States, and qualify under 46 App. U.S.C. 802 to be employed in coastwise trade. The other comment, from the legal department of the other company engaged in offshore shipping activities, included a chart purporting to show that by use of several tiers of partnerships the percentage of alien interest, in a partnership seeking to document and license a vessel, could increase progressively to 92.4915% by the ninth level. The Coast Guard disagrees with the analysis that leads to this conclusion. The analysis is not sound and based on a mathematical fiction. Furthermore, at each tier the partnership is 100% controlled by U.S. citizens. Each successive level must satisfy the 75/25 percent citizenship requirement, and therefore control cannot be diluted. Under the approach suggested by these two comments, the Coast Guard would evidently be required to refuse a coastwise license for a vessel owned by a partnership consisting of two other partnerships if the combined alien participation at all levels of the three partnerships exceeded 25 percent, even if each partnership at each level of ownership considered individually could qualify for a coastwise license under 46 App. U.S.C. 802. The Coast Guard and its predecessor agency have never used such an approach when deciding whether a vessel owned by an entity, which in turn is owned by one or more other entities, is eligible for a coastwise license. Moreover, the Coast Guard considers such an approach inconsistent with the language and the intent of 46 App. U.S.C. 802. Therefore, the position suggested by these comments is not incorporated into the regulation.

c. The fourth comment indicating substantial disagreement with the NPRM came from a union representing merchant seamen. The comment requests the Coast guard promulgate regulations that will accord the same interpretation of the term controlling interest as that in 46 App. U.S.C. 802, so as to assure "actual and complete control of a vessel to be documented under the U.S.-flag in the hands of U.S. citizens." For the reasons already discussed, the Coast Guard does not consider the test for "controlling interest" contained in 46 App. U.S.C. 802 applicable to basic documentation determinations. The Coast Guard believes the proposed regulation is sufficient to preclude alien ownership and control of partnership-owned vessels documented under the laws of the United States.

Two additional substantive comments were received outside the public comment period. Each comment was reviewed and found to contain no new significant information and therefore was not considered in the final rule.

Two comments suggested that public hearings be held. Both requests were denied. The Coast Guard does not believe that pubic hearings will produce any significant information not already reflected in the written comments and analyses. The only seriously controverted issue which has arisen during this rulemaking project is whether the Coast Guard is required to use the "controlling interest" test of 46 App. U.S.C. 802 when deciding whether a vessel owned by a partnership is eligible for a document. Approximately 40 comments were received in response to the ANPRM and the NPRM published in the **Federal Register**.

The comments included extensive analyses and arguments based on the statutes, the legislative history, court decisions, and practical considerations. These analyses came from advocates for both sides, including admiralty law firms and others who are well-informed concerning the controverted issue. In light of this, the Coast Guard considers public hearings unnecessary.

Based on the foregoing, the Coast Guard has decided the proposed regulation as published in the NPRM, with minor modifications, should be promulgated as a final rule.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation has been found to be so minimal that further evaluation is unnecessary. The regulation merely clarifies the Coast Guard interpretation of the statutory eligibility requirements pertaining to documentation of a vessel owned by a partnership.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

In consideration of the foregoing, 46 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 is revised to read as follows:

Authority: 46 U.S.C. 12103, 12113, 12115, 12120, 12121; 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 App. U.S.C. 927); 41 Stat. 1006 (46 App. U.S.C. 983); 94 Stat. 978 (42 U.S.C. 9101). 49 CFR 1.46

2. Section 67.03–5 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 67.03–5 Partnership, association, or joint venture.

(a) A partnership is a citizen:

(1) For the purpose of obtaining a registry, a fishery license, or a

recreational license, if all its general partners are citizens and the controlling interest in the partnership is owned by citizens of the United States.

(2) For the purpose of obtaining a coastwise license or a Great Lakes license, if it meets the requirements of paragraph (a)(1) of this section and at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who, if applying for a license to engage in those trades, would each qualify as a citizen owner under this subpart.

* * * * *

(d) The controlling interest in a partnership is not deemed to be owned by citizens of the United States if:

(1) By any means whatsoever, control of the partnership is conferred upon or permitted to be exercised by a partner or partners who, if applying for a certificate of documentation as owner of a vessel, would not qualify as a citizen owner under this subpart; or

(2) More than 50 per cent of the equity in the partnership is owned by a partner or partners who, if applying for a certificate of documentation as owner of a vessel, would not qualify as a citizen owner under this subpart.

(e) For the purpose of paragraph (d)(1) of this section, control includes an absolute right to direct partnership business, to limit the actions of or replace any general partner, to direct the transfer or operations of any vessel owned by the partnership, or otherwise to exercise authority over the business of the partnership, but not the right to simply participate in these activities or the right to receive a financing return, i.e., interest or the equivalent of interest, on a loan or other financing obligation.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

Dated: May 10, 1988.

[FR Doc. 88-10954 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 802

Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) reviewed and proposes to revise the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance and Procedural Requirement for Grain Weighing and Inspection Equipment and Related Grain Handling Systems. FGIS proposes to incorporate by reference the applicable requirements of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1988 edition (Handbook 44). Currently, the 1985 edition of Handbook 44 is incorporated into Part 802 by reference. In addition, the proposal would change the test weight requirement for non-automatic hopper scales to 10 percent of the scale's capacity.

DATE: Comments must be submitted on or before July 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., USDA, FGIS, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 475–3428. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as shown above telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed action has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Regulatory Review

Part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, prescribes specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing official services.

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems, sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services.

This review of the regulations concerning Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems (7 CFR 801.1–801.11 and 7 CFR 802.0–802.1) included a determination of continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations were serving their intended purpose, the language was clear, and the regulations were consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, proposes that the 1988 edition of Handbook 44 be incorporated by reference into Part 802 of the regulations in order to update the regulations. Additionally, FGIS proposes to revise the test weight requirements for non-automatic hopper scales to 10 percent of the scale's capacity.

Effective March 31, 1986, FGIS incorporated by reference, most provisions in the National Bureau of Standards (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1985 edition (Handbook 44) and all provisions in NBS Handbook 105–1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," (Handbook 105–1). Those provisions in Handbook 44 that did not pertain to or were not practical for FGIS grain scales were not incorporated by reference. The provisions that were not incorporated are listed in 802.0(b) of the regulations.

Handbook 105–1 has not been revised by NBS since it was incorporated by reference by FGIS in 1986. Accordingly, that edition of Handbook 105–1 shall remain incorporated by reference.

The 1985 edition of Handbook 44 has been changed by NBS. In the past three years, approximately 42 sections of the Handbook 44 codes adopted by FGIS have been changed by revision, deletion, or addition of new sections. Most of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44. Accordingly, FGIS is proposing to update the regulations to incorporate by reference the most current edition of Handbook 44.

While most of the differences between the 1985 and the 1988 editions of Handbook 44 are minor, the following three sections of Handbook 44 were significantly changed in the 1988 edition:

1. Section T.N.8.2. *Humidity*. Scale Code (2.20), was deleted. This requirement had specified that scales must operate over a specified range of relative humidity. To ensure that scales met this requirement, it was necessary that they be tested in expensive, environmental chambers under varying humidity conditions. Such tests were very difficult to perform and were of arguable value. The impact of deleting this requirement is twofold: weights and measures organizations, such as FGIS, will be saved the expense of purchasing environmental chambers; and scale

companies will be saved the cost of developing equipment that could comply with this requirement.

2. Section T.1.11. *Tolerance Values,* Scale Code (2.20), was revised to require that unmarked, grain test scales be tested to the same tolerances as marked scales. Unmarked scales are those manufactured prior to January 1, 1986. Marked grain tests scales are currently tested using a step tolerance system. This system was first introduced in 1985. In the step tolerance system, the allowable tolerance for error is small for the lower scale values but gradually increases as the size of the values increase. In the fixed tolerance system, the system FGIS now uses to test unmarked scales, the tolerance is the same throughout the scale's operational range. Preliminary evaluations indicate that all FGIS-approved grain tests scales currently in operation should test as well under the step tolerance system as under the fixed tolerance system.

3. Section T.4. *Radio Frequency Interference (RFI) and Other Electromagnetic Interference Susceptibility,* Scale Code (2.20), was added to ensure that scales are not adversely affected by RFI. Since FGIS already requires scales to be tested for RFI sensitivity, the impact of this requirement should be negligible.

FGIS is also proposing to revise the test weight requirement for non-automatic hopper scales. Both the 1985 and 1988 edition of Handbook 44 specify that test weights equal to or more than 12.5 percent of the capacity of such scales must be used to test these scales. Prior to adoption of Handbook 44, FGIS required non-automatic hopper scales to have test weights equal to at least 10 percent of their capacity. In the intervening period, the Service has found that 12.5 percent requirement is too costly, of limited benefit, and not conducive to effective elevator operation. FGIS proposes that the test weight requirement in section N.3. of Handbook 44 not be incorporated by reference. The Service will reinstate the 10 percent test weight requirement for non-automatic hopper scales by a revision to the FGIS Weighing Handbook.

Changes in Handbook 44 would also necessitate a revision to 802.0(b) concerning those provisions that could not be incorporated by reference because the provisions do not pertain to or are not practical for FGIS grain scales.

Specifically, FGIS proposes to revise:

1. Section 802.0(a), *Applicability,* by revising the edition of Handbook 44 that is incorporated by reference from the 1985 edition to the 1988 edition.

2. Section 802.0(b), *Applicability,* by revising the list of Handbook 44 sections that are not incorporated by reference as follows:

a. Delete Scale Code (2.20) sections N.2.1.1., T.3.8.3., and T.3.8.4. because the code in which these sections were located is not in the 1988 edition of Handbook 44.

b. Delete the title "(New) Scale Code (2.20)" because this code is known as the "Scale Code (2.20)" in the 1988 edition of Handbook 44.

c. Delete (new) Scale Code (2.20) section T.N.8. because the requirements for humidity have been eliminated from this section in the 1988 edition of Handbook 44.

d. Add Scale Code (2.20) section N.3. because this requirement does not improve the evaluation of weighing systems or their subsequent performance and therefore is deemed not practical for FGIS grain scales.

e. Add Scale Code (2.20) section T.N.3.7. because "in motion weighing", regardless of the kind of scale used, has been deemed unacceptable for grain weighing.

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Part 802 is proposed to be amended as follows:

PART 802—[AMENDED]

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1988 edition of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NBS Handbook 105–1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures" (Handbook 105–1). Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.** The NBS Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. These are also available for inspection at the Office of the Federal Register, Room 8401, 1100 "L" Street NW., Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scale Code (2.20)

N.3. Recommended minimum test weights
N.3.1.1. Test train
T.1.9. Railway track scales weighing in motion
T.N.3.6. In motion weighing
T.N.3.6.1.–4. In motion weighing
T.N.3.7. In motion weighing

Dated: April 28, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–11031 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–932–86]

Income Taxes; Transition Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations relating to transition rules with respect to implementing the changes made to section 904(f) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986. The Tax Reform Act of 1986 changed the order in which foreign source losses offset U.S. source and foreign source income of a taxpayer and expanded the number of separate limitation categories for income. The regulations would provide the public with guidance needed to comply with that Act and would affect individuals

and entities claiming the foreign tax credit.

DATES: Written comments and request for a public hearing must be delivered or mailed by July 18, 1988 The amendments are proposed to be effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (INTL–932–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Willard W. Yates of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3896 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** adds new § 1.904(f)–13T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1. For the text of the temporary regulations, see T.D. 8201, published in the Rules and Regulations portion of this issue of the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Willard W. Yates, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861.1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

Proposal of Regulations

The temporary regulations T.D. 8201, published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 904(f) of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–10921 Filed 5–16–88; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–128–87]

Apportionment of Expenses in the FSC and DISC Contexts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to apportionment of expenses in the FSC and DISC contexts.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 18, 1988. The amendments are proposed to be effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [INTL–28–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attn: CC:LR:T). Telephone 202–566–6384, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 861 (b) of the Internal Revenue Code.

Discussion

These regulations modify § 1.861–8(f)(1)(vi)(C) to provide that expenses, losses and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a DISC or FSC from an export transaction and residual gross income are not also allocated and apportioned to gross income consisting of certain distributions from the DISC or FSC. A new *Example* (23) is added to § 1.861–8(g) by these regulations to reflect this change. Specifically, new *Example* (23) illustrates how a related supplier's general and administrative expenses are apportioned to its various classes of gross income if the related supplier pays commissions to the FSC on export sales. In contrast to the apportionment of general and administrative expenses in existing *Example* (22) of § 1.861–8(g) which involves an export sale made through a DISC, new *Example* (23) illustrates that there is not a second stage apportionment to FSC dividends attributable to the FSC's foreign trade income (except to the extent that the foreign trade income is determined under the section 925(a)(3) transfer pricing method) of the related supplier's general and administrative expenses that have already been apportioned to the combined taxable income of the FSC and the related supplier. The example also illustrates that the related supplier's research and development expenses are apportioned in a like manner.

In addition, new *Example* (23) of § 1.861–8(g) illustrates that in the DISC context, there will not be a second stage apportionment to DISC dividends of the related supplier's expenses that have already been apportioned to the combined taxable income of the DISC and the related supplier. Existing *Example* (22) of § 1.861(g) applies only with regard to taxable years beginning before January 1, 1987.

New *Example* (23) does not apply to corporations electing the application of section 936.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

Although this document is a notice of proposed rulemaking which solicits public comment, it has been concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). It has been determined that this proposed rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

List of Subjects in 26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

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

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

Par. 2. Section 1.861–8(f)(1) (iii) and (vi)(C) is revised to read as follows:

§ 1.851–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(f) *Miscellaneous matters—(1) Operative sections.* * * *

(iii) *DISC and FSC taxable income.* Sections 925 and 994 provide rules for determining the taxable income of a FSC and DISC, respectively, with respect to qualified sales and leases of export property and qualified services. The combined taxable income method availabe for making determination of a DISC's taxable income provides, without consideration of export promotion expenses, that the taxable income of the DISC shall be 50 percent of the combined taxable income of the DISC and the related supplier derived from sales and leases of export property and from services. In the FSC context, the taxable income of the FSC equals 23 percent of the combined taxable income of the FSC and the related supplier. Pursuant to regulations under sections 925 and 994, this section provides rules for determining the deductions to be taken into account in determining combined taxable income, except to the extent modified by the marginal costing rules set forth in the regulations under sections 925(b)(2) and 994(b)(2) if used by the taxpayer as provided therein. *See Examples* (22) and (23) of paragraph (g) of this section. In addition, the computation of combined taxable income is necessary to determine the applicability of the section 925(d) limitation and the "no loss" rules of the regulations under sections 925 and 994.

* * * * *

(vi) * * *

(C) The separate classifications of income to which the foreign tax credit limitation is applied separately under section 904(d) (as in effect after enactment of the Tax Reform Act of 1986). In the case of expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a DISC or former DISC under section 994 and residual gross income, such deductions are not also allocated and apportioned to gross income consisting of certain distributions from the DISC or former DISC with respect to DISC or former DISC taxable years beginning after December 31, 1986. Accordingly, *Example* (22) of paragraph (g) of this section does not apply to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years beginning after December 31, 1986. In addition, for taxable years beginning after December 31, 1986, in the case of expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a FSC under section 925 and residual gross income, such deductions are not also allocated and apportioned to gross income consisting of distributions from the FSC or former FSC which are attributable to the foreign trade income of the FSC or former FSC (except to the extent that the foreign trade income is determined under the section 925(a)(3) transfer pricing method). *See Example* (23) of paragraph (g) of this section;

* * * * *

Par. 3. *Example* (22) of § 1.861–8 (g) is amended by adding immediately after subdivision (iii) a subdivision (iv) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (22). * * *

(iv) This *Example* (22) applies only to DISC taxable years beginning before January 1, 1987, and to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years beginning before January 1, 1987.

* * * * *

Par. 4. *Example* 23 of § 1.861–8(g) is removed and replaced with new *Example* (23) to read as follows:

§ 1.861.8 Computation of taxable income form sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (23)—Foreign Sales Corporations—(i) *Facts.* R, a domestic corporation, manufactures a product line of electronic equipment and sells it to retailers both in the United States and in foreign countries through foreign sales branches. On January 1, 1988, R established FSC, a wholly owned corporation, in a possession of the United States. FSC elected under section 922(a)(2) foreign sales corporation status. Both R and FSC are calendar year corporations. R entered into a written agreement with FSC whereby FSC was granted a sales franchise with respect to the export sales of the electronic equipment, which is export property as defined in section 927(a). Under the agreement, FSC would receive commissions with respect to those exports equal to the maximum amount permitted to be received under the administrative pricing rules of section 925(a)(1) and (2). The maximum amount will equal the expenses incurred by FSC plus the maximum profit permitted to be earned by FSC under the pricing rules. In 1988, the profit earned by FSC was $354,424. This profit was determined using the combined taxable income administrative pricing method of section 925(a)(2). FSC paid taxes to the United States in the amount of $41,914 (*i.e.*, $354,424 × 8/23 × .34). The FSC did not pay any foreign tax. On September 15, 1989, FSC paid R a dividend of $312,510 (*i.e.*, profit less United States tax). The 100% dividends received deduction of section 245(c) applied to this dividend. In 1988, R had total export sales of $7,700,000 for which its cost of goods sold was $6,000,000. Thus, its gross income on

those sales was $1,700,000. Those sales occurred outside the United States. Moreover, R had U.S. domestic sales of $12,000,000 on which it earned gross income of $900,000. R received royalty income from the foreign license of its electronic technology in the amount of $1,000,000. R's deductible general and administrative expenses allocable to all gross income are $125,000. For purposes of this example, it is assumed that R did not incur any research and development expenses. In addition, it is assumed that R did not incur any direct selling expenses with respect to either its domestic or foreign sales. FSC incurred $100,000 of expenses relating to the activities and functions referred to in section 924(c), (d) and (e). FSC will receive the maximum commission and profit under the combined taxable income method of section 925 (a)(2). Under this method, FSC will receive a profit equal to 23% of the combined taxable income attributable to the export sale of the electronic equipment computed on a product line basis.

(ii) *Allocation.* For purposes of determining combined taxable income of R and FSC from export sales, R's general and administrative expenses of $125,000 must be allocated to and apportioned between gross income resulting from the production and sale of the electronic equipment for foreign markets, and from the production and sale of the electronic equipment for the domestic market.

(iii) *Apportionment*—(a) *Combined Taxable Income.* In order to compute the combined taxable income from the production and sale of the electronic equipment, R's general and administrative expenses of $125,000 are apportioned between the statutory grouping of gross income under section 863(b) from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. None of R's general and administrative expenses are apportioned to the FSC distribution of $312,510. In the absence of more specific or contrary information, R's general and administrative expenses may be apportioned on the basis of gross income in the respective groupings, as follows:

Apportionment of general and administrative expenses to the section 863(b) statutory grouping, gross income from exports of electronic equipment:

$$\$125{,}000 \times \frac{\$1{,}700{,}000}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000)} = \$59{,}028$$

Apportionment of general and administrative expenses to the residual grouping, gross income from domestic sales of electronic equipment, foreign royalty income from licensing electronic equipment technology:

$$\$125{,}000 \times \frac{(\$900{,}000+\$1{,}000{,}000)}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000} = \$65{,}972$$

Total apportionment of general and administrative expenses	$125,000

On the basis of this apportionment, the combined taxable income and FSC's portion of the combined taxable income may be calculated as follows:

Gross income from exports		$1,700,000
Less:		
FSC section 924(c), (d) and (e) expenses	100,000	
Apportioned general and administrative expenses	59,028	
Total expenses		(159,028)
Combined taxable income		1,540,972
FSC's income—23% of combined taxable income		354,424

(B) *R's section 863(b) taxable income.* R's total section 863(b) taxable income from the export sales equals 77% of combined taxable income and is computed as follows:

Gross receipts		$7,700,000
Cost of goods sold		6,000,000
Gross income		1,700,000
Less:		
Apportioned general and administrative expenses	59,028	
Commission to FSC	454,424	
Total		(513,452)
R's taxable income		1,186,548

As illustrated, all of the general and administrative expenses apportioned to combined taxable income are taken as deductions in computing R's section 863(b) taxable income.

(C) *R's foreign source royalty income.* In order to determine the amount of taxable income of R from sources without the United States relating to the royalty income, the remaining general and administrative expenses of $65,972 are apportioned between the statutory grouping, foreign royalty income, and the residual grouping of gross income from sources within the United States. The computations below illustrate this apportionment:

Apportionment of the general and administrative expenses to the statutory grouping, foreign royalty income:

$$\$65{,}972 \times \frac{\$1{,}000{,}000}{(\$1{,}000{,}000+\$900{,}000)} = \$34{,}722$$

grouping, gross income from domestic sales of electronic equipment.

Apportionment of general and administrative expenses to the residual

$$\$65,972 \times \frac{\$900,000}{(\$1,000,000 + \$900,000)} = \$31,250$$

(iv) *R's foreign source income from the sales using FSC as a commission agent.* R's section 863(b) income of $1,186,548 from the export sales of electronic equipment manufactured in the United States and sold in foreign countries will qualify for sourcing partly from within and partly from without the United States in accordance with § 1.863–3. For purposes of this example, it is assumed that R's income qualifies for sourcing on the basis of *Example* (2) of § 1.863–3(b)(2). Accordingly, one-half of the income ($593,274) would qualify as foreign source income. However, since the export sales were made using a foreign sales corporation as a commission agent on the sale, section 927(e)(1) will operate to limit R's foreign source income to $385,243. Under section 927(e)(1), R's foreign source income on the export transaction may not exceed the amount which would have been treated as foreign source income had the comparable DISC pricing rule, in this case the 50% of combined taxable income method, been used to compute FSC's profit. The calculations under section 927(e)(1) are as follows (for purposes of this example, it is assumed that there are no export promotion expenses):

Combined Taxable Income (CTI)	$1,540,972
DISC income (50% of CTI)	770,486
R's income (50% of CTI)	770,486
Source of R's income:	
U.S. source	$385,243
Foreign source	$385,243

(v) *Research and development expenses.* For purposes of this example, it was assumed R did not incur any research and development expenses (R & D expenses). Had R incurred R & D expenses, for purposes of computing the combined taxable income from the production and sale of the electronic equipment, those R & D expenses would have been allocated and apportioned between the statutory grouping of gross income from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. R & D expenses would also have been apportioned to R's export sales and royalty income in order to determine R's section 863(b) taxable income from export sales. As with the apportionment of general and administrative expenses none of the R & D expenses, are apportioned to the dividends from the FSC.

(vi) *Apportionment of expenses in DISC context.* For taxable years beginning after December 31, 1986, general and administrative expenses and research and development expenses of a related supplier in a DISC context are also allocated and apportioned as illustrated in this example. None of the expenses are apportioned to DISC dividends.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–11004 Filed 5–16–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 9

Servicemen's and Veterans' Group Life Insurance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) is amending its regulations relating to Servicemen's and Veterans' Gorup Life Insurance to reflect that the law provides that members of the Individual Ready Reserve (IRR) and the Inactive National Guard (ING) are eligible to be issued Veterans' Group Life Insurance. Members of the IRR and ING will be able to obtain Veterans' Group Life Insurance (VGLI) by submitting an application together with the initial premium within 120 days of becoming a member of the IRR or ING. If the application and required premium are not submitted within the 120 day period, insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120 day period.

DATES: Comments must be received on or before June 17, 1988. Comments will be available for public inspection until July 1, 1988. The effective date of this regulation, if promulgated, is the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: The Administrator of Veterans Affairs hereby certifies that this proposed regulation, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) this proposed regulation is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation will affect only certain VGLI applicants. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this proposed regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. This proposed regulation will not have a large effect on the economy, will not cause an increase of costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program Number for this regulation is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Servicemen's and veterans' group.

Approved: April 11, 1988.

Thomas K. Turnage,

Administrator.

PART 9—[AMENDED]

In 38 CFR Part 9, *Servicemen's Group Life Insurance and Veterans' Group Life Insurance,* § 9.3 is proposed to be amended by adding paragraph (f) to read as follows:

§ 9.3 Applications.

* * * * *

(f) Members of the Individual Ready Reserve and the Inactive National Guard are eligible to be granted Veterans' Group Life Insurance provided an application together with the initial premium are submitted to the administrative office within 120 days of becoming a member of either organization. If an application and the

initial premium are not submitted within the 120 day period as set forth in this paragraph, Veterans' Group Life Insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120 day period.

(Authority: 38 U.S.C. 777)

[FR Doc. 88-11019 Filed 5-16-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 91

[CGD 82-004a]

Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations to permit alternative examinations of Offshore Supply Vessels (OSV's) of less than 400 gross tons operating from foreign ports in place of the Coast Guard examination required for reinspection of these vessels. OSV owners must reimburse the Coast Guard for the expenses of marine inspectors conducting foreign inspections, and they occassionally bear the cost of relocating vessels to certain ports to facilitate required inspections. Foreign inspections of OSV's frequently require Coast Guard personnel to be assigned to temporary duty in remote locations where their official status and personal security are matters of concern, and result in a less than optimum allocation of Coast Guard resources. The benefits of alternative examinations would include flexibility and financial savings to the OSV industry, and more effective and secure use of limited Coast Guard resources.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 84-004a), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: CDR R.S. Tweedle, Office of Marine Safety, Security and Environmental Protection, (202) 267-1045.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (82-004a) and the specific section of the proposal to which each comment applies, and give the reason for the comments. Persons desiring acknowledgment that their comments have been received should enclose a stamped, addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

This rulemaking is an extension of an Advance Notice of Proposed Rulemaking (ANPRM) published on February 14, 1983, entitled "Offshore Supply Vessel Regulations" [CGD 82-004]. Two (2) comments were received on parts of the ANPRM which proposed changes to the scope and timing of reinspections. One (1) comment suggested that reinspections had previously been eliminated from Coast Guard regulations.

Drafting Information

The principal persons involved in drafting this proposal are Mr. John M. Kinsey, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Willian Register, Project Counsel, Office of Chief Counsel.

Background and Objective

OSV's are inspected for certification every two years. They are required to be reinspected once between the tenth and fourteenth month of the period of validity of the certificate of inspection. This notice addresses reinspections and proposes an alternative procedure to having Coast Guard personnel conduct the examination required for the reinspection of OSVs that are continuously employed outside of the United States.

In 46 U.S.C. 2101(19) an OSV is defined as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies or equipment in support of exploration, exploitation or production of offshore mineral or energy resources and is not a small passenger vessel. Further, 46 U.S.C. 3306(f) recognizes OSV's as a distinct vessel type and requires that regulatory consideration be given to the characteristics, methods of operation, and nature of service of these vessels.

The Coast Guard is currently engaged in rulemaking which will set uniform, minimum standards for OSV's. An advance notice of proposed rulemaking, CGD 82-004, "Offshore Supply Vessel Regulations," was published in the **Federal Register** on February 14, 1983 (48 FR 6636). Some degree of self-examination was discussed in the ANPRM, together with proposed changes in the intervals for inspections and the scope of inspection. Until this rulemaking is completed, OSV's are inspected and certificated under the provisions of 46 CFR Subchapter I (Parts 90-99), "Cargo and Miscellaneous Vessels." For the reasons explained below, the self-examination aspect of the Offshore Supply Vessel Regulations rulemaking is being considered separately in this rulemaking.

The relevant provisions in 46 CFR Subpart 91.27 require at least one reinspection on each vessel holding a two year certificate of inspection under Subchapter I. Generally, this reinspection is required to be made between the tenth and fourteenth month of the period of validity of the certificate. A reinspection is not intended to be equivalent to an inspection for certification. The scope of a reinspection is intended to be appropriate to assure the continued safe operation of a vessel. The level of detail varies according to the conditions found, the maintenance performed on the vessel, and the vessel's safety history.

While a large number of OSV's operate in areas where Coast Guard inspectors are reasonably available, an increasing and significant number are based overseas due to a decline in the domestic offshore exploration and production industry in recent years. Some have been based in remote locations, and to not normally return to the United States. Under 46 U.S.C. 3317(b), vessel owners or operators must reimburse the Coast Guard for inspector travel and per diem costs incurred to conduct inspections in foreign ports.

The Coast Guard believes that the reinspections required by 46 CFR Subpart 91.27 are necessary to promote and maintain marine safety. However, it is noted that overseas reinspections of these vessels results in less than optimum allocation of Coast Guard resources. In addition, the official status and personal security of marine inspectors assigned to temporary duty overseas in remote locations where

OSV's operate are also matters of concern. Recently, the Coast Guard was temporarily unable to provide inspectors to conduct OSV inspections due to civil unrest in one area. Coast Guard personnel may not have status in some countries and may be vulnerable to local laws. Current reinspection procedures are costly to vessel owners and operators who are basing more vessels in foreign waters and must reimburse the government for the per diem and travel cost incurred by the Coast Guard in performing these inspections.

To minimize the special concerns arising from foreign inspections of OSV's, the Coast Guard, in cooperation with interests that own or operate 80% of all inspected OSV's, has developed a data base of OSV's operating overseas. The Coast Guard provides these owner/operators with advisories of vessel inspection dates, inspector locations, projected inspection schedules, and future inspection requests to assist in scheduling multiple inspections and avoid vessel relocations where possible. The Coast Guard also notifies the Department of State and cognizant embassies of the itinerary of inspectors performing overseas inspections while on temporary duty.

In the past, the Coast Guard has always used marine inspectors to examine OSV's requiring reinspection overseas, but, in this very narrow set of circumstances, to allow the marine safety resources of the Coast Guard to be used more effectively, and to reduce costs to the agency and to the marine industry, the Coast Guard considers that pursuing alternative methods of reinspection is timely. Some degree of self-examination is possible in these circumstances because of the relatively small size, simplicity and traditional hull form of most OSV's, the presence of licensed crew members aboard these vessels, and since the Coast Guard will continue to perform detailed inspections for certification every two years and two drydock examinations in each five year period. This type of program can be kept workable because of the financial incentives to owners seeking self-examination and because of the enforcement tools available to the Coast Guard for dealing with the owner/operator or Master for violations of applicable requirements. The Coast Guard is not proposing alternative reinspection examinations for other types of vessels because of their size, complexity, service, equipment, scope of operations and potential risks to the environment and crews.

The possibility of discontinuing Coast Guard reinspections was considered. While this would remove the financial burden on the industry and reduce Coast Guard costs, it was felt that the level of safety would decrease because of decreased accountability. A program utilizing Coast Guard approved independent inspectors hired by the owners of OSV's was also considered. In addition to the cost to the government in developing and managing the approval program and the burden on the inspectors in obtaining approval, this would impose substantial additional expense on the industry by requiring the use of fee paid services. Consideration was also given to delegating the reinspection examinations to specific third parties under the provisions of existing law. This alternative was not acceptable as it would also impose substantial costs on the industry in the form of fees and expenses. In addition, most OSV's are not classed by a U.S. classification society. The alternative selected was a program of self-examination with Coast Guard oversight and evaluation accomplished through the existing marine inspection program. This choice would minimize the cost to the industry because it is flexible and allows several alternatives. By allowing existing Coast Guard resources to be concentrated on problem areas, such a program would maintain overall safety in the OSV industry.

This rulemaking concerns only who may perform the examinations conducted for reinspection and how the examination reports will be evaluated. The proposed rulemaking for "Offshore Supply Vessels" considers the intervals for and the scope of reinspections. In place of the reinspection process currently required, the Coast Guard is considering permitting reinspection examinations of OSV's by the Masters of the vessels or by persons retained or employed by the owner/operator, provided the Master and the person performing the examination verifies the accuracy of the examination report. Coast Guard inspectors would continue to conduct inspections for certification every two years and two drydock examinations in any five year period.

This proposal contemplates that the marine inspector performing the biennial inspection for certification would comment in the record of the inspection whether the vessel should be considered for self-examination. The proposed rules would require a factual report of the results of the reinspection examination to be submitted to the Coast Guard. The vessel's Master would be required to perform the examination and submit the report, or, in the alternative, verify the results of an examination by another representative of the owner/operator on the basis of personal knowledge. The report would be forwarded to the Coast Guard via the owner or operator of the vessel. Coast Guard inspectors would review reinspection examination reports, conduct the anticipated increased number of foreign biennial inspections and drydock examinations of OSV's (resulting from the increased number of OSV's operating in foreign ports), conduct oversight of the alternate examination program, and carry out an unchanged overall OSV inspection program on vessels based in U.S. waters.

The Officer in Charge, Marine Inspection would evaluate the continued compliance and fitness of a vessel for its intended route and service on the basis of the examination report. The Coast Guard would require examination reports to be complete, descriptive, and supported by photographs and documentation of the servicing of lifesaving and fire protection equipment.

Vessel owners and operators would be expected to develop report formats appropriate to their vessels and provide factually accurate reports of vessel conditions and required systems. The Coast Guard would initially distribute Cargo, Miscellaneous and Passenger Vessel Hull Inspection books, Form CG-840A (Rev. 11-78) to interested OSV owners and operators to assist in the development of examination report formats. Original examination reports would be submitted to the Officer in Charge, Marine Inspection who issued the certificate of inspection. Vessel owners and operators would be encouraged to retain a copy of the examination report for their own records.

This proposal requires that the person conducting the examination be a representative of the vessel's owner or operator. There are few substitutes for good judgment, knowledge of the vessel's operation, and experience on the part of the person conducting the examination. Further, it is expected that persons who conduct these examinations would be familiar with the applicable Coast Guard regulations. The Coast Guard contemplates that these examinations would be conducted by the Master of the vessel, a company safety officer, port captain or port engineer, or, in some cases, an independent marine surveyor.

Under the provisions of Regulation 16 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), the Coast Guard is obligated to perform annual surveys on

OSV's of 400 gross tons or more operating outside of the United States, and to endorse the International Oil Pollution Prevention (IOPP) Certificate upon completing a satisfactory survey. This survey would normally be conducted concurrently with an inspection for certification or reinspection. The necessity to perform this survey limits the applicability of these proposed rules to vessels of less than 400 gross tons.

The provisions of this rulemaking would not limit an Officer in Charge, Marine Inspection from making such tests or inspections as deemed necessary to be assured of the compliance and seaworthiness of any OSV.

Disussion of the Comments to the ANPRM

Of the comments received to the ANPRM, only 2 addressed proposed changes to the reinspection regulations. One commenter preferred the existing description of the scope of a reinspection in 46 CFR 91.27–5(a) & (b) over the scope of a reinspection described in the ANPRM. This proposed rulemaking does not concern the scope of reinspections. Another commentor suggested that some vessels would be required to have annual surveys under SOLAS 74 or MARPOL 73/78. SOLAS 74 does not require annual surveys for cargo vessels of less than 500 gross tons. This proposed rulemaking takes into consideration the United States' obligations under SOLAS 74 and MARPOL 73/78, by limiting the applicability of the rule to vessels under 400 gross tons which are not required to have annual pollution prevention surveys. A third commenter erroneously concluded that the ANPRM proposed to put reinspections back into Coast Guard regulations, and that to do so would cost the commentor $1 million annually for transportation and lodging. One purpose of this proposed rule is to address industry cost problems. Reinspections were fully a part of Coast Guard regulations when the ANPRM was published. They had, however, been suspended operationally between October 1981 and August 1983 due to Coast Guard budget constraints and personnel shortages. There were no comments on the advantages, disadvantages, procedures or cost benefits of self-inspections.

Discussion of Proposed Amendments

The proposed changes would establish an alternative self-examination program in place of Coast Guard examinations for reinspections of OSV's of less than 400 gross tons operating for extended periods in foreign waters. The examination would be conducted during the period between the tenth and fourteenth month of their certificates of inspection.

Proposed section 91.27–13

This is a new section that would state the eligibility and requirements for requesting, conducting and reporting alternative examinations of OSV's operating in foreign waters. Paragraph (a) proposes that the owner or operator of each OSV that is expected to be employed outside of the United States when the reinspection examination is due may request permission from the OCMI who issued the vessel's certificate of inspection to perform the examination provided certain conditions for eligibility are met. The Coast Guard does not intend for the proposed rule to be used as a mechanism to avoid Coast Guard reinspections of OSV's by temporarily relocating them in foreign waters. Requests for permission to perform alternative examinations will be carefully evaluated to prevent such a practice.

It is proposed that eligibility would be determined on the basis of the vessel's location, it's safety record as reflected in reports of casualties or accidents, the vessel's inspection status, the recommendation of the Coast Guard inspector who performed the prior inspection for certification or drydock examination, and the owner/operator's history of compliance and cooperation with the foreign inspection program. Inspectors would not recommend vessels for alternative examination where, for example, defects or unsafe practices aboard the vessel are revealed in confidence to the inspector or discovered by the inspector.

Proposed paragraph (b) outlines the factors considered by the Officer in Charge, Marine Inspection in determining whether to grant permission for the alternative inspection.

Proposed paragraph (c) details when the examination must be conducted; the scope of the examination and who may conduct it; the content required in the report of examination, and a requirement that each report of examination be verified and forwarded to the owner or operator for review and final submission to the Officer in Charge, Marine Inspection. Paragraph (c) also establishes a requirement that owners or operators submit examination reports to the Officer in Charge, Marine Inspection together with a certified statement of assurances concerning the capacity of the person examining the vessel, the owner's or operator's review of the report, and the correction of deficiencies.

The purpose of proposed paragraph (c)(5) is to emphasize the importance of the supporting role of the owners or operators of OSVs (as compared to the operational role of shipboard personnel) and the requirement for their active involvement in the alternative examination program. It is important that the condition of vessels subject to alternative examination be within the knowledge of their owners or operators to assure accountability, particularly in the sometimes difficult task of obtaining services or equipment in remote locations for routine maintenance and repair, or, to correct deficiencies. In such circumstances, operational personnel require the full logistical support of owners or operators.

Proposed paragraph (d) establishes the required from of certification for examination reports and for the statements of the owner/operator which must accompany examination reports submitted to the Officer in Charge, Marine Inspection.

Proposed paragraph (e) establishes procedures to handle deficiencies discovered during alternative examinations of offshore supply vessels and describes how outstanding deficiencies or hazards reported by the owner or operator are handled by the Officer in Charge, Marine Inspection.

Proposed paragraph (f) emphasizes the authority and responsibility of the Officer in Charge, Marine Inspection to evaluate the conditon of the vessel, to require additional information concerning any vessel and to conduct inspections with or without notice. The owners or operators of vessels inspected by Coast Guard personnel at a foreign port or place will still be required to reimburse the government for travel and per diem expenses.

E.O. 12291 and DOT Regulatory Policies and Procedures

This proposed rule is considered to be non-major under Executive Order 12291. It is considered non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC (202) 426–2307, from 8 a.m. to 4 p.m. Copies may also be obtained by contacting that office.

If this proposal is adopted, it is estimated that the OSV industry would realize an annual savings of $190,000 to

$240,000 in travel, per diem and vessel relocation expenses. The Coast Guard would save approximately $56,000 annually due primarily to reduced personnel costs and a reduction in the cost associated with collecting inspector travel and per diem expenses from OSV owners and operators. The agency would be able to focus its resources on OSV's with poor safety and compliance records, and fewer Coast Guard inspectors would be assigned to temporary duty in remote locations where their official status and security are matters of concern.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned a operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The regulations would affect owners and operators of offshore supply vessels. Because of the relatively high costs of these vessels (one 180' standard design may be constructed for $5 million; one 120' standard design may be constructed for $1.2 million), their owners and operators tend to be multi-vessel corporations or otherwise substantial corporations. In addition, the proposed rules have the potential of saving vessel owner/operators $1000 to $2000 in each instance where a reexamination of a OSV in a overseas location is necessary. For the above reasons, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirement in § 91.27–13. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "**ADDRESSES.**"

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. A categorical exclusion determination has been prepared and is on file in the rulemaking docket.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 91

Cargo vessels, Coast Guard, Law enforcement, Marine safety, Offshore supply vessels, Reporting requirements.

In consideration of the foregoing, Parts 91 of Title 46 of the Code of Federal Regulation is proposed to be amended as follows:

PART 91—INSPECTION AND CERTIFICATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321 (j)(i); 49 CFR 1.46.

2. In Part 91 and Subpart 91.27 a new § 91.27–13 with the heading "Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports" is added to read as follows:

§ 91.27–13 Alternative Provisions for Reinspections of Offshore Supply Vessels In Foreign Ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons may request permission to conduct an examination of the vessel in lieu of having it examined by the Coast Guard pursuant to § 91.27–5, provided:

(1) The request is received by the OCMI who issued the certificate of inspection before the end of the twelfth month of the period of the certificate's validity;

(2) The vessel is expected to be continuously employed outside of the United States during the tenth through fourteenth month of the period of validity of the vessel's certificate of inspection;

(3) The vessel has not experienced a marine casualty or accident as defined in this Title since the date of the inspection for certification;

(4) The vessel does not have outstanding inspection requirements;

(5) The marine inspector who performed the previous inspection for certification or drydock examination recommends that the vessel be considered for alternative examination in place of examination by the Coast Guard.

(b) In determining whether to grant permission for the alternative examination, the Officer in Charge, Marine Inspection considers:

(1) The necessity of the request, and

(2) The owner/operator's history of foreign inspection compliance and cooperation, including;

(i) The prompt correction of deficiencies;

(ii) The reimbursement of Coast Guard marine inspector travel and per diem for other inspections;

(iii) The submittal of reliable prior alternative examination reports; and

(iv) The reliability of representations that vessels previously examined under this section were employed outside of the United States for the tenth through the fourteenth month of the periods of validity of their certificates of inspection.

If permission is granted, the Officer in Charge, Marine Inspection provides the applicant written authorization to proceed with the alternative examination, including special instructions when appropriate.

(c) The conditions of this paragraph must be met for the examination in paragraph (a) of this section to be accepted by the Coast Guard.

(1) The examination must be conducted between the tenth and fourteenth month of the period of validity of the vessel's certificate of inspection;

(2) The examination must be of the scope detailed in § 91.27–5 and must be conducted by the vessel's Master, owner, or operator or a designated representative of the owner or operator;

(3) Upon completion of the examination, the person or persons conducting the examination shall prepare a comprehensive report describing the conditions found and containing sufficient detail (including reports and receipts documenting the servicing of lifesaving and fire protection equipment and photographs) that the Officer in Charge, Marine Inspection may evaluate the vessel to be assured that it is fit for the service and route specified on the certificate of inspection. Each person preparing the report shall sign it and certify that the information contained therein is complete and accurate;

(4) Unless he or she has participated in the examination and preparation of the report, the vessel's Master shall review the report and shall sign a

statement certifying that the examination was conducted as described and that the report is complete and accurate to the best of his or her knowledge and belief. The Master shall forward the report to the vessel's owner or operator;

(5) The owner or operator of an offshore supply vessel examined under this subpart must review and submit the report of examination to the Officer in Charge, Marine Inspection, who issued the certificate of inspection. The report must be received before the sixteenth month of the period of the vessel's certificate of inspection to be considered valid. The forwarding letter or endorsement must be certified and contain the following information:

(i) The person who conducted the examination was assigned as an authorized agent of the vessel owner or operator;

(ii) The report was reviewed by the owner or operator;

(iii) The discrepancies noted during the examination were or will be corrected; and

(iv) The owner or operator has personal knowledge of conditions aboard the vessel at the time of the examination or made all necessary inquires to justify forming a belief that the examination report was true and correct.

(d) The form of certification required under this subpart shall be as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

Note: False statements are subject to the penalties provided by 18 U.S.C. 1001.

(e) Deficiencies and hazards discovered during an examination of an offshore supply vessel under this section must be corrected or eliminated, if practicable, before the report of examination is submitted to the Officer in Charge, Marine Inspection. Deficiencies and hazards that are not corrected or eliminated by the time the report is submitted must be reported as "outstanding." Upon receipt of a report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection, informs the owner or operator of the vessel by letter of the time period specified to correct or eliminate the deficiencies or hazards and the method for establishing that it has been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection, shall initiate appropriate enforcement measures.

(f) On the basis of the information in the report submitted under this section, the Officer in Charge, Marine Inspection, determines whether the vessel is in satisfactory condition and whether it continues to be reasonably fit for its intended service and route, and informs the owner/operator of this determination by letter. The Officer in Charge, Marine Inspection, may request any additional information required to evaluate a vessel, and may conduct inspections with or without notice at any time deemed necessary.

Dated: March 30, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-10955 Filed 5-16-88; 8:45 am]

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Notices

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 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

Commodity Credit Corporation

1988 Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice and Cotton Programs; Determination Regarding the Proclamation of 1988-Crop Program; Provisions for Wheat, Feed Grains, Rice and Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1988-Crop Program provisions for wheat, feed grains, rice and cotton.

SUMMARY: The purpose of this notice is to affirm the determinations previously made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), including amendments required in the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1988 price support and production adjustment programs for wheat, feed grains (corn, sorghum, barley, oats, and rye), rice, and cotton (upland and extra long staple (ELS)).

EFFECTIVE DATE: May 16, 1988.

ADDRESS: Dr. Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: William J. Gleason, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-4038.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

The 1987 Act amended the 1949 Act with respect to the 1988-90 crops of wheat, feed grains, upland and ELS cotton, and rice.

Generally, these amendments provide that:

(1) Minimum target prices for the 1988 and 1989 crops of wheat, feed grains, upland cotton, ELS cotton, and rice will be lowered;

(2) The reduction in price support rates for the 1988 crops which would have occurred in accordance with the 1949 Act will be limited;

(3) A voluntary paid land diversion program for corn, sorghum, and barley with an acreage diversion requirement of 10 percent and a payment rate of $1.75 per bushel for corn (other payment rates to be established in relation to corn) will be in effect for 1988;

(4) Adjustments of wheat and feed grain county price support rates which reflect transportation differentials may not exceed more than the percentage change in the national average price support rate plus or minus 2 percent for the 1988-90 crops;

(5) A 1988 crop oats acreage limitation program not to exceed 5 percent will be in effect;

(6) Minimum Farmer-Owned Reserve levels for wheat and feed grains will be reduced to 300 million bushels and 450 million bushels, respectively;

(7) Additional yield payments for the 1988-1990 crops will be made to producers of wheat, feed grains, upland cotton, and rice if the farm program payment yield is reduced by more than 10 percent below the 1985 program payment yield;

(8) Advance deficiency payments will be made available with respect to the 1988-90 crops to wheat and feed grains producers at not less than 40 percent, nor more than 50 percent, of the projected payment rate, and for rice and uplance cotton producers, not less than 30 percent, nor more than 50 percent, of the projected payment rate;

(9) Advanced emergency compensation payments will be made to wheat producers who elect, at signup, to receive 75 percent of the projected additional deficiency payment (the "Findley" payment) in December of the respective wheat marketing year;

(10) Haying and grazing of acreage designated as conservation use (CU) and acreage conservation reserve (ACR) shall be permitted, except during any consecutive 5-month period between April 1 and October 31 as designated by the State Agricultural Stabilization and Conservation (ASC) committees. However, haying and grazing shall not be permitted for any crop if the Secretary determines that haying and grazing would have an adverse economic effect in the State. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage;

(11) An optional acreage diversion program, commonly referred to as "0/92," will be available to producers of the 1988-1990 crops of wheat and feed grains. Producers may devote all or a portion of the permitted acreage to CU and receive deficiency payments on an

acreage not to exceed 92 percent of the crops permitted acreage. The deficiency payment rate on the CU acreage will not be less than the estimated deficiency payment rate. The Secretary is required to implement the program in such a manner as to minimize the adverse effects on agriculturally related economic interests within any county, State or region taking into consideration acreage idled under other price support, production adjustment, or conservation programs;

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the **Federal Register** Vol. 52, No. 61, Page 15358; No. 136, Page 26707; No. 137, Page 27032; No. 175, Page 34262; and No. 201, Page 38806.

Public comments were recorded and presented before the Secretary prior to the final program provision determinations. Comments received during the specified comment period are summarized below for the 1988 commodity programs of wheat, feed grains, upland cotton, ELS cotton and rice.

Wheat and Common Program Comments

A total of 72 respondents commented on the 1988 Wheat and Common Program determinations. Thirty-two of the respondents were individual producers and twenty were producer organizations.

Common Program Provisions

With respect to the specific comments for the Common Program Provisions of the 1988 crops of Wheat, Feed Grains, Upland and ELS Cotton, and Rice the following are noted:

(a) *Approved Nonprogram Crops (ANPC) and Haying and Grazing on ACR and CU Acres:* Fifty-six respondents opposed ANPC production and haying and grazing of ACR and CU acreage and 43 favored such action. Planting of ANPC and haying of ACR and CU acreage will not be permitted, except under emergency conditions, because of the otherwise adverse economic effect such a determination would have on producers who already grow such crops. However, the haying prohibition may be waived if it is determined by the State ASC Committee that the additional haying will not have an adverse economic effect. Grazing of ACR and CU is permitted except during any 5-consecutive-month period between April 1 and October 31 as designated by the State ASC committees.

(b) *Advance Payments:* Twenty-three respondents favored advanced program payments and 1 respondent opposed such payments. Advance deficiency payments of 40 percent of the projected payment were announced in order to provide program participants with sufficient operating funds.

(c) *Cross Compliance:* Twenty respondents favored limited cross compliance and 1 respondent opposed such action. These compliance requirements were implemented in order to ensure that desired levels of stocks for all program commodities are attained.

(d) *Offsetting Compliance:* Sixteen respondents opposed offsetting compliance and 5 favored such action. These compliance requirements will not be implemented due to: (1) The stautory prohibition of such actions relative to rice and upland cotton; and (2) the likely decrease in the level of program participation that otherwise would have occurred under the wheat, feed grains, and ELS cotton programs. The higher level of participation achieved by not requiring offsetting compliance will likely result in greater overall program effectiveness.

(e) *Farm Acreage Base (FAB) Adjustment:* Sixteen respondents favored the 10 percent FAB adjustment provision and 5 opposed such adjustments. The FAB adjustment program will not be implemented because: (1) Significant budget increses would occur; (2) producers would be discouraged producers from reacting to appropriate market signals and instead seek to capitalize on favorable Government programs; and (3) additional excess production would be stimulated in those commodities with favorable payment programs.

(f) *Advance Recourse Loans:* Four respondents favored advance loans and 3 opposed the use of such loans. Advance recourse loans will not be offered because: (1) Sufficient operating funds are available for the 1988 crop; and (2) such a program could place unnecessary encumbrances upon crops that have not been produced, resulting in increased financial stress for producers.

(g) *Miltiyear Set-Asides:* Eight respondents favored multiyear set-asides and 4 opposed such a program. This program will not be implemented because the expected acres idled under the ALP, PLD, and conservation reserve program (CRP) are considered adequate for the purpose of supply management of program commodities.

(h) *Interest Payment Certificates (IPC):* Seven respondents favored interest payment certificates and 4 opposed the use of such certificates. IPC will not be used because the existing generic certificate exchange procedure will provide sufficient opportunities to producers to use such certificates in the orderly marketing of commodities.

(i) Eight comments were received that related to issues for which comments were not requested.

With respect to the specific comments for the 1988 Wheat Program the following are noted:

(a) *Acreage Limitation Program (ALP):* Twenty-seven respondents favored an acreage reduction level of 27.5 percent or less, 6 favored 30 percent. The announced ALP level of 27.5 percent is 2.5 percent below the statutory maximum. The 1949 Act provides that an ALP of less than 30 percent and more than 20 percent must be implemented if it is determined that a carryover of 1 billion bushels of wheat will exist on June 1, 1988. When the ALP was announced, it had been determined that this carryover would be 1.778 billion bushels. Based upon this estimate it was determined that an ALP of 27.5 percent would result in a decline in carryover stocks while export demands could still be met.

(b) *Established "Target" Price:* Eighteen respondents favored a target price level of $4.38 per bushel, the 1987 level, 10 favored $4.29 per bushel, and 2 favored parity. The target price is set at the statutory minimum of $4.23 per bushel provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Twenty-nine comments were received regarding the establishment of the wheat price support loan level. Twelve respondents favored $2.17 per bushel, the lowest level recommended. The remaining 17 respondents favored higher price support loan levels ranging from $2.22 per bushel to $3.00 per bushel. The minimum statutory loan level of $2.21 per bushel was selected because: (1) Average farm prices during the preceding marketing year did not exceed 110 percent of the loan rate; (2) this level is necessary to maintain a competitive market position; and (3) the loan rate is well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Twenty-six respondents favored a paid diversion program and 3 opposed such a program. A paid diversion program will not be implemented because the ALP

level was determined to be sufficient to adequately manage stock levels.

(e) *Marketing Loan:* Sixteen respondents favored a marketing loan program and 3 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions; and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(f) *Commodity Certificates:* Thirty-four respondents favored payments in generic commodity certificates and 2 opposed such payments. In order to fully utilize the assets of CCC, it has been determined that 50 percent of the advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(g) *Farmer-Owned Reserve (FOR):* Eight respondents opposed entry into the FOR and 5 favored such action. Because the required minimum reserve levels were lowered by the 1987 Act, it was announced that no immediate entry would be permited into the FOR. Actions to encourage participation in the program will be taken if reserve quantities fall below the required minimum level of 300 million bushels.

(h) *Wheat Export Certificate Program:* Five respondents opposed the export certificate program while 2 favored its implementation. This program will not be implemented because the generic commodity certificate and export enhancement programs were determined to be sufficient to provide incentives for the export of wheat from private and CCC-owned stocks.

(i) *Inventory Reduction Program (IRP):* Four respondents favored the IRP and 1 respondent opposed its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

(j) *Special Wheat Grazing and Hay Program:* Three comments were received opposing this program. The special grazing and hay program will not be implemented because it was determined that: (1) Additional haying and grazing supplies will not be needed; (2) haying of additional program acreage will have an adverse economic effect on the incomes of those producers who already grow such crops; and (3) additional reductions in planted acreage is not necessary to manage wheat supplies.

Feed Grain Comments

A total of 115 respondents commented on the 1988 Feed Grain Program determinations. Eighty-seven of the respondents were individual producers and 10 were producer organizations.

With respect to the specific comments for the 1988 Feed Grains Program the following are noted:

(a) *Acreage Limitation Program:* Forty-eight comments were received regarding acreage reduction levels with 20 percent, the statutory maximum ALP level, receiving the most comments at 27. Of the remaining 21 comments, 5 favored a 12.5 percent ALP, 3 favored a 15 percent ALP, 10 favored unspecified ALP levels, and 3 opposed the ALP. The maximum level was selected because corn stock levels on September 1, 1988, were projected to exceed 4 billion bushels, double the statutory target carryover level of 2 billion bushels.

(b) *Established "Target" Price:* Eighteen respondents favored a target price level of $3.03 per bushel, the 1987 level, 10 favored $2.97 per bushel, and 12 favored non-specific raising or lowering of the target price. The target price is set at the statutory minimum of $2.93 per bushel provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Nine respondents favored setting the loan rate for corn at the 1987 level, 7 favored $2.17 per bushel and 9 favored $1.74 per bushel, with 13 non-specific comments. The minimum statutory loan level of $1.77 per bushel for corn was selected because: (1) Average farm prices during the preceding marketing year did not exceed 110 percent of the loan rate; (2) the action is necessary to maintain a competitive market position; and (3) the loan rate is well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Thirty-one respondents favored a paid diversion program and 7 opposed such a program. In accordance with the 1987 Act, a voluntary paid diversion program of 10 percent for corn, sorghum, and barley is required to be implemented with respect to 1988 crops. Accordingly, such a program will be available to producers who also participate in the acreage reduction program.

(e) *Marketing Loan:* Twelve respondents favored a marketing loan program and 8 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions; and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(f) *Commodity Certificates:* Thirty respondents favored payments in generic commodity certificates, 5 opposed the use of certificates, and 2 favored a choice of receiving payments in cash or in certificates. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments and 100 percent of feed grain diversion payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(g) *Farmer-Owned Reserve:* Thirteen respondents favored entry into the FOR and 6 opposed such action. The quantity of corn in the FOR exceeds the statutory maximum level, accordingly it was announced that no immediate entry would be permitted into the FOR. Actions to encourage participation in the program will be taken if reserve quantities fall below the required minimum level of 450 million bushels.

(h) *Feed Grain Export Certificate Program:* Six respondents opposed the export certificate program and 1 respondent favored its implementation. This program will not be implemented because the use of generic commodity certificate and the export enhancement program were determined to be sufficient to provide incentives for the export of feed grains from private and CCC-owned stocks.

(i) *Inventory Reduction Program:* Four respondents opposed the IRP and 3 favored its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

(j) *Eligibility of Barley:* Five comments were received favoring the inclusion of barley in the feed grain program. Barley will be included in the 1988 Feed Grain Program because instituting ALP requirements with respect to the production of barley will help balance barley supply with demand.

(k) *Exemption of Malting Barley:* Three respondents opposed the exemption of malting barley from an acreage limitation program and 2 favored such action. Malting barley producers will not be exempt from the ALP because the exclusion of such varieties from production adjustment requirements would reduce the effectiveness of the feed grain program.

(l) *Nonrecourse Loan for Corn Silage:* Eleven respondents favored the inclusion of corn silage grain equivalent in the loans and purchases program and 4 opposed such action. The program will not be made available because the cost of the program would significantly outweigh the benefits which would be received by producers.

(m) Sixty-two comments were received that were either nonspecific or related to issues for which comments were not requested.

Upland Cotton Program Comments

A total of 10 respondents commented on the 1988 Upland Cotton Program determinations. Two of the respondents were individual producers, 7 were producer organizations, and one represented an industry association.

(a) *Acreage Limitation Program:* Five respondents favored an acreage reduction level of 10 percent or less and 3 favored an ALP of 15 percent. An ALP level of 12.5 percent was selected because it provided a total supply of upland cotton adequate for domestic and export marketings and resulted in carryover stocks at approximately the statutory target level of 4 million bales.

(b) *Established "Target" Price:* Four comments were received supporting the statutory minimum target price level. The target price is set at the statutory minimum of $0.759 per pound provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan Level:* Five comments were received supporting the statutorily determined loan level. The loan level of $0.518 per pound was established based on the statutory formula.

(d) *Land Diversion Program:* Five respondents favored a paid diversion program and 1 opposed such a program. A paid diversion program will not be implemented because the ALP level was determined to be sufficient to adequately manage stock levels.

(e) *Commodity Certificates:* Seven respondents favored payments in the form of generic commodity certificates and 1 respondent opposed such payments. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(f) *Inventory Reduction Program:* One respondent favored the IRP and 1 respondent opposed the implementation of such a program. The IRP will not be implemented for cotton because: (1) Such a program would encourage producers to plant nonprogram crops on available crop acreage thereby adversely affecting the incomes of current producers of such nonprogram crops; and (2) the program requires payments to be made in the form of cotton specific certificates and CCC does not have a sufficient quantity of cotton inventory which could be exchanged for such certificates.

(g) *Plan A/Plan B and Loan Repayment Level:* Four comments were received supporting the Plan B repayment provision. Plan B was selected because of its flexibility in adapting to world price fluctuations, thereby minimizing Government cost exposure should prices rise above expected levels.

(h) *Loan Deficiency Payments:* Five comments were received in support of making loan deficiency payments available to producers. This provision will be implemented for upland cotton because offering loan deficiency payments will provide greater marketing opportunities to producers and also reduce the quantity of upland cotton pledged as collateral for CCC price support loans.

(i) *National Program Acreage (NPA):* Two comments were received opposing the NPA provision. Since an ALP is in effect for the 1988 crop, the NPA determination is not applicable.

(j) *Voluntary Reduction Percentage (VRP):* Two comments were received opposing the VRP provision. Since an ALP is in effect for the 1988 crop, the VRP will not be applicable.

(k) *Seed Cotton Loan Program:* Five comments were received favoring continuation of seed cotton loans. Seed cotton loans will continue to be offered to producers because it helps to provide producers interim financing between the time cotton is harvested and the time the cotton is ginned.

(l) Thirty-one comments were received that were either nonspecific or related to issues for which comments were not requested.

ELS Cotton Program Comments

One respondent commented on the 1988 ELS Cotton Program determinations. The respondent was a producer organization that favored an acreage reduction level of 5 percent. An ALP level of 10 percent was selected because it provided a total supply of ELS cotton adequate for domestic and export marketings and rsulted in carryover stocks at approximately the target level of 65,000 bales.

Rice Program Comments

A total of 43 respondents commented on the 1988 Rice Program determinations. Twenty-three of the respondents were individual producers and 10 were producer organizations.

With respect to the specific comments for the 1988 Rice Program the following are noted:

(a) *Acreage Limitation Program:* Forty comments were received regarding acreage reduction levels with 35 percent, the statutory maximum level, receiving the most comments at 20. Of the remaining 20 comments, 8 favored an ALP level of 25 percent, 6 favored 20 percent, 3 favored 15 percent, and 1 each favored 10, 5, and 0 percent. An ALP level of 25 percent was selected because it provided a total supply of rice adequate for domestic and export marketings and resulted in ending stocks at approximately the statutory target level of 30 million cwt.

(b) *Established "Target" Price:* Three respondents favored a target price level of $11.30 per cwt., the 1987 level, and 1 respondent favored $10.74 per cwt. The target price is set at the statutory minimum of $11.15 per cwt. provided for in the 1987 Act. This level is well above the projected U.S. average variable cash costs of production for the 1988-crop, thereby ensuring program participants an adequate safety net for farm income.

(c) *Loan and Purchase Level:* Three respondents favored a loan and purchase rate of $6.50 per cwt., the statutory minimum at the time comments were requested, and 1 respondent favored $6.84 per cwt. Subsequently, the 1949 Act was amended to provide for a minimum price support level for the 1988 crop of $6.63 per cwt. The statutory minimum was selected because it was determined to be well above the projected U.S. average variable cash cost of production for the 1988 crop.

(d) *Land Diversion Program:* Two comments were received opposing a paid diversion program. A paid diversion program will not be implemented because the ALP level was determined to be sufficient to adequately manage stock levels.

(e) *Commodity Certificates:* Five respondents favored payments in the form of generic commodity certificates and 3 opposed the use of certificates. In order to fully utilize the assets of CCC, it has been determined that 50 percent of advanced deficiency payments will be paid in commodity certificates. Any additional certificate payments will be made as market conditions warrant.

(f) *Inventory Reduction Programs:* Two comments were received opposing the IRP. The IRP will not be implemented for rice because such a program would encourage producers to plant nonprogram crops on available crop acreage, thereby adversely affecting the incomes of current producers of such nonprogram crops.

(g) *Loan Deficiency Payments:* Three respondents favored making could be available to exchange for such certificates; loan deficiency payments and 1 respondent opposed such action. Loan deficiency payments will be made available because: (1) Part of such payments must be made in the form of rice specific commodity certificates and CCC does not own sufficient quantities of rice which would be available for the exchange of such certificates; (2) these payments are based on program yields rather than harvested yields and, accordingly, producer participation in this provision would to be negligible; and (3) it has been determined that offering producers loan deficiency payments would not significantly reduce the quantities of rice pledged as collateral for CCC price support loans.

(h) *National Program Acreage:* One comment was received opposing the NPA provision. Since an ALP is in effect for the 1988 crops, the NPA determination is not be applicable.

(i) *Voluntary Reduction Percentage:* Two comments were received opposing the VRP provision. Since an ALP is in effect for the 1988 crops, the VRP is not applicable.

(j) *Loan Rate Adjustment:* Seven comments were received regarding the class loan rate differential. Four of the comments favored a differential of $1.00 per cwt., which was the 1987 level. One comment each was received supporting a differential of $4.00, $2.00, and $0.00 per cwt. The loan rate differential was established at $1.00 per cwt. because this level most accurately represents the domestic class loan rates which reflect the ratio of class world prices.

(k) *Purchase of Marketing Certificates:* Two respondents opposed this provision and 1 respondent favored its implementation. Producers will not be required to purchase marketing certificates as a condition of repaying a loan at a reduced rate because such certificates must be exchanged for CCC-owned rice and CCC does not have sufficient quantity of rice in its inventory which could be exchanged for such certificates.

(l) *Marketing Certificates:* Three comments were received in favor of the marketing certificate program. CCC will continue to issue generic commodity certificates to producers whenever the world price for a class of rice (adjusted to U.S. qualities and location) is below the minimum loan repayment level. This action is considered necessary to make U.S. rice competitive in world markets and to maintain and expand exports of rice produced in the U.S.

(m) Twenty-eight comments were received that were either nonspecific or related to issues for which comments were not requested.

This notice affirms the following determinations previously made and announced by the Secretary, beginning July 2, 1987, with respect to the 1988 crops of wheat, feed grains, rice and cotton (upland and ELS).

Determinations

1. Loan and Purchase Level

In accordance with sections 107D(a)(1), 105C(a)(1), 101A(a)(1), 103A(a)(1), and 103(h)(2) of the 1949 Act, the price support loan and purchase level per bushel, unless otherwise indicated, shall be $2.21 for wheat, $1.77 for corn, $1.68 ($3.00 per cwt.) for sorghum, $1.44 for barley, $0.90 for oats, $1.50 for rye, $6.63 per cwt. for rice, $0.5180 per pound for upland cotton, and $0.8092 per pound for ELS cotton.

2. Established (Target) Price

In accordance with sections 107D(b)(1)(G), 105C(b)(1)(E), 101A(c)(1)(D), 103A(c)(1)(D) and 103(h)(3)(B) of the 1949 Act, the established ("target") price per bushel, unless otherwise indicated, shall be $4.23 for wheat, $2.93 for corn, $2.78 ($4.96 per cwt.) for sorghum, $2.51 for barley, $1.55 for oats, $11.15 per cwt. for rice, $0.759 per pound for upland cotton, and $0.957 per pound for ELS cotton.

3. Acreage Reduction/Paid Land Diversion Program

In accordance with sections 107D(f)(1)(B), 105C(f)(1)(B), 103A(f)(2)(A) and 103(h)(8)(A) of the 1949 Act, acreage reduction programs have been established with respect to the 1988 crops at 27½ percent for wheat, 20 percent for corn, sorghum, and barley, 5 percent for oats, 25 percent for rice, 12½ percent for upland cotton, and 10 percent for ELS cotton.

Accordingly, producers will be required to reduce their 1988 acreages of these commodities for harvest from the respective crop acreage base established for a farm by at least these established percentages for each commodity in order to be eligible for price support loans, purchases, and payments for each such commodity. Producers of corn, sorghum, and barley are eligible in accordance with section 105C(f)(5) of the 1949 Act to receive diversion payments on an acreage equivalent to 10 percent of the corn, sorghum, and barley crop acreage base established for the farm if the acreage planted to these crops on the farm for harvest does not exceed 70 percent of such crop acreage base. The diversion payment rates per bushel shall be: $1.75 for corn; $1.65 for sorghum, and $1.40 for barley.

4. Set-Aside Program

In accordance with sections 107D(f)(1), and (3) and 105C(f) (1) and (3) of the 1949 Act, it has been determined that there will be no set-aside program for the 1988 crops of wheat and feed grains.

5. Haying and Grazing/Production of Approved Nonprogram Crops

In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(c)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that haying will not be allowed except under emergency conditions unless it is determined that, based upon information submitted by a State ASC committee, haying will not result in an adverse economic effect in the State. Grazing of acreage designated as ACR and CU will be permitted except during any 5-consecutive-month period between April 1 and October 31 that is established for a State, by the State ASC committee. Haying and grazing of conservation reserve acreage is prohibited. The Secretary has further determined that production of crops, program or nonprogram, will not be permitted on ACR or CU acreage.

6. Advance Deficiency and Land Diversion Payments

In accordance with section 107C of the 1949 Act the Secretary will make available to producers: (1) Advance deficiency payments for the 1988 crops of wheat, feed grains, upland cotton, and rice; and (2) advance land diversion payments for the 1988 crops of corn, sorghum, and barley. Producers may request 40 percent of their projected deficiency payments when they enroll in the 1988 Wheat, Feed Grain, Upland Cotton and Rice Programs. Fifty percent of the advance deficiency payments will be paid in cash and the balance of the advanced amount will be paid in generic commodity certificates. The entire diversion payment will be made in advance on or about May 16, 1988. One hundred percent of the feed grain diversion payment will be paid in generic commodity certificates. No

advance deficiency payments will be offered to ELS cotton producers.

7. Binding Contracts

Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

8. Cross and Offsetting Compliance

In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton. Section 103(h)(16)(c) prohibits imposition of limited cross compliance for the 1988 crop of ELS cotton. In accordance with sections 107(d)(i), 105C(i), 103A(n)(1), and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grain and ELS cotton Program participants will not be required as a condition of eligibility for program benefits. Sections 101A(n)(1) and 103A(n)(3) prohibit imposition of offsetting compliance for rice and upland cotton program participants.

9. Establishment of Acreage Bases and Adjustments

In accordance with section 503 of the 1949 Act, farm acreage bases will be established for the 1988 crop year. Adjustments in crop acreage bases for the 1988 program as provided in section 505 will not be allowed. In accordance with section 504 of the 1949 Act, it has been determined that limited adjustments in crop acreage bases may be approved when producers need to change cropping practices to carry out conservation compliance requirements on highly erodible land.

10. Establishment of Program Payment Yields

In accordance with section 506 of the 1949 Act, it has been determined that the actual yield per harvested acre for the 1988 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

11. Marketing Loan

A. Wheat and Feed Grains

In accordance with sections 107D(a)(5) and 105(a)(4) of the 1949 Act, it has been determined that marketing loans will not be implemented for the 1988 crops of wheat or feed grains. The price support loan and purchase levels applicable to such crops have been lowered to the maximum extent possible and it has been determined that this action is sufficient to maintain a competitive market position. Also, the implementation of a marketing loan program for such crops would greatly increase program costs while program benefits would be minimal.

B. Upland Cotton

In accordance with section 103A(a)(5) of the 1949 Act, the Secretary determined on October 29, 1987, that Plan B of the marketing loan program would be implemented in the event that the prevailing world market price (adjusted to U.S. quality and location) for upland cotton falls below the upland cotton price support loan rate. The loan repayment rate shall be equal to the lesser of the loan level or the adjusted world market price.

C. Rice

In accordance with section 101A(a)(5) of the 1949 Act, it has been determined that a producer of 1988-crop rice may repay a price support loan for the 1988 crop of rice at a level that is the lesser of: (1) The price support loan level or; (2) the higher of (i) 60 percent of the rice price support loan rate or (ii) the prevailing world market price for rice. It has been determined that a producer shall not be required to purchase a negotiable marketing certificate as a condition of repaying the rice price support loan at a lower level.

12. Loan Deficiency Payments

In accordance with sections 107D(b), 105C(b), 101A(b), and 103A(b) of the 1949 Act, it has been determined that, with respect to the 1988 price support and production adjustment programs, loan deficiency payments will not be available for wheat, feed grains, and rice, but will be available for upland cotton. It has been determined that offering producers loan deficiency payments in lieu of obtaining a price support loan will reduce the quantity of upland cotton pledged as collateral for price support loans when a marketing loan is in effect, but would not significantly reduce such quantities of rice pledged as collateral. Since, for the 1988 crops, marketing loans are available only with respect to upland cotton and rice, loan deficiency payments will not be available for feed grains and wheat producers.

13. Inventory Reduction

In accordance with sections 107D(g), 105C(g), 101A(g), and 103A(g) of the 1949 Act, it has been determined that the inventory reduction program will not be implemented for the 1988 crops of wheat, feed grains, rice, and upland cotton since such a program would encourage producers to plant nonprogram crops on available crop acreage and thereby adversely affect producers of such nonprogram crops.

14. Advance Recourse Commodity Loans

In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and cotton and advance diversion payments for feed grains (except oats) will substantially augment private lending to producers and, therefore, ease producer credit problems. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

15. Farmer-Owned Reserve Program

In accordance with section 110 of the 1949 Act, it has been determined that there will be no immediate entry into the farmer-owned reserve (FOR) program for the 1988 crop of wheat and feed grains. The lower limit on the size of the reserve for wheat and feed grains is established at 300 million bushels and 450 million bushels, respectively. Actions to encourage participation in the program will be taken if reserve quantities fall below the minimum levels.

16. Inclusion of Barley

In accordance with section 105(c)(1)(F) of the 1949 Act, it has been determined that barley producers are eligible to receive 1988 feed grains program payments since inclusion of barley in the feed grain acreage reduction program permits the alignment of barley stocks with barley demand.

17. Exemption of Malting Barley

In accordance with section 105C(e)(2) of the 1949 Act, it has been determined that malting barley shall not be exempt from the feed grain acreage reduction program since a large portion of barley production is planted to malting barley

varieties and exclusion of such varieties from any production adjustment requirements would greatly reduce the effectiveness of the feed grain program.

18. Nonrecourse Loans and Purchases for Corn Silage Grain Equivalent

In accordance with section 105C(a) of the 1949 Act, it has been determined that corn silage grain equivalent will not be eligible for nonrecourse loans and purchases since an increase in program costs would result in only marginal increases in program benefits.

19. ELS and Upland Seed Cotton Loan

In accordance with section 103(h)(17) of the 1949 Act and section 5 of the Charter Act, it has been determined that recourse loans will be made available to producers for ELS and upland seed cotton under the same provisions that were applicable to the 1987 crops of ELS and upland cotton.

20. Cost Reduction Options

In accordance with section 1009 of the 1985 Act it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); secs. 101, 101A, 103A, 103(h), 105B, 107C, 107D, 107E, 109, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464 and 1465); sec. 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 U.S.C. 1308a).

Signed at Washington, DC, on May 6, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–10940 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Poverty Income Guidelines

AGENCY: Food and Nutrition, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR Part 246.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291 and has been determined to be *not major.* The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a 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.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.577 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the national School Lunch Act (42 U.S.C. 1758). Under section 9, the income limit for reduced-price school meals is 185 percent of the Federal poverty income guidelines, as adjusted.

Section 9 also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1988 was published by the Department of Health and Human Service (DHHS) in the **Federal Register** for February 12, 1988, at 53 FR 4213. The guidelines published by DHHS are referred to as the poverty income guidelines.

The Department published final WIC regulations on February 13, 1985, at 50 FR 6108. Section 246.7(c) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9 of the National School Lunch Act for reduced-price school meals, or are less than 100 percent of the Federal poverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At the time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1988 through June 30, 1989. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Effective July 1, 1988–June 30, 1989

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	5,770	10,675
2	7,730	14,301

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
3	9,690	17,927
4	11,650	21,553
5	13,610	25,179
6	15,570	28,805
7	17,530	32,431
8	19,490	36,057
For each additional family member add	1,960	3,626
Alaska:		
1	7,210	13,339
2	9,660	17,871
3	12,110	22,404
4	14,560	26,936
5	17,010	31,469
6	19,460	36,001
7	21,910	40,534
8	24,360	45,066
For each additional family member add	2,450	4,533
Hawaii		
1	6,650	12,303
2	8,900	16,465
3	11,150	20,628
4	13,400	24,790
5	15,650	28,953
6	17,900	33,115
7	20,150	37,278
8	22,400	41,440
For each additional family member add	2,250	4,163

Authority: 42 U.S.C. 1786.

Anna Kondratas,

Administrator.

Date: May 10, 1988.

[FR Doc. 88-11002 Filed 5-16-88; 8:45 am]

BILLING CODE 3410-30-M

Commodity Supplemental Food Program; Elderly Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations, 7 CFR Part 247.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291 and has been determined to be *not major.* The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99-198). This legislation amends section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Department establish procedures allowing agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99-198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Pub. L. 99-198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 53 FR 4831. These regulations defined "elderly persons" as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services" (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1988 was published by the Department of Health and Human Services at 53 FR 4213 on February 12, 1988. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1988 through June 30, 1989.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar. The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Effective July 1, 1988—June 30, 1989

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:	
1	7,501
2	10,049
3	12,597
4	15,145
5	17,693
6	20,241
7	22,789
8	25,337
For each additional family member add	2,548
Alaska:	
1	9,373
2	12,558
3	15,743
4	18,928
5	22,113
6	25,298
7	28,483
8	31,668
For each additional family member add	3,185
Hawaii:	
1	8,645
2	11,570
3	14,495
4	17,420
5	20,345
6	23,270
7	26,195
8	29,120

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
For each additional family member add	2,925

Authority: Sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note).

Date: May 10, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–11003 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

Upper Stage Gulch Watershed, OR; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1960; the Council on Enfironmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guideline (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Stage Gulch Watershed, Umatilla County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1640 Federal Building, 1220 SW. Third Avenue, Portland, Oregon 97204, telephone 503–221–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for the watershed. The planned works of improvement include accelerated technical assistance for land treatment or cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jack P. Kanalz,

State Conservationist.

May 6, 1988.

[FR Doc. 88–10947 Filed 5–16–88; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held June 8, 1988, 9:00 a.m. to 3:00 p.m. The open session will be held at the Willard Hotel located 1401 Pennsylvania Avenue NW., Washington, DC from 9:00 until 11:45. The afternoon session meeting from 1:30 p.m. to 3:00 p.m., will be closed. It will be held at the Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

(Willard Hotel) 9:00–11:45 a.m. Introduction of new members; objectives of Subcommittee; briefing on Export Administration developments; working group status reports.

Executive Session

(Department of Commerce) 1:30–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1987 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Sharon Gongwer, (202) 377–4275.

Date: May 10, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–11008 Filed 5–16–88; 8:45 am]

BILLING CODE 3510–DT–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–408,569 (4,734,524), Synthetic Pheromone 8-Methyl-2-Decanol Propanoate.

SN 6–868,484 (4,735,327), Radio Controlled Downhill Skyline Logging Carriage and System.

SN 6–886,502 (4,735,651), Novel Phytotoxic and Plant Growth Regulating Oligopeptide.

SN 7–042,033 (4,733,493), Trap Gun.

SN 7–152–791, Combined Physical and Chemical Treatment to Improve Lignocellulose Digestibility.

Department of Health and Human Services

SN E–445–87, Method For Treating Acne.
SN 7–094,618, CSF–1 Facilitated Detection, Isolation and Propagation of Monocyte-Tropic Human Immunodeficiency Virus in Human Monocytes.
SN 7–133,948, Method of Eliminating Immunosuppressive Effects of Thymus-Derived (T) Suppressor Cells.
SN 7–135,280, A Human Gene Related to But Distinct from abl Proto-Oncogene.
SN 7–154,692, Cloned cDNA for Human Procathepsin L.
SN 7–159,847, Polyacrylamide Gels for Improved Detection of Proteins.
SN 7–165,173, New, Water Soluble, Antineoplastic Derivatives of Taxol.
SN 7–167,695, Vaccine Against Disease Caused by Human Type 3 Parainfluenza Virus.
SN 7–169,487, Novel Restriction Endonuclease.
SN 7–169,949, Novel Recombinant Vaccinia Virus Expression Vectors and Methods of Selecting Same.
SN 7–175,505, Assay for 06-Alkylguanine-DNA Alkyltransferase Using Restriction Enzyme Inhibition.
SN 7–177,465, Method for Early Detection of Lung Cancer.

Department of the Army

SN 7–128,700, A Saw Dispersive Delay Device.
SN 7–160,952, Local Preservation of Infinite, Uniform Magnetization Field Configuration Under Source Truncation.
SN 7–162,723, Microstrip Resonance Isolator.

[FR Doc. 88–10946 Filed 5–16–88; 8:45 am]
BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Coulter Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Coulter Corporation having a place of business in Hialeah, Fl., and exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Backbone Polysubstituted Chelates for Forming a Metal Chelate-Protem Conjugate," U.S. Patent Application Serial Number 6–903,723. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which estabilishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10980 Filed 5–16–88; 8:45 am]
BILLING CODE 3510–04–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Ocean Assessments National Ocean Service, NOAA (P415)

On March 7, 1988, notice was published in the **Federal Register** (53 FR 7223), that an application had been filed by the Ocean Assessments Division, National Ocean Service, NOAA, 701 C Street, Box 56, Anchorage, Alaska 99513, for a permit to take specimen materials from animals taken in subsistence hunts or from beached or stranded animals in Alaska for scientific research.

Notice is hereby given that on May 11, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act (16 U.S.C. 1351–1544) the National Marine Fisheries Service (NMFS) issued a Permit for the above taking subject to certian conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 (ESA) is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with the subject to Parts 220–222 of Title 50 CFR, and the NMFS regulations governing endangered species permits.

Documents are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805 Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: May 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–11027 Filed 5–16–88; 8:45 am]
BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Programmatic Environmental Impact Statement for the Biological Defense Research Program and Public Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability of draft environmental impact statement and notice of public meeting, Biological Defense Research Program.

SUMMARY: In the April 8, 1987 Notice of Intent, the Department of the Army stated that, as executive agent for the Department of Defense, it is responsible for the ongoing conduct of research and product development in the biological defense field. The Biological Defense Research Program involves research and product development in equipment, devices, drugs, substances, and biologics that are used to detect biological substances, protect soldiers from the adverse effects of biological substances, treat exposed individuals, and decontaminate exposed individuals, areas and equipment. The work is being carried out at a number of Government and university laboratories throughout the country.

The proposed action for EIS evaluation purposes is the continuation of the ongoing program in its current form. Alternatives considered to the proposed action for consideration in the EIS are:

(1) Modification in program scope and

(2) Modification in program implementation.

The draft EIS for the Biological Defense Research Program is available for public review and comment. A copy of the document may be obtained by contacting Mr. Charles Dasey at the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. Written comments should be submitted to the same address. The time period for providing written comments for consideration in

preparing the final EIS will end August 12, 1988.

A public meeting has been scheduled on July 25, 1988 at the Rosslyn West Park Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, to elicit comments and suggestions on the draft EIS. There will be a morning session beginning at 8:00 a.m. EDT and an afternoon session beginning at 1:00 p.m. EDT. Individuals wishing to present oral comments at the meeting may register in advance by calling (301) 663–2732 up through July 21, 1988, during normal business hours of 8:00 a.m. to 4:00 p.m. EDT. Collect calls will be accepted. On-site registration at the meeting may also be available. All commenters are asked to bring a written copy of their remarks for submission to the meeting record. Persons or organizations unable to attend the public meeting may submit written comments for inclusion in the public meeting record to the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. The time period for providing written comments for inclusion in the meeting record will end August 12, 1988.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 88–11015 Filed 5–16–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8–9 June 1988.

Time: 0800–1700 hours, 8 June 1988.

Place: HQ, Operations, Test and Evaluation Agency, Falls Church, VA 0800–1700 hours, 9 June 1988, Pentagon, Washington, DC.

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet for the purpose of gathering facts in the fifth phase of the study. The focus of the discussions will be to follow up on operational issues that were highlighted in previous phases of the study effort. In addition, the Army Science Board Summer Study on Army Testing will discuss specific test requirements/results for certain selected systems. These sessions will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–10981 Filed 5–16–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Solicitation of international commercial air rates for movement of household goods (HHG) and unaccompanied baggage (UB) worldwide.

SUMMARY: The next 6-month cycle (Volume 007) for the worldwide movement of HHG and UB will be effective October 1, 1988. The solicitation package for the October rate cycle will be distributed in July 1988.

This filing cycle contains some new features. One is an administrative high for each rate channel which will be instituted to provide a more controlled compensatory filing system. Second, rates will be accepted for intertheater moves, e.g., Hawaii to Germany.

Transportation offices have been informed to use only the carriers that participate in the international commercial air program when there is a need for moving HHG and UB by air.

Nonparticipating carriers who wish to receive a copy of the solicitation should contact MTMC (MT–PPC–I) providing a contact, address, phone number, and standard carrier alpha code (SCSA).

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT–PPC–I (Ms. Anderson), Room 408, Falls Church, Virginia 22041–5050. (703) 756–2385.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–10945 Filed 5–16–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to Claflin College, Orangeburg, SC, for conduct of a Science Enrichment Training Program. The grant will be for a two-year period at a DOE funding level of $59,188; Claflin College will contribute $14,646. Pursuant to section 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to Claflin College.

Procurement Request Number: 09–88SR18048.000.

Project Scope: Claflin College will conduct a Student Science Enrichment Training Program, with special emphasis placed on chemical and computer science fields. The residential summer sessions will be held at Claflin College for six weeks during the 1988 and 1989 summers. Thirty participants will be selected for the program and will include high school juniors, seniors and some freshman. The students will be selected from rural South Carolina schools which have limited science and computer facilities. The program is intended to focus on high ability students with potential for science and mathematical careers.

Claflin College is a predominantly black institution and served the needs of a primary rural community for more than one hundred years. The participation of Historically Black Colleges and Universities (HBCUs) in federally supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320, dated September 15, 1981, directed Federal agencies to increase the participation of HBCUs in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community and increase the pool of well-qualified, college entering minority students who will elect to enter science and mathematical careers.

DOE has determined that this award to Claflin College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and

Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephone: (803) 725–2096.

Issued in Aiken, SC, on May 3, 1988.

C.D. Simpson,

Acting Manager, Savannah River Operations Office.

[FR Doc. 88–11037 Filed 5–16–88; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to Savannah State College, Savannah, Georgia, in support of research on coal fly ash. The grant will be for a three-year period at a DOE funding level of $233,430. Pursuant to section 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600 DOE has determined that eligibility for this grant award shall be limited to Savannah State College.

Procurement Request Number: 09–88SR18047.000.

Project Scope: Savannah State College will conduct an investigation into the use of coal fly ash as a component of compost. Fly ash is the major waste product of coal combustion. As such, its disposal and/or utilization are major economic and environmental concerns worldwide. One use of ash is as an additive to soil mixtures. The research to be conducted by Savannah State College will explore the beneficial and harmful effects of using ash in a compost for agricultural crops. Chemical and radiological measurements will be combined with the production of various crops to assess the overall effect of coal fly ash as a composting material.

Savannah State College has conducted previous research on coal fly ash using samples collected from each of the coal-fired power plants on the Savannah River plant.

Savannah State College is a minority institution, a unit of the University System of Georgia. The participation of Historically Black Colleges and Universities (HBCUs) in federally-supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320, dated September 15, 1981, directed federal agencies to increase the participation of HBCUs in federally-funded research and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen related research capabilities and academic programs at this college and increase their participation in DOE mission-oriented research.

The DOE has determined that this award to Savannah State College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P. O. Box A, Aiken, SC 29801, Telephone (803) 725–2096.

Issued in Aiken, SC, on May 3, 1988.

C.D. Simpson,

Acting Manager, Savannah River Operations Office.

[FR Doc. 88–11038 Filed 5–16–88; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No. MC–88]

Lost Power Revenue Mitigation Charge; Withdrawal

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. BPA announces the withdrawal of its proposed Lost Power Revenue Mitigation Charge.

SUMMARY: Continuing discussions with various utilities indicate less interest in the proposed Lost Power Revenue Mitigation Charge than had been expressed at the time the initial proposal was set forth. In view of the expenditures of time and resources required to complete this case and implement the final rate into Assured Delivery Contracts by May 16, 1988, BPA believes that this reduced level of interest no longer supports pursuing the proposal. BPA counsel has moved to withdraw the prefiled testimony of witnesses Cameron, Metcalf, and Lamb, together with the proposed MC–88 Lost Power Revenue Mitigation Charge. The Administrator has requested that the hearing officer terminate the docket.

Responsible Official: John A. Cameron, Jr., Intertie Access Project Manager, is the official responsible for the development of the MC–88 charge.

ADDRESSES: Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Sugai, Public Involvement office, at the address listed above, 503–230–3475. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskride, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewalk, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue N., Suite 400, Seattle, Washington 98109, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

Issued in Portland, Oregon, on May 10, 1988.

James J. Jura,

Administrator.

[FR Doc. 88–11028 Filed 5–16–88; 8:45 am]

BILLING CODE 8450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–370–000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Natural Gas Certificate Filings

May 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–370–000]

Take notice that on April 29, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket

No. CP88-370-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate an 8-inch tap and appurtenant facilities on its 12-inch pipeline near the Exxon/Katy plant located in Waller County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the proposed tap would enable it to receive from and/or deliver to Coronado Transmission Company (Coronado), an intrastate pipeline, a maximum quantity of up to 75,000 Mcf per day of natural gas. It is stated that the facilities are estimated to cost $57,500. Transco states that Coronado would construct, own and operate a meter station and approximately 150 feet of 12-inch pipeline connecting its existing 12-inch pipeline to Transco's proposed tap.

Transco states that the proposed interconnection would be used for varying transactions, including those relating to the Katy Interchange Service. Further, Transco states that the proposed tap would enable Coronado to increase the potential for addition of production area transportation throughout.

Comment date: June 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tenneco Oil Company

[Docket No. CI79-360-000, et al.]

Take notice that on April 29, 1988, Tenneco Oil Company (Tenneco Oil), of P. O. Box 2511, Houston, Texas 77252-2511, filed an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder, requesting a permanent certificate of Public Convenience and Necessity authorizing Tenneco Oil Company to continue the service previously rendered by Multistates Oil Properties, Inc. and Resource Oil and Gas Company and for the redesignation of the rate schedules from stating the operator as "Tenneco Oil Company, Operator, *et al.*, Agent for Multistates Oil Properties, N. V. *et al.*", to "Tenneco Oil Company", all as more fully shown on the attached Exhibit "I". This application is on file with the Commission and open to public inspection.

Effective April 29, 1987, pursuant to the laws of the State of Delaware, Multistate Oil Properties, Inc., HCT Oil and Gas Company, One Independence Corporation and Resource Oil and Gas Company merged into Tenneco Oil Company.

Comment date: May 25, 1988, in accordance with Standard Paragraph J at the end of this notice.

EXHIBIT I.—TENNECO OIL CO. (OPERATOR), ET AL, AGENT FOR MULTISTATES, OIL PROPERTIES, INC. (ET AL).

GSC No.	RS No.	Contract date	Docket No.	Purchaser/FERC code No.
1129	3	8/30/61	CI79-360	Williams Natural/02711.
1130	5	10/21/53	CI79-362	Colorado Interstate/003979.
1131	6	6/2/78	CI79-363	El Paso Natural Gas/005708.
1132	7	11/29/76	CI79-364	Kansas Nebraska Gas/010022.
1133	8	10/23/61	CI79-365	Lone Star Gas Company/011158.
1136	9	1/7/75	CI79-366	ANR Pipeline Company/012442.
1137	10	10/22/74	CI79-367	ANR Pipeline Company/012442.
1139	12	9/5/68	CI79-369	ANR Pipeline Company/012442.
1141	13	3/9/57	CI79-370	ANR Pipeline Company/012442.
1140	14	9/26/66	CI79-371	ANR Pipeline Company/012442.
1154	17	10/9/70	CI79-374	Northern Natural Gas Co./013767.
1156	18	7/29/66	CI79-375	Northern Natural Gas Co./013767.
1157	19	4/17/68	CI79-376	Northern Natural Gas Co./013767.
1159	20	8/3/77	CI79-377	Northern Natural Gas Co./013767.
1160	21	2/21/62	CI79-378	Northern Natural Gas Co./013767.
1163	23	8/11/64	CI79-381	Panhandle Eastern Pipeline/014423.
1164	24	1/10/77	CI79-382	Panhandle Eastern Pipeline/014423.
1165	25	4/6/64	CI79-383	Panhandle Eastern Pipeline/014423.
1166	26	8/19/74	CI79-384	Panhandle Eastern Pipeline/014423.
1168	27	1/2/62	CI79-385	Panhandle Eastern Pipeline/014423.
1155	28	2/10/66	CI79-386	Northern Natural Gas Co./013766.
1134	31	6/27/74	CI79-389	ANR Pipeline Company/012442.
1135	32	8/26/75	CI79-390	ANR Pipeline Company/012442.
1144	34	11/6/61	CI79-392	Northern Natural Gas Co./013767.
1145	35	3/18/66	CI79-393	Northern Natural Gas Co./013767.
1146	36	10/14/76	CI79-394	Northern Natural Gas Co./013767.
1147	37	11/1/77	CI79-395	Northern Natural Gas Co./013767.
1167	39	6/18/74	CI79-398	Panhandle Eastern Pipeline/014423.
1170	40	5/1/67	CI79-399	Panhandle Eastern Pipeline/014423.
1171	41	7/30/58	CI79-400	Transwestern Pipe Line/027438.
1172	42	9/1/59	CI79-401	Zenith Natural Gas Co./021165.
1158	43	5/22/78	CI79-386	Northern Natural Gas Co./013767.
1222	44	6/29/60	C181-510	Western Gas Interstate/020449.
1943	45	6/6/75	83-5-000	Northern Natural Gas Co./013767.
1944	46	6/6/75	83-6-000	Northern Natural Gas Co./013767.
1212	47	9/1/76	CI83-335	Phillips Petroleum/014980.
1211	48	9/1/76	CI83-336	Phillips Petroleum/014980.
	1	8/2/74	CI81-65-000	Northwest Pipeline Corporation.

3. Sonat Exploration Company

[Docket No. CI86-403-001]

Take notice that on April 29, 1988, Sonat Exploration Company (Sonat) of P.O. Box 1513, Houston, Texas 77251-1513, filed an application pursuant to sections 4 and 7 of of the Natural Gas Act and sections 154 and 157 of the Commission's regulations requesting modification and extension of its limited-term abandonment and blanket sales authorizations granted in Docket

No. CI86–403–000 which will expire December 28, 1988. Sonat requests extension of its authorization for a three-year term and modification of its authorization to include (1) uncommitted gas, (2) all of Sonat's certificated sales, and (3) any certificated sales from properties which Sonat may acquire from others, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 25, 1988, in accordance with Standard Paragraph J at the end of the 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 Capital 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.

J. Any person desiring to be heard or make any protest with reference to said filings 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, 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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10972 Filed 5–16–88; 8:45 am]

BILLING CODE 6717–01–M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued May 11, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On May 2, 1988, the Commission received notice from MMS, Alaska Outer Continental Shelf Region, that 202 lease were issued as a result of Sale 97, Beaufort Sea. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Sale	Lease No. OCS–Y	Effective date
97	1062	May 1, 1988.
97	1063	Do.
97	1064	Do.
97	1065	Do.
97	1102	Do.
97	1105	Do.
97	1109	Do.
97	1110	Do.
97	1007	Do.
97	1153	Do.
97	1154	Do.
97	1157	Do.
97	1160	Do.
97	1161	Do.
97	1162	Do.
97	1042	Do.
97	1043	Do.
97	1045	Do.
97	1046	Do.
97	1047	Do.
97	1048	Do.
97	1049	Do.
97	1051	Do.
97	1052	Do.
97	1053	Do.
97	1066	Do.
97	1067	Do.
97	1068	Do.
97	1069	Do.
97	1070	Do.
97	1071	Do.
97	1072	Do.
97	1075	Do.
97	1155	Do.
97	1156	Do.
97	1158	Do.
97	1159	Do.
97	1163	Do.
97	1165	Do.
97	1166	Do.
97	1167	Do.
97	1168	Do.
97	1170	Do.
97	1171	Do.
97	0977	Do.
97	0981	Do.
97	0983	Do.
97	0984	Do.
97	0985	Do.
97	0986	Do.
97	0989	Do.
97	0990	Do.
97	0991	Do.
97	0994	Do.
97	0996	Do.
97	0997	Do.
97	0998	Do.
97	1003	Do.
97	1004	Do.
97	1005	Do.
97	1006	Do.
97	1009	Do.
97	1010	Do.
97	1011	Do.

Sale	Lease No. OCS-Y	Effective date
97	1012	Do.
97	1013	Do.
97	1014	Do.
97	1015	Do.
97	1018	Do.
97	1019	Do.
97	1020	Do.
97	1021	Do.
97	1022	Do.
97	1023	Do.
97	1026	Do.
97	1027	Do.
97	1028	Do.
97	1029	Do.
97	1030	Do.
97	0958	Do.
97	0959	Do.
97	0963	Do.
97	0966	Do.
97	0978	Do.
97	0979	Do.
97	0982	Do.
97	0987	Do.
97	1001	Do.
97	1008	Do.
97	1016	Do.
97	1017	Do.
97	1024	Do.
97	1025	Do.
97	1115	Do.
97	1152	Do.
97	1169	Do.
97	1116	Do.
97	1117	Do.
97	1164	Do.
97	1103	Do.
97	1104	Do.
97	1106	Do.
97	1107	Do.
97	1108	Do.
97	1111	Do.
97	1112	Do.
97	1056	Do.
97	1057	Do.
97	1058	Do.
97	1089	Do.
97	1090	Do.
97	1095	Do.
97	1096	Do.
97	1118	Do.
97	1122	Do.
97	1124	Do.
97	1125	Do.
97	1128	Do.
97	0960	Do.
97	0964	Do.
97	0967	Do.
97	0968	Do.
97	0970	Do.
97	0971	Do.
97	0974	Do.
97	0975	Do.
97	0976	Do.
97	1032	Do.
97	1033	Do.
97	1038	Do.
97	1039	Do.
97	1044	Do.
97	1050	Do.
97	1054	Do.
97	1055	Do.
97	0988	Do.
97	0992	Do.
97	0993	Do.
97	0999	Do.
97	1000	Do.
97	1031	Do.
97	1034	Do.
97	1035	Do.
97	1036	Do.
97	1037	Do.
97	1040	Do.
97	1041	Do.
97	1059	Do.
97	1060	Do.
97	1061	Do.
97	1073	Do.
97	1074	Do.
97	1076	Do.
97	1077	Do.
97	1078	Do.
97	1079	Do.
97	1080	Do.
97	1081	Do.
97	1082	Do.
97	1083	Do.
97	1084	Do.
97	1085	Do.
97	1086	Do.
97	1087	Do.
97	1088	Do.
97	1091	Do.
97	1092	Do.
97	1093	Do.
97	1094	Do.
97	1097	Do.
97	1098	Do.
97	1099	Do.
97	1100	Do.
97	1101	Do.
97	1119	Do.
97	1120	Do.
97	1126	Do.
97	1147	Do.
97	1148	Do.
97	1149	Do.
97	1150	Do.
97	0961	Do.
97	0962	Do.
97	0965	Do.
97	0969	Do.
97	0972	Do.
97	0973	Do.
97	0980	Do.
97	0995	Do.
97	1002	Do.
97	1113	Do.
97	1114	Do.
97	1121	Do.
97	1123	Do.
97	1127	Do.
97	1129	Do.
97	1130	Do.
97	1151	Do.
97	1172	Do.
97	1173	Do.
97	1174	Do.
97	1175	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10973 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-12-000 and TA88-4-12-001]

Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant To Purchased Gas Cost Adjustment Provision and Request for Waiver

May 13, 1988

Take notice that on May 4, 1988, and May 6, 1988 [1] Distrigas Corporation ("Distrigas") tendered for filing 23rd Revises Sheet No. 1 to its FERC Gas Tariff to reflect rate decreases for LNG from five cargoes delivered pursuant to amended import authorization granted by the Economic Regulatory Administration, and Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing 23rd Revised Sheet No. 3A of its FERC Gas Tariff also to reflect rate decreases.

Distrigas stated that its filing is made pursuant to the Purchased LNG Cost Adjustment provision set forth in its FERC Gas Tariff and that the rate changes therein reflect further decreases in its current sales rates to DOMAC of approximately $0.36. The first cargo is priced at $2.20/MMBtu plus approximately $.005 for custom user and harbor maintenance fee. Subsequent cargoes will be subject to renegotiated prices as authorized by ERA Orders.

DOMAC states that its filing is made under section 15 of the General Terms and Conditions of its FERC Gas Tariff to reflect the Distrigas rate changes in DOMAC's rates for sale to its distribution customers, a losses and uses factor, and the GRI surcharge. The resulting sales price is approximately $2.30 per MMBtu, which reflects a decrease of approximately $0.38. No surcharge is filed to recover outstanding balances in DOMAC's unrecovered purchased LNG cost account.

Distrigas and DOMAC request a waiver of all applicable notice requirements so that the proposed tariff sheets will become effective on the date of delivery of the first LNG cargo imported from Sonatrach pursuant to Amendment No. 2.

A copy of Distrigas' and DOMAC's filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

[1] The May 6, 1988 filing corrected several typographical errors that were found on Twenty-Third Revised Sheet No. 1 of the May 4, 1988 filing. Distrigas requests that it be substituted for the previously filed corresponding sheet.

DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 20, 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. 88-11043 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-003]

El Paso Natural Gas Company; Compliance Filing (Revised)

May 13, 1988.

Take notice that on May 6, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted a revised filing in compliance with the Commission's order issued January 29, 1988 at Docket Nos. RP88-44-000 and CP88-203-000 and the letter order dated March 31, 1988 issued by the Director of the Office of Pipeline and Producer Regulation ("OPPR") at Docket No. RP88-44-002.

El Paso states that the January 29, 1988 order, among other things, conditionally accepted, to be effective July 1, 1988, subject to refund certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1987 pursuant to Section 4 of the Natural Gas Act. Ordering paragraph (H) directed El Paso to refile all tariff sheets referred to in ordering paragraphs (B) through (G) of the order within thirty (30) days of the issuance of the order. On February 26, 1988, El Paso tendered revised tariff sheets to comply with the Commission's directives in the January 29, 1988 order. The March 31, 1988 letter order from OPPR rejecting El Paso's compliance filing provided specific directives to El Paso for a further revised compliance filing. Accordingly, El Paso tendered for filing and acceptance the revised tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

El Paso states that the order issued March 18, 1988 at Docket Nos. RP88-44-001 and CP88-203-001, the Commission granted rehearing of the Commission's January 29, 1988 order for the limited purpose of further consideration. Although El Paso is revising its compliance filing, El Paso believes its filing of December 31, 1987 was correct with regard to the issues and for the reasons set forth in El Paso's request for rehearing and reserves the right to refile its rates and/or tariff provisions based upon the outcome of such request for rehearing.

1El Paso further states that it has complied with the conditions set forth in the body of the January 29, 1988 order and the ordering paragraphs and has followed the specific directives contained in the March 31, 1988 letter order by submitting revised and original tariff sheets which reflect the Commission directives and serve to modify El Paso's (i) cost of service, (ii) cost classification, allocation and rate design, and (iii) Transportation General Terms and Conditions.

1El Paso states that a copy of the compliance filing has been served upon all parties of record in Docket Nos. RP88-44-000 and CP88-203-000 and, otherwise, upon all parties served with a copy of El Paso's original filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Reglatory 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. All such motions or protests should be filed on or before May 20, 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.

Appendix

First Revised Volume No. 1

Substitute Seventeenth Revised Sheet No. 100
Substitute Third Revised Sheet No. 210
Substitute Fourth Revised Sheet Nos. 211 through 213
Substitute First Revised Sheet No. 214
Substitute Third Revised Sheet No. 220
Substitute Sixth Revised Sheet No. 221
Substitute Fifth Revised Sheet No. 222
Substitute Fourth Revised Sheet No. 223
Substitute Third Revised Sheet Nos. 230 through 232

Original Volume No. 1-A

Substitute Sixth Revised Sheet No. 20
Substitute First Revised Sheet No. 21
Substitute Original Sheet No. 21-A
Substitute Second Revised Sheet No. 110
Substitute Second Revised Sheet No. 111
Substitute Third Revised Sheet No. 112
Substitute Third Revised Sheet No. 113
Substitute Second Revised Sheet No. 114
Substitute First Revised Sheet Nos. 130 through 135
Substitute First Revised Sheet Nos. 229 through 230
Substitute First Revised Sheet Nos. 231-A and 231-B
Original Sheet No. 231-C
Substitute First Revised Sheet No. 233
Substitute First Revised Sheet Nos. 235 through 237
Original Sheet No. 237-A

Third Revised Volume No. 2

Substitute Forty-first Revised Sheet No. 1-D
Substitute Twenty-first Revised Sheet No. 1-D.2
Substitute Original Sheet No. 1-D.3

Original Volume No. 2A

Substitute Forth-third Revised Sheet No. 1-C

[FR Doc. 88-11040 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[RP87-22-006]

High Island Offshore System; Tariff Filing

May 13, 1988.

Take notice that on May 6, 1988, High Island Offshore System ("HIOS") tendered for filing Second Substitute Eighteenth and Substitute Nineteenth Revised Sheet Nos. 4 to be included in its F.E.R.C. Gas Tariff, Original Volume No. 1 to be effective January 1, 1988, and April 1, 1988, respectively.

HIOS states that Second Substitute Eighteenth and Substitute Nineteenth Revised Sheet Nos. 4 reflect a decrease of $.02 in its Demand Rate as a result of decreased costs paid to U-T Offshore System under its Rate Schedule X-1 for measurement, dehydration, and separation at the Cameron Meadows facilities. HIOS further states that such rate reduction is in compliance with Article III of RP87-22-000 Stipulation and Agreement approved by the Federal Energy Regulatory Commission ("Commission") on February 25, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC

20426, in accordance with Rule 211 or rule 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 May 20, 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 to the proceeding 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. 88-11041 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-163-000 and TQ88-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

May 12, 1988.

Take notice that on May 6, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, and requests such waivers as necessary to implement an effective date of June 1, 1988:

Forty-Sixth Revised Sheet No. 4
Eleventh Revised Sheet No. 30
Ninth Revised Sheet No. 31
First Revised Sheet No. 31A
Seventh Revised Sheet No. 32
First Revised Sheet No. 32A
Second Revised Sheet No. 32B
Third Revised Sheet No. 32C
Third Revised Sheet No. 33
Second Revised Sheet No. 34
Original Sheet No. 34.1
Original Sheet No. 34.2

South Georgia states that the proposed tariff sheets reflect the restatement of the Purchased Gas Adjustment (PGA) clause of South Georgia's tariff and a revision to its Current Adjustment in compliance with the Commission's Order Nos. 483 and 483-A and the revised PGA Regulations promulgated thereunder. South Georgia notes that the Current Adjustment rate change reflects a commodity decrease of approximately 63.5¢ per MMBtu. No change was made to South Georgia's presently effective Surcharge Adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 19, 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. 88-10974 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-704-002]

Florida Gas Transmission Co; Phase II Pipeline Project; Second Notice of Intent To Prepare An Environmental Assessment and Request for Comments On its Scope

May 13, 1988.

Proposed Action

A second notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket. This second notice identifies the high-density residential areas that would be affected by construction. It has been distributed to the recipients of the first notice, and to homeowners and tenants in selected residential areas whose properties may be crossed by the proposed pipeline or construction equipment.

On October 30, 1987, Florida Gas Transmission Company (FGT) applied to the FERC for a certificate of public convenience and necessity, under section 7 of the Natural Gas Act, to construct 179.7 miles of interstate gas transmission pipeline, and 33,625 horsepower of compression at 11 existing and 2 proposed compressor stations. On February 4, 1988, the FERC staff issued the first *Phase II Notice of Intent to Prepare an Environmental Assessment and Request for Comments on its Scope*, which was sent to all parties in the proceeding, government agencies, and interested persons. The first notice, which contains information about the entire project, can be obtained by calling or writing the project manager identified later in this notice.

The residential areas that would be affected by the project are in or near the Florida cities of Ocala, Orange City, Cocoa, Lakeland, Tampa, Auburndale, and Lake Wales. In total, about 6 miles of pipeline are involved. Most of the pipeline in these areas would be located entirely within existing pipeline, road, and powerline rights-of-way. Residential properties would be affected by construction activities and temporary construction rights-of-way would be needed. However, FGT does not propose to acquire any additional permanent right-of-way for operation of the pipeline except in two locations where there is no existing right-of-way. The proposed location and the temporary and permanent right-of-way configuration for the residential areas are identified in Table 1. Schematic drawings of the right-of-way configurations for these areas are shown in Figure 1, and the location maps are presented in the appendix to this notice. The route maps and drawings are not published in the **Federal Register**, but are included with copies of the notice distributed by the Commission to all parties in the proceeding, Federal, state and local government agencies, and interested members of the public.[1]

Presently, FGT's system can transport 825 million cubic feet of gas per day. According to FGT, the proposed facilities are necessary to transport an additional 100 million cubic feet per day for residential, commercial, and industrial customers. The total cost of the project is expected to be $103,385,000.

Current Environmental Issues

By this notice, the staff of the FERC is requesting public comments on the environmental matters that should be addressed in its EA on the proposal. The EA will be used to determine whether the project constitutes a major Federal action significantly affecting the quality of the human environment. It may also contain staff recommendations to the Commission regarding measures to reduce or avoid impact on the environment. At a minimum, the EA will address the following issues; any additional issues will be considered based on further staff review or public comments.

Land Use—Effect of the right-of-way location and width on existing and future uses of land including residential areas crossed.

Restoration—Erosion control, revegetation, soil productivity after construction.

Aesthetics—Visual impact of the right-of-way.

Wildlife—Impact on wetlands, threatened or endangered species, and habitat.

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[1] Route maps are available from the FERC's Division of Public and Legal Reference, telephone (202) 357-8118.

TABLE 1.—RESIDENTIAL AREAS CROSSED BY PIPELINES

Project name	State	County	Nearest city or town	Street or area	Distance (feet)	Pipeline diameter (inches)	Right-of-way configuration (see fig.1)
Ocala Lateral (New) [a].	FL	Marion	Ocala	NE. 49th St.	3,600	8	Permit 1.
				Parallel powerline existing right-of-way	11,400	8	O.
Deland Loop [b]	FL	Volusia	Orange City	Parallel FGT pipeline.	1,400	6	I.
				Parallel Route 430A	400	6	Permit 1.
Cape Canaveral Loop.	FL	Brevard	Williams Point	Parallel FGT pipeline.	2,400	12	I.
OUC/Titusville Loop.	FL	do	Delespine	Parallel FGT pipeline.	1,900	8	G.
St. Petersburg Loop 2.	FL	Polk	Fox Town	New route in new subdivision, parallel Williams Road.	4,000	16	A.
Do	FL	do	Gibsonia	Parallel FGT pipeline along Old Polk City and Marcum Roads.	12,000	16	Permit 3.
Do	FL	do	Galloway	Parallel FGT pipeline through subdivision between Hwy 35A and Galloway Road.	1,000	16	L.
Tampa Interconnect (New).	FL	Hillsborough	Tampa	Various streets NW of MacDill AFB	800	6	Permit 1.
Sarasota Lateral (New).	FL	Polk	Auburndale	Various streets in NW Auburndale.	2,400	16	Permit 1.
				Across properties in north Jones Corner	2,500	16	A.
Lake Wales Loop	FL	do	Floritan/Lake Wales	Parallel FGT pipeline across residential area adjacent to Hwy 60.	200	4	J.

[a] "New" means that it would not be parallel and adjacent to an existing FGT pipeline, although other rights-of-way may be followed.
[b] "Loop" means that the new pipeline would be parallel and adjacent to an existing FGT pipeline.

Geology—Evaluation of potential geologic hazards, including sinkholes.
Cultural Resources—Potential for impact on historic properties and cultural artifacts.
Alternatives—Pipeline route variations and alternative system designs.

All interested parties will receive a copy of and be invited to comment on the EA.

Construction Procedures

FGT proposes to have the facilities in-service by January 1989. Constructing the pipeline would involve the following procedures:

1. The right-of-way would be cleared and graded.
2. The trench would be excavated and the spoil would be stockpiled along one side of the right-of-way.
3. Forty-foot sections of pipe would be placed along the trench, the pipe would be bent to fit the trench contour, and the sections welded together.
4. The pipeline would be lowered into the ditch.
5. The ditch would be backfilled, the pipeline would be tested for leaks using pressurized water, and the right-of-way would be cleaned up.

FGT anticipates that construction along city roads would involve disturbance to only one or two blocks at a time. The clearing and grading operations would be followed closely by cleanup and restoration to reduce the time of traffic disruption in any one area. In residential areas where the pipeline would not follow roads, FGT proposes to use conventional cross-country construction methods which normally result in disturbance lasting from 3 to 6 weeks in any one area. To reduce settling of the trench-fill, the ditch would be compacted by rolling with equipment. The disturbed area would then be seeded or sodded, depending on the requirements of the property owner, to match the surrounding vegetation. The work would be performed by the general contractor or a landscaping firm at the contractor's discretion, and the property owner would be asked to water the seed or sod as specified in the right-of-way agreement.

Comments and Scoping Procedure

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, the Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Partice and Procedure (18 CFR 385.214).

A copy of this notice and request for comments has been distributed to Federal, State, and local environmental agencies, parties in the proceeding, and the public. Written comments on specific environmental issues should contain supporting documentation or rational and be filed as soon as possible, but no later than June 15, 1988. All written comments must reference Docket No. CP86–704–002 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the written comments should also be sent to the project manager identified below.

Additional information about the proposal, including detailed route maps for specific lacations, is available from Mr. Cary Secrest, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capital Street NE., Washington, DC 20426, telephone (202) 357–9048.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10971 Filed 5–16–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88-118-000 TQ88-1-15-000, RP88-118-001 and TQ88-1-15-001]

Mid Louisiana Gas Co.; Proposed Change of Rates

May 13, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on May 9, 1988,[1] tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective June 1, 1988:

	Superseding
Sixty-Third Revised Sheet No. 3a	Sixty-Second Revised Sheet No. 3a
Third Revised Sheet No. 26	Second Revised Sheet No. 26
Sixth Revised Sheet No. 26a	Fifth Revised Sheet No. 26a
Ninth Revised Sheet No. 26b	Eight Revised Sheet No. 26b
Seventh Revised Sheet No. 26c	Sixth Revised Sheet No. 26c
Third Revised Sheet No. 26d.3	Second Revised Sheet No. 26d.3
Second Revised Sheet No. 26d.4	First Revised Sheet No. 26d.4

Mid Louisiana states that the purpose of the filing of Sixty-Third Revised Sheet No. 3a is to reflect a 20.69¢ per MCF decrease in its current cost of gas.

Mid Louisiana states that the purpose of the remaining tariff sheets is to implement the amended purchased gas adjustment regulations promulgated by the Commission in Order Nos. 483 and 483-A.

Mid Louisiana states that this filing is being made in accordance with Section 19 of its FERC Gas Tariff. Copies of this filing have been mailed to its jurisdictional customers and interested state commissions.

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 May 20, 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. 88-11042 Filed 5-16-88; 8:45 am]

BILLING CODE 6717-01-M

[1] A supplemental filing submitted on May 9, 1988, corrected a pagination error with regard to Tariff Sheet No. 26a.

[Docket No. QF86-433-001]

Midway-Sunset Cogeneration Co.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

May 13, 1988.

On April 28, 1988, Midway-Sunset Cogeneration Company (Applicant), of P.O. Box 55060, 25115 West Avenue, Stanford, Suite 120, Valencia, California 91355, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Kern County, California. The facility consists of three combustion turbine generating units with three waste heat recovery steam generators. Steam produced by the facility will be used by Sun Operating Limited Partnership in enhanced oil recovery operations. The net electric power production capacity of the facility will be 217 MW. The primary energy source will be natural gas. The facility is expected to begin operation in May 1988.

By order issued March 24, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF86-433-000 (38 FERC ¶ 62,203).

The recertification is requested due to the following changes: (1) Change of the ownership structure and the Applicant's name, and (2) inclusion of a 19-mile 230 kV transmission line and switchyard as part of the cogeneration facility. All other facility's characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11044 Filed 5-16-88; 8:45 am]

BILLING CODE 6716-01-M

Office of Hearings and Appeals

Cases Filed; Week of March 11 Through 18, 1988

During the Week of March 11 through March 18, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Mar. 11 through 18, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 12, 1988	T.E. Reserve, Houston, TX	KRZ-0400	Interlocutory. *If granted:* The Office of Hearings and Appeals would strike certain materials from pleadings filed by the Economic Regulatory Administration in T.E. Reserve, Proposed Remedial Order proceeding (Case No. KRO-0400).
Mar. 10, 1988	Elk Trading Company, Washington, DC	KRX-0049	Supplemental Order. *If granted:* The Office of Hearings and Appeals would dismiss the PAM violation in the Remedial Order issued to Elk Trading Co. on February 29, 1988 (Case No. HRO-0286).
Mar. 14, 1988	Froseth Service & Supply, Garretson, SD	KEE-0162	Exception to the Reporting Requirements. *If granted:* Froseth Service & Supply would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	Natural Resources Defense Council, Washington, DC	KFA-0171	Appeal of an Information Request Denial. *If granted:* The January 6, 1988, Freedom of Information Request Denial issued by the Office of Military Application, Defense Programs, would be rescinded and the Natural Resources Defense Council would receive access to documents pertaining to foreign nuclear weapons programs, materials production or atomic information or agreements.
Do	William R. Bowling II, Rolla, MT	KFA-0170	Appeal of an Information Request Denial. *If granted:* The February 10, 1988, Freedom of Information Request Denial issued by the Executive Secretariat would be rescinded and William R. Bowling II would receive access to a complete copy of the minutes of the AEC Meeting No. 1265.
Mar. 15, 1988	Natural Resources Defense Council, Washington, DC	KFA-0172	Appeal of an Information Request Denial. *If granted:* The February 11, 1988, Freedom of Information Request Denial issued by the Office of the Deputy Assistant Secretary for Military Application would be rescinded and the Natural Resources Defense Council would receive access to documents related to nuclear weapons accidents, exercises, and testing with the United Kingdom.
Mar. 16, 1988	Petroleum Traders Corporation, Fort Wayne, IN	KEE-0163	Exception to the Reporting Requirements. *If granted:* Petroleum Traders Corporation would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."

Date received	Name of refund proceeding/ name of refund applicant	Case no.
3/11/88 thru 3/18/88	Crude Oil Refund Applications Received.	RF272-50239 thru RF272-51286
3/11/88 thru 3/18/88	Gulf Oil Refund Applications Received.	RF300-5809 thru RF300-5999
3/5/88	Currie Bros.	RF238-85
3/9/88	E.M. Lane Oil Company, Inc.	RF263-38
9/3/88	Lott Oil Company.	RF225-11008
3/14/88	Peppo Oil Works, Inc.	RF305-2
2/22/88	Wayne Oil Company.	RF265-2612
3/18/88	Tony Fava	RF265-2614
2/24/87	Trump Village Section 4.	RF243-5
9/3/86	Winston Oil Company.	RF225-11009
3/16/88	United Petroleum, Inc.	RF306-1

Date received	Name of refund proceeding/ name of refund applicant	Case no.
3/17/88	Hulcher Services.	RD272-09354
3/17/88	Superior Tube Company.	RD272-08219
3/17/88	Century Furniture.	RD272-09644
3/17/88	Norton Company.	RD272-11947
3/17/88	Wellsville Fire Brick Company.	RD272-15370
3/17/88	American Cast Iron Pipe Company.	RD272-16026

[FR Doc. 88-10961 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of March 18 Through 25, 1988

During the Week of March 18 through 25, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of the Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Mar. 18 through 25, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 18, 1988	National Helium/Louisiana and Amoco/Louisiana	RM3-107 & RM21-108	Requests for Modification/Rescission. *If granted:* The June 26, 1986 Decision and Order issued to Louisiana (Case Nos. RQ3-262 and RQ21-263) would be modified, regarding the state's application for second stage refund in the National Helium and Amoco refund proceedings.
Mar. 21,1988	Economic Regulatory Administration, Washington, DC	KRX-0050	Supplemental Order. *If granted:* The Office of Hearings and Appeals would issue a Special Report Order requiring Apex Oil to provide information concerning its sales of crude oil and crude oil blends for time periods before and after the audit period (Case No. HRO-9241).
Do	Glen Milner, Seattle, WA	KFA-0173	Appeal of an Information Request denial. *If granted:* Glen Milner would receive access to documents concerning the Trident system.
Do	Mobil/Featherstone Service Station, Washington, DC	RR225-19	Request for Modification/Rescission. *If granted:* The March 3, 1988, Decision and Order issued to Featherstone Service (Case No. RF225-9216) would be modified, regarding the firm's Mobil Oil refund application.
Mar. 23, 1988	Robert T. Yaes, Lexington, KY	KFA-0174	Appeal of an Information Request Denial. *If granted:* The March 1, 1988, Freedom of Information Request Denial issued by the SSC Site Task Force would be rescinded and Robert T. Yaes would receive access to a copy of the cost estimates for the construction and operation of the Superconducting Super Collider.
Mar. 24, 1988	Eugene S. Post, Graniteville, SC	KFA-0176	Appeal of an Information Request Denial. *If granted:* The March 3, 1988 Freedom of Information Request issued by the Savannah River Operations Office would be rescinded, and Eugene Post would receive access to information used by the DOE for the selection of Lou Crossman as Branch Chief of the Internal Security Branch at SRP in April 1986 and Ronald Bartholowmew as Head of the Analysis Section, Internal Security Branch in October 1987.
Do	Glen Milner, Seattle, WA	KFA-0175	Appeal of an Information Request Denial. *If granted:* The March 8, 1988 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescended and Mr. Milner would receive access to information regarding the Trident I and Trident II nuclear warheads and the shipment of those warheads.
Mar. 25, 1988	Marty Jane Hatfield, Oak Ridge, TN	KFA-0177	Appeal of an Information Request Denial. *If granted:* The March 1, 1988, Freedom of Information Request Denial issued by Oak Ridge Operations would be rescended and Marty Jane Hatfield would receive access to copies of documentation included in her personnel security file.
Do	MCO Holdings, Inc, & MGPC, Inc., Washington, DC	KEF-0108	Implementation of Special Refund Procedures. *If granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the September 11, 1986, Consent Order entered into with MCO Holdings, Inc. & MGPC, Inc.
Do	Patton Oil Company, Washington, DC	KEF-0107	Implementation of Special Refund Procedures. *If granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with February 18, 1987, Consent Order entered into with Patton Oil Company.

Date received	Name of refund proceeding/ name or refund applicant	Case No.
1/11/88	Palo Pinto Louisiana.	RQ5-435
1/11/88	Amoco I/ Louisiana.	RQ21-436
1/11/88	Perry Gas/ Louisiana.	RQ183-437
1/11/88	Belridge/ Louisiana.	RQ8-438
1/11/88	Pennzoil/ Louisiana.	RQ10-439
1/11/88	Charter/ Louisiana.	RQ23-440
1/11/88	Coline/ Louisiana.	RQ2-441
1/11/88	Amoco II/ Louisiana.	RQ251-442
3/18/88 thru 3/25/88	Crude Oil Refund Applications Received.	RF272-51287 thru RF272-52264
3/18/88 thru 3/25/88	Gulf Oil Refund Applications Received.	RF300-6000 thru RF300-6099
3/18/88	Oasis Petroleum Corporation.	KRO-0650
4/29/87	State Escrow Distribution.	RF302-3
6/1/87	Zak's Westside Serv. & Repair.	RF265-2616
3/21/88	Primerica Corporation.	RF265-2615
3/21/88	G.E. Stahl	RF253-50
3/24/88	Strachan Shipping Company.	RF305-3
3/24/88	Ayers Steamship Agency, Inc.	RF305-4
3/24/88	Franzwa Trailer Sales.	RF265-2618
10/23/87	Knotty Pine Oil Company, Inc.	RF265-2617

[FR Doc. 88-10962 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of April 11 through 15, 1988

During the week of April 11 through April 15, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy

with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection with ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Echo Drilling, Inc., Zanesville, OH, KEE-0150 Crude Oil

Echo Drilling, Inc., a crude oil reseller, filed an Application for Exception from the provisions of 10 CFR 212.10, 212.31, 212.93 and 212.183. The exception request, if granted, would permit Echo to calculate the firm's profits on its sales of crude oil during the period June 1, 1974 through January 31, 1981, according to the transportation rates established by the Ohio Public Utilities Commission. On April 13, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be granted.

[FR Doc. 88-10964 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Period of April 18 Through 29, 1988

During the period of April 18 through April 29, 1988, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the horus of 1:00 p.m. and 5:00 p.m., except Federal holidays.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

PRO Oil, Ogallala, Nebraska, KEE-164, Reporting Requirements

PRO Oil filed an Application for Exception from the Energy Information Administration reporting requirements regarding Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report". The exception request, if granted, would relieve PRO Oil of any requirement to file the form. On April 25, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Webb's Oil Corporation, Roanoke, Virginia, KEE-0161, Reporting Requirements

Webb's Oil Corporation (Webb's) filed an Application for Exception from the Energy Information Administration reporting requirements regarding Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report". The exception request, if granted, would relieve Webb's of any requirement to file the form. On April 25, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 88-10965 Filed 5-16-88; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Period of April 4 through 22, 1988

During the period of April 4 through April 22, 1988, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Tesoro Petroleum Corp., San Antonio, TX, KRO-0670

On April 18, 1988, Tesoro Petroleum Corp., 8700 Tesoro Drive, San Antonio, Texas 78286, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration issued to the firm on February 11, 1988. In the PRO, the ERA found that during the period from December 1974 through December 1980, Tesoro violated the refiner price

regulations by claiming excessive non-product cost increases and by improperly computing its selling prices of refined petroleum products. The Tesoro PRO would require the firm to recompute its lawful selling prices of refined products and refund any resulting overcharges, which the ERA estimates to be between $4 and $6 million.

[FR Doc. 88-10963 Filed 5-16-88; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010424-015.
Title: United States Atlantic and Gulf/Hispaniola Steamship Freight Conference.
Parties:

Crowley Caribbean Transport, Inc./CTMT, Inc./Trailer Marine Transport Corporation (As One Party)
Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would permit the parties to establish and publish rates on excepted commodities. It would prohibit independent action ("IA") with respect to rates on excepted commodities and would provide for IA with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker. It would also permit the parties to enter into service contracts on excepted commodities on a group basis only (individual service contracts are prohibited), and would restate the agreement.

Agreement No.: 206-010694-006.
Title: Trans-Atlantic Conferences.
Parties:

North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 202-010833-010.
Title: Eurocorde-I.
Parties:

North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference
Polish Ocean Lines
American Transport Lines Ltd.
Topgallant Group, Inc.
South Atlantic Cargo Shipping (Atlanticargo) N.V.
Mediterranean Shipping Co., S.A.
Dart-ML Limited
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 203-011194.
Title: Intermodal Transportation Association-UIIA Agreement (Foreign).
Parties:

Topgallant Group, Inc.
Norsk Pacific Steamship Company Limited
Trans Africa Line
Cedar Star Line

Synopsis: The proposed agreement would permit the parties to agree upon rules and regulations concerning equipment interchange, to include free time, detention and per diem charges; insurance and liability for containers and related equipment and the publication of applicable tariffs in the foreign commerce of the United States. Adherence to any agreement reached would be voluntary.

Agreement No.: 207-011195.
Title: Hyundai Australia Direct Line Joint Service Agreement.
Parties:

PAD Line Overseas, S.A. d/b/a Pacific Australia Direct Line
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed agreement would permit the parties to operate a joint service in the trade between ports on the West Coast of North America (including Alaska, Hawaii, Mexico and Canada), and ports in Australia, New Zealand and islands of the South Pacific and inland and coastal points via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: May 12, 1988.

[FR Doc. 88-11024 Filed 5-16-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004008-007.
Title: Port of Oakland Terminal Agreement.
Parties:

Port of Oakland
Marine Terminals Corporation (MTC)

Synopsis: The proposed agreement amends Agreement No. 224-004008 to reduce the crane rental rates applicable to MTC in certain instances in which the container cranes are used for loading and discharging of non-containerized cargo.

Agreement No.: 224-010619-004.
Title: Port of Oakland Terminal Agreement.
Parties:

Port of Oakland
EAC Lines Trans Pacific Service, Ltd.

Synopsis: The proposed amendment provides for the application of the basic Agreement's compensation provisions to User's vessels and cargo handled at another of the Port's public container terminals as a result of User's Joint Service Agreement with Hyundai Merchant Marine Co., Ltd.

Agreement No.: 224-010646-003.
Title: Port of Oakland Terminal Agreement.
Parties:

Port of Oakland

Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment provides for the application of the basic Agreement's compensation provisions to User's vessels and cargo handled at another of the Port's public container terminals as a result of User's Joint Service Agreement with EAC Lines.

Agreement No.: 224–011024–001.

Title: South Carolina Terminal Agreement

Parties:

South Carolina State Ports Authority (SCSPA)

Lykes Bros. Steamship Co., Inc. (Lykes)

Synopsis: The proposed amendment provides for SCSPA to furnish Lykes receiving and delivering services for Lykes' containers and chassis and Lykes agrees to pay SCSPA at 60 percent of the rates then published in SCSPA's Terminal Tariff No. 6 as well as pay wharfage on container cargo at discount rates for 50,001 net tons per year and over.

Agreement No.: 224–010642–003.

Title: Port of Oakland Terminal Agreement

Parties:

Port of Oakland

Stevedoring Services of Ameria (SSA)

Synopsis: The agreement amends the basic agreement to reduce the crane rental rates applicable to SSA to 65% of the tariff rates when the cranes are used for loading and discharging noncontainerized cargo.

By Order of the Federal Maritime Commission.

Dated: May 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–11025 Filed 5–16–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Financial Bancorp 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 June 8, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp,* Monroe, Ohio; to merge with NB Banc Corp, Van Wert, Ohio, and thereby indirectly acquire Van Wert National Bank, Van Wert, Ohio.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1 *Calhoun Bankshares, Inc.,* Grantsville, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Calhoun County Bank, Grantsville, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1 *First Miami Bancorp, Inc.,* South Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of South Miami, South Miami, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Kansas Banc Corporation,* Kansas, Illinois; to become a bank holding company by acquiring 95 percent of the voting shares of Kansas State Bank, Kansas, Illinois. Comments on this application must be received by June 3, 1988.

E. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Citizens National Bank Corporation,* Tell City, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Tell city, Tell City, Indiana. Comments on this application must be received by June 1, 1988.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Express of Nebraska, Inc.,* Lincoln Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Gering State Bank, Gering, Nebraska. Comments on this application must be received by June 3, 1988.

Board of Governors of the Federal reserve System, May 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–10948 Filed 5–16–88; 8:45 am]

BILLING CODE 6210–01–M

NBD Bancorp, Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking pratices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, and NBD Midwest Corporation, both in Detroit, Michigan; to acquire 100 percent of the voting shares of Charter Bank Group, Inc., Northfield, Illinois, and thereby indirectly acquire Bank of Glenbrook, Glenview, Illinois; Bank of Northfield, Northfield, Illinois; Bank of Wheaton, Wheaton, Illinois; and Bank of Winfield, Winfield, Illinois. In addition, NBD Midwest Corporation has applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Charter Group Life Insurance Company, and thereby engage in underwriting through reinsurance of group credit life and credit accident and death insurance that is directly related to extensions of credit by its banking affiliates pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10949 Filed 5-16-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Peter L. Ochs et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter L. Ochs*, Wichita, Kansas, to acquire an additional 25.1 percent; Wesley Rubenich, Wichita, Kansas, to acquire an additional 25.1 percent; and Clay Phillips, Attica, Kansas, to acquire an additional 9.5 percent of the voting share of Attica Financial Corporation, Attica, Kansas, and thereby indirectly acquire First National Bank of Attica, Attica, Kansas.

2. *B.P. Sudberry, III*, Muskogee, Oklahoma; to acquire 97 percent of the voting shares as trustee of Boynton Holding Company, Inc., Boynton, Oklahoma, and thereby indirectly acquire First National Bank, Boynton, Oklahoma.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Paul W. Van Etten*, Walnut Creek, California; to acquire up to 35 percent of the voting shares of Lamorinda Financial Corporation, Lafayette, California, and thereby indirectly acquire Lamorinda National Bank, Lafayette, California.

Board of Governors of the Federal Reserve System, May 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10950 Filed 5-16-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0180]

Drug Export; UBI-Olympus HIV-EIA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Olympus Corp. has filed an application requesting approval for the export of the biological product UBI-OLYMPUS HIV-EIA to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN-322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) of the act have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Olympus Corp., 4 Nevada Dr., Lake Success, NY 11042, has filed an application requesting approval for the export of the biological product UBI-OLYMPUS HIV-EIA, to the United Kingdom. The UBI-OLYMPUS HIV-EIA is an in vitro qualitative enzyme immunoassay for the detection of antibodies to Human Immunodeficiency Virus (HIV) contained in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on May 3, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 27, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 6, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88–11013 Filed 5–16–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–157–N]

Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

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

ACTION: Notice.

SUMMARY: This notice announces the first meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The Panel was established as required by section 9305(h)(2) of the Omnibus Budget Reconciliation Act of 1986 (OBRA'86), Pub. L. 99–509. The meeting is open to the public.

DATE: June 1–2, 1988.

TIME: June 1, 8:00 a.m. to 4:30 p.m. EDST. June 2, 9:00 a.m. to 1:00 p.m. EST.

ADDRESS: Hyatt Regency on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301) 966–6825.

SUPPLEMENTARY INFORMATION: Section 9305(c) of OBRA '86, in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA'86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is to include experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries. The Secretary has named Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center as chairman of the panel and appointed 17 members to the panel.

The panel will have several meetings at which it plans to:

- Develop a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Construct the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluate the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for posthospital extended care services and home health services which are provided to Medicare beneficiaries.

The Secretary must report to Congress no later than January 1, 1989 his recommendations for the appropriate use of a uniform needs assessment instrument to determine a beneficiary's need for post-hospital extended care.

At this meeting, the Advisory Panel will discuss: The discharge planning process; the importance of discharge planning in ensuring continuity of care and the appropriateness of after-care; and other functional assessment issues. The items of discussion are subject to change as priorities change. An Executive session will be held at 8:00 a.m. on June 2, 1988; the remainder of the meeting is open to the public.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program No. 13.773, Medicare—Hospital Insurance Program No. 13.774, Medicare—Supplementary Medical Insurance).

Dated: May 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–11136 Filed 5–16–88; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Division of Research Resources; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Animal Resources Review Committee, Subcommittee on Primate Research Centers, Division of Research Resources, May 17–18, 1988, National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892, which was published in the **Federal Register** on Friday, April 15, 1988 (53 FR 12603–12604).

The meeting was cancelled due to the lack of a quorum.

Dated: May 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–11032 Filed 5–12–88; 4:32 pm]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Partially Open, Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, May 18, 1988, Building 1, Wilson Hall, and May 19 and 20, Building 31, Conference Room 6, National Institutes of Health which was published in the **Federal Register** on April 15, (53 FR 12605).

This council meeting was to have been closed to the public from 8:30 a.m. to 6:00 p.m. on May 19, but the meeting will now be closed from 8:30 a.m. to 11:00 a.m., and then closed again from 11:45 a.m. to 6:00 p.m. on May 19, in Building 31, Conference Room 6.

This meeting will be open to the public on May 19, from 11:00 a.m. to 11:45 a.m., at which time Dr. James B. Wyngaarden, Director, NIH, will address the council.

Dated: May 9, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10933 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on

June 8 and 9, 1988, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 9 a.m. to 11:30 a.m. on June 8, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552(c)(4) and 552(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11:30 a.m. on June 8 until adjournment on June 9. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would contitute a clearly unwarrant invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Disease Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 88–11033 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommitees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on June 1 and 2, 1988, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public June 1 from 8:30 a.m. to 12 noon and again on June 2 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on June 1 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on June 2 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commerical property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20982, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metablic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 6, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–11035 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting dates which will be June 27–28, 1988. The meetings will begin at 8:30 a.m. and end at approximately 5 p.m. each day. On June 27, the Board will meet at the Westin Peachtree Plaza Hotel, Peachtree at International Boulevard, Atlanta, Georgia 30343–9986. On June 28, the meeting will be held at the Center for Disease Control, 1600 Tullie Circle, Freeway Park, Atlanta, Georgia 30333. The primary purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: May 11, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–11034 Filed 5–16–88; 8:45 am]

BILLING CODE 4140–01–M

Meeting of National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on June 24–25, 1988, from 8 a.m. to approximately 5 p.m. each day at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Oral and written testimony will be received by the National Kidney and Urologic Diseases Advisory Board (NKUDAB) from members of the kidney and urologic disease commnities on June 23, 1988, from 9:00 a.m. to 2:30 p.m. at the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois, 60611. This input will be applied to the development of the first national long-range plan to combat kidney and urologic diseases. If you are interested in presenting oral testimony on June 23, 1988, in Chicago, Illinois, please submit a one-paragraph summary of your presentation to Dr. Ralph Bain,

Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852. Oral testimony will be limited to three to five minutes. All written testimony to be received on June 23, 1988, in Chicago, Illinois, must be submitted to the Board office no later than May 25, 1988. For additional information, please contact the Board office.

Dated: May 11, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88-11036 Filed 5-16-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Office of the Assistant Secretary for Health Advisory Council; Meeting

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 Council scheduled to meet during the month of May 1988:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: May 23, 1988—1:30 p.m. to 5:30 p.m.; May 24, 1988—8:30 a.m. to 12:00 Noon.

Place: Omni Georgetown Hotel, Phillips Ballroom, 2121 P Street, Northwest Washington, DC. Closed May 24, 11:30 a.m. to Noon. Open for remainder of the meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include a presentation to the full Council on the draft report of the Medicare Coverage Process Subcommittee and a discussion of the draft recommendations of the report. The Criteria Subcommittee will also meet to review the results of applying a proposed system for classifying the quality of evidence for technology assessments to various assessments completed by the NCHSR's Office of Health Technology Assessment. In addition, the full Council will be presented with a report on the status of the activities of the Criteria Subcommittee. In closed session, May 24 from 11:30 a.m. to Noon, the Council will review technology assessment grant applications submitted to the NCHSR.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-5650.

Agenda items are subject to change as priorities dictate.

Date: May 10, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-10982 Filed 5-16-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; Endangered and Threatened Species; Frank G. Carlisi et al

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Frank G. Carlisi, North Hollywood, CA, PRT-727371

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. Phil van der Merwe, Skietkuil, Cape Provice, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Rare Feline Breeding Center, Center Hill, FL, PRT-726748

The applicant requests a permit to export one femal leopard (*Panthera pardus*) captive-born in the U.S. to Asahiyama Zoological Park, Asahikawa, Hokkaido, Japan for purposes of public display and enhancement of propagation.

Applicant: Peter Paulos, Salt City, UT, PRT-727509

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by F.W.M. Bowker, Jr., Thornkloof, Grahamstown Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Wildlife Safari, Winston, OR PRT-727454

The applicant requests a permit to import two male cheetahs (*Acinonyx jubatus*) captive born in the Netherlands from Safaripark Beekse Bergen, Hiluarenbeek, the Netherlands to add new blood lines to stock currently available in the U.S. for enhancement of propagation or survival of the species.

Applicant: J.C. Schulz, Inc., Catskill, NY, PRT-727502

The applicant requests a permit to purchase one pair of captive-born mandrills (*Papio sphinx*) from the San Diego Wild Animal Park, San Diego, California, for export and sale to the Guadalajara Zoo, Camino Viejo a Huetitan, Guadalajara, Jalisco, Mexico, where the animals will be displayed in a manner designed to educatge the public regarding the species' ecological role and conservation needs.

Applicant: Steven C. Gruber, Miami, FL, PRT-727624

The applicant requests a permit to import one pair of captive-born Jamaican boas (*Epicrates subflavus*) from the Picton Reptile Breeding Foundation, Picton, Ontario, Canada, for captive breeding purposes and future release of the progency in Jamaica.

Applicant: Herman Alton Bennett, Brownwood, TX, PRT-727703

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 11, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-11046 Filed 5-16-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA-060-08-7122-10-1018; CA-21608]

Realty Action; Exchange of Public and Private Lands, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA-21608.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 5 E.
Sec. 30: Lots 14, 16, 21, and 25.
Containing 20.71 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands from The Nature Conservancy:

San Bernardino Meridian California

T. 4 S., R. 6 E.
Sec. 14: SE¼SE¼SE¼.
Containing 10 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for a Federal Aid Highway, serial no. LA 097054, under the Act of November 9, 1921 (42 Stat. 212; 23 U.S.C. 18).

3. A right-of-way for a Federal Aid Highway, serial no. R 243, Act of August 27, 1958, as amended (23 U.S.C. 317).

4. Those rights for transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial no. R 458, under the Act of March 4, 1911 (43 U.S.C. 961).

5. Those rights for electrical transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial no. R 964, under the Act of March 4, 1911 (43 U.S.C. 961).

6. The reservation to the United States, its permittees and licensees, to enter upon, occupy and use any part or all of the said land lying within 50 feet of the centerline of an electric transmission line authorized under Power Project 1397 and Powersite Reserve 530, and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323-4421.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

H.W. Riecken,

Acting District Manager.

Date: May 6, 1988.

[FR Doc. 88-10944 Filed 5-16-88; 8:45 am]

BILLING CODE 4310-40-M

[ES-940-08-4520-13; ES-038802, Group 173]

Florida; Filing of Plat of Subdivision of Section 8

May 11, 1988.

1. The plat of the survey of the subdivision of section 8, and the metes-and-bounds survey of a certain parcel in Lot 1 of section 8, Township 14 South, Range 24 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 27, 1988.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 27, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-11000 Filed 5-16-88; 8:45 am]

BILLING CODE 4310-GJ-M

National Park Service

Information Collection Submitted to the Office of Management and Budget Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, Telephone 202-395-7313.

Title: Park Use Survey (Great Basin National Park).

Abstract: Survey will affect use of Great Basin National Park. Results of survey will be used in operational, planning and management activities designed to support actual public use activities and needs.

Bureau Form Number: 10-175B.

Frequency: On Occasion.

Description of Respondents: Individuals or Households.
Annual Responses: 1200.
Annual Burden Hours: 150.
Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 88–10959 Filed 5–16–88; 8:45 am]

BILLING CODE 4310–02–M

National Register of Historic Places; Notification of Pending Nominations; Alaska et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 7, 1988. Pursuant to 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 1, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Valdez—Cordova Borough

Chugach National Forest vicinity, *Bering River Train,* Cordova Ranger District.

DISTRICT OF COLUMBIA

Washington

Chesapeake and Potomac Telephone Company, Old Main Building, 722 Twelfth St., NW.

MISSOURI

Johnson County

Chilhowee, *Chilhowee Historic District,* Roughly Walnut and Main Sts.

NEW HAMPSHIRE

Chesire County

Hinsdale, *Todd Block,* 27–31 Main St.

Merrimack County

Concord, *New Hampshire Savings Bank Building,* 97 N. Main St.

Rockingham County

Exeter, *Gilman, Major John, House,* 25 Cass St.

NORTH CAROLINA

Cabarrus County

Midland vicinity, *Green, John Bunyan, Farm,* SR 1114.5 mi. E of SR 1178.

Jackson County (also in Transylvania County)

Lake Toxaway vicinity, *Backus, E.M. Lodge,* Cold Mountain Gap Rd.

PUERTO RICO

Caguas County

Caguas, *Benitze, Gautier, High School,* Calle Gautier Benitez and Calle Cristobal Colon.
Caguas, *Logia Union y Amparo No. 44,* Calle Acosta No. 39.

Mayaguez County

Mayaguez, *Esmoris, Duran, Residencia,* Mendez Vigo B204 L204.
Mayaguez, *Gomez Residencia,* Mendez Vigo No. 60.

VERMONT

Rutland County

Poultney, *Poultney Main Street Historic District,* Roughly Main St., E. Main St., Depot St. Knapp Ave., Beaman St., Grove St., Maple Ave., and College Ave.

Windsor County

Harland, *Damon Hall,* US 5 and VT 12.

VIRGINIA

Prince William County

Buckland, *Buckland Historic District,* 7980–8205 Buckland Mill Rd. and 16206, 16208, 16210 and 16211 Lee Hwy.

WISCONSIN

Florence County

Fay Outlet Site (47FL13).

Milwaukee County

Milwaukee, *Knickerbocker Hotel,* 1028 E. Juneau Ave.

Correction: The following property was erroneously listed in New Jersey on the **Federal Register** list dated May 10, 1988. It should read as follows:

NEW YORK

Ulster County

Stone Ridge, *Main Street Historic District,* US 209.

[FR Doc. 88–10960 Filed 5–16–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT AND COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Sri Lanka as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Sri Lanka. The Government of Sri Lanka has authorized A.I.D. to request proposals from eligible investors. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and loan number are indicated below:

Government of Sri Lanka

Loan Number: 383–HG–003B—$10 Million

Attention: Dr. A.C. Randeni, Director, Economic Affairs, c/o Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations, 640 Third Avenue, 20th Floor, New York, NY 10017
Telex No.: 420646 LAREP N.Y.
Telephone No.: 212/986–7040

Interested investors should telegram their bids to the Borrower's representative no later than June 7, 1988 at 12:00 noon New York Time (bid closing time). Bids should be open at least 24 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. C. Chanmugam, Secretary, Ministry of Finance and Planning, Colombo 1, Sri Lanka
Telex No.: 21409 FINMIN CE
Telephone No.: 94–1–31761

Mr. David Painter, Assistant Director/Asia, RHUDO/Bangkok, USAID/Bangkok, Box 47, APO San Francisco 96346–0001
Telex No.: 22964 AMEMB
Telephone No.: 66–2–252–6281 or 8191 Ext. 26

Michael G. Kitay or Barton Veret, Agency for International Development GC/PRE, Room 3328 N.S., Washington, DC 20523
Telex No.: 892703 AID WSA
Telefax No.: 202/647–4958 (preferred communication)
Telephone No.: 202/647–8235

Each proposal should consider the following terms:

(a) *Amount:* U.S. $10 Million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* Maximum of 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Alternate Proposals will be acceptable on the basis of one or more of the following three rates: fixed, floating, and floating rate with Borrower's option to convert to fixed rate. Fixed rate bids should provide for prepayment at Borrower's option (the Borrower is interested in obtaining a call option as early as possible). Floating rate bids (with or without option to convert) should specify the index on which the interest is to be based, the margin over the index, the frequency of reset and the frequency of payments. While margin over index is a primary concern, attention will also be given to ease of conversion from a floating rate to a fixed rate obligation which will be governed by market conditions at the conversion date. Such conversion will be solely at the option of the Borrower with the approval of A.I.D. For convertible loans, bidders should

specify (1) earliest date at which loan can be converted consistent with no (or nominal) penalty and (2) costs associated with the remarketing and nature of the remarketing commitment (i.e., underwritten or best efforts).

(e) *Draw Down:* Net proceeds from borrowing will be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(g) *Fees:* Borrower will pay all investment expenses, fees and costs at closing from proceeds of the loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg.), SA–18, Washington, DC 20523

Telephone No.: 703/875–4808

Date: May 13, 1988.

William Gelman,

Acting Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 88–11131 Filed 5–16–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–19142]

ZEN-NOH Grain Corp. et al.; Control Exemption; Consolidated Grain and Barge Co., River Bend Transport Co., and River Terminals Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ZEN-NOH Grain Corporation (Grain), ZEN-NOH Unico America Corporation (Unico), C. Itoh & Co., Ltd. (Trading), and C. Itoh & Co. (America) Inc. (America), all noncarriers and collectively referred to here as petitioners, seek an exemption from the requirement of approval and authorization for their acquisition of control, through a merger and ultimate stock ownership, of Consolidated Grain and Barge Company (Consolidated) (W–1356), a water common and contract carrier, and its wholly-owned, motor property carrier subsidiary RIver Bend Transport Company (River Bend) (MC–139243) and 50 percent owned, motor property carrier subsidiary River Terminals Transport, Inc. (River Terminals) (MC–119012).[1]

Grain, Unico, Trading, and America will own 37.5 percent, 12.5 percent, 30 percent, and 20 percent, respectively, of the common stock of Consolidated. Grain and Unico are majority-owned subsidiaries of the National Federation of Agricultural Cooperative Associations (ZEN-NOH), a noncarrier federation of agricultural cooperatives established under Japanese law. Trading is a publicly-held Japanese company, and America is a majority-owned subsidiary of Trading.

Petitioners will acquire control of Consolidated by the merger into Consolidated of their noncarrier subsidiary, Cornflake Acquisition Co. (Cornflake). Consolidated will survive the merger, and petitioners thus will be in control of a regulated water carrier and two regulated motor property carriers.[2] River Bend also operates in intrastate commerce in Ohio, Indiana, and Illinois, and those intrastate operations are also subject to this exemption.

Under 49 U.S.C. 11343(a)(4), the Commission's approval and authorization are required for the acquisition of control of at least two carriers by a person that is not a carrier. Therefore, the parties' proposed acquisition of Consolidated and its carrier subsidiaries through Cornflake's merger into Consolidated is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or an exemption from regulation.

Petitioners argue that the transaction is consistent with the National Transportation Policy: Consolidated and its subsidiaries will continue to operate under the same management and control that they have operated under for several years.[3] Only the ultimate control of Consolidated will change, and this assertedly will have no material effect upon the operations of any of the involved carriers. The petitioners' intent is that Consolidated and its subsidiaries will continue their operations in virtually the same manner as they are conducted now. Moreover, petitioners assert that the transaction is of limited scope because it involves only a small number of carriers whose operations represent insignificant portions of their respective markets. Finally, petitioners state that the transaction will not threaten shippers with an abuse of market power because the industry is competitive and entry into it is relatively easy.

DATE: Comments must be received by June 16, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–19142, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioners' representative: Peter A. Greene, Thompson, Hine, and Flory, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Paul Grossman (202) 275–7976. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Petitioners seek an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling*

[1] Consolidated also has three subsidiaries that perform exempt water transportation services pursuant to 49 U.S.C. 10544. Because they perform transportation services not regulated by the Commission, they are not considered carriers within the meaning of 49 U.S.C. 11343. Consequently, in response to petitioners' concern, we find that approval of the transaction is not necessary to the extent it involves these three exempt entities.

[2] Pending the Commission's final approval of the transaction, the shares of River Bend and River Terminals owned by Consolidated will be placed in voting trusts pursuant to 49 CFR Part 1013, in order to enable Grain to acquire Consolidated immediately.

[3] The Commission previously approved Consolidated's control of River Bend and River Terminals in No. MC–F–15389.

Exemptions Filed by Motor Carriers, 367, I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business Hours.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10970 Filed 5-16-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-No. 5) (88-2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Amortization period for back pay and lump sum payments payable under conditions of union contracts.

SUMMARY: The Commission has decided that back pay and lump sum payable under conditions contained in union contracts shall be amortized over a one-year period when calculating the quarterly Rail Cost Adjustment Factor (RCAF). This modification will mitigate upward and downward swings in the RCAF and maximum RCAF rate levels. An opportunity cost calculated using the three-month Treasury Bill interest rate shall be used.

DATES: Effective date is May 15, 1988.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275-7354

or

Robert C. Hasek (202) 275-0938, 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 contact Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289-4357. 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.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: May 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10969 Filed 5-16-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-122 (Sub-No. 1X)]

Terminal Railroad Association of St. Louis; Abandonment Exemption; St. Louis, MO

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.2-mile line of railroad in a tunnel between Third and Spruce Streets in St. Louis, MO.

Applicant has certified that (1) 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) that 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 abandonment 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 June 16, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been received). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May 27, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 6, 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 applicant's representatives: Robert J. Wuller, Jr., and Joseph C. Orlet, Gundlach, Lee, Eggmann, Boyle & Roessler, 5000 West Main Street, Box 692, Belleville, IL 62222.

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 addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 22, 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 upon environmental or public use conditions.

Decided: May 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10799 Filed 5-16-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines,* served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* ——— I.C.C. 2d ———, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meetings

ACTION: Notice of meeting.

The second quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on June 23, 1988, from 9:00 a.m. until 4:00 p.m. The meeting will take place at the Department of Housing and Urban Development in the Departmental Conference Room 10233, Seventh and D Streets SW., Washington, DC.

This meeting of the Coordinating Council will focus an the critical issue of crime and drug trafficking by youth gangs. The agenda will include

presentations by a distinguished pannel of law enforcement experts, school officials, community representatives and others representing various cities in the United States that have serious gang problems, or emerging gang problems.

Individuals and organizations concerned with the issue are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655 to request reserved seating. Requests will be received until space is filled or until 4:00 p.m. on June 17, 1988.

Dated: May 12, 1988.

Diane M. Munson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-11039 Filed 5-16-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustments Assistance; General Motors Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 2, 1988–May 6, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,510; General Motors Corp., New Departure-Hyatt, Sandusky, OH

TA-W-20,524; Rico Fashion, Inc., Union City, NJ

TA-W-20,526; Smokador, A Division of Knoll International, Edison, NJ

TA-W-20,508; General Motors Corp, Ypsilanti, MI

TA-W-20,566; J.S. Designers Associates, Inc., New York, NY

TA-W-20,525; Sigri Carbon Corp., Hickman, KY

TA-W-20,522; Hofmann Industries, Inc., Sinking Spring Foundry Div., Sinking Spring, PA

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,505; General Motors Corp., BOC Flint Auto Body Plant, Flint, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,503; General Electric Co., General Electric Lighting, Incandescent Production Dept., Austintown, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,507; General Motors Corp., CPC Framingham, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,604; Wetterau, Inc., Pittsburgh Division's Coupon Department, Belle Vernon, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,520; Dieterick Standard, Boulder, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-20,519; CSX Transportation, Inc., (CSXT) Jacksonville, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,519A; Consolidated Rail Corp. (Conrail), Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,519B; Norfolk Southern Corp., Norfolk, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,506; General Motors Corp., Central Foundry, Saginaw, MI

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-20,485; Control Data Corp., Magnetic Peripherals, Inc., Normandale Plant, Bloomington, MN

A certification was issued covering all workers in employment related to the production of ferrite products (heads and head arm assemblies) including the WREN III product line separated on or after February 18, 1987.

TA-W-20,538; SL Waber, Inc., Westville, NJ

A certification was issued covering all workers of the firm separated on or after March 7, 1987.

TA-W-20,577; Eaton Corporation, Controls Div., Winamac, IN

A certification was issued covering all workers of the firm separated on or after March 17, 1987.

TA-W-20,502; Elliott Co., Scranton, PA

A certification was issued covering all workers of the firm separated on or after Febraury 29, 1987.

TA-W-20,509; General Motors Corp., Three River, MI

A certification was issued covering all workers of the Three River Plant of the Hydramatic Division separated on or after February 22, 1988.

TA-W-20,504; General Motors Corp., BOC Flint Buick City, Flint, MI

A certification was issued covering all workers of the firm separated on or after February 22, 1987.

TA-W-20,541; Transpetco I, Spearman, TX

A certification was issued covering all workers of the firm separated on or after February 11, 1987.

TA-W-20,541A; Transpetco I, Borger, TX

A certification was issued covering all workers of the firm separated on or after February 11, 1987.

TA-W-20,569; Levolor-Lorentzen, Inc., Hoboken, NJ

A certification was issued covering all workers engaged in the production of

venetian blinds separated on or after March 14, 1987.

TA-W-20,523; Razor Ridge, Inc., Sparta, NC

A certification was issued covering all workers separated on or after March 4, 1987.

I hereby certify that the aforementioned determinations were issued during the period May 2, 1988–May 6, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: May 10, 1988

[FR Doc. 88–10936 Filed 5–16–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20,393]

Hussman/Bastian-Blessing; Gran Haven, Mich; Negative Determination Regarding Application for Reconsideration

After being granted a filing extension, the Sheet Metal Workers Union, Local #7 requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Local #581 of the Allied Industrial Workers on behalf of workers at Hussman/Bastian-Blessing, Grand Haven, Michigan. The denial notice was signed on March 2, 1988 and published in the **Federal Register** on March 17, 1988 (53 FR 8819).

Pursuant to 29 CFR 90.18c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union submitted shipping documents for equipment being shipped to a plant in Mexico to replace the work performed at Grand Haven.

The Department's denial was based on the fact that the "contributed importantly" test was not met. Respondents to the Department's survey which accounted for a predominant share of Bastian-Blessing's 1987 sales decline revealed that they did not import food service equipment in 1986 or 1987.

Investigative findings also show that all production of food service equipment from Grand Haven will be transferred to a domestic corporate plant in Missouri. Hussman has an affiliated plant in Mexico but that plant does not produce food service equipment. The Mexican plant produces shelving and brackets. Some of the machinery was moved out of the Grand Haven plant to Mexico. There are no company imports of food service equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of May 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 88–10937 Filed 5–16–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20,416]

SKF Industries, Inc.; Hornell Division, Hornell, NY; Affirmed Determination Regarding Application for Reconsideration

By an application dated March 29, 1988, the Maple City Lodge #1975 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of SKF Industries, Inc., Hornell Division, Hornell, New York. The determination was published in the **Federal Register** on April 5, 1988 (53 FR 11147).

The union claims that accessory products are being imported from SKF in Sweden. The union claims that when production ceases in Hornell, SKF will import mounted ball units from their plant in Mexico The union states that the Department's survey was inadequate and submits the name of a customer who imports pillow blocks from SKF in Canada.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 6th day of May 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–10938 Filed 5–16–88; 8:45 am]

BILLING CODE 4510–30–M

Invitation To Comment on Proposed Procedures for Release of Quality Control Data for Unemployment Insurance Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on proposed procedures and format to release Quality Control data for the Unemployment Insurance program.

SUMMARY: On September 4, 1987, a notice was published in the **Federal Register** at 52 FR 33784 inviting comments on issues relating to the public release of Quality Control (QC) data for the Unemployment Insurance (UI) program. Based on the comments from numerous interested parties, the Department proposes procedures for the release of QC data on benefit payments. This notice offers interested parties the opportunity to review the procedures and provide comments to the Department.

DATE: Written comments must be received by the close of business on June 16, 1988.

ADDRESS: Submit comments to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charles L. Atkinson, Director, Office of Quality Control, Employment and Training Administration, Unemployment Insurance Service, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 535–0220 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The QC program is based on a statistical sample of weeks compensated. From the information gathered by in-depth reviews of samples

of weeks compensated, the performance of a State's UI benefits system is evaluated in terms of weeks and dollars that were properly or improperly paid, as well as the causes for improper payments based on each State's law and regulations. The QC system also produces information that can be used to guide and evaluate the effectiveness of program improvements in response to the QC data. The system produces samples of weeks compensated that are statistically reliable, sufficiently precise for States to develop and evaluate program improvement plans, and flexible enough to accommodate differences between States and efficiently use available resources.

State have the primary responsibility for proper and efficient administration of the program; thus, the States also have the primary role in program improvements. In other words, program improvements are a State-initiated management approach to improving operations. Given the importance of program improvement planning and implementation in eliminating the causes of errors, careful consideration was given to the roles and responsibilities of the various levels of government for initiating and overseeing program improvements.

After consultations with representatives of organized labor, State government, and employers from the private sector, the Department decided to implement the QC program without providing for any Federal sanctions or funding incentives that States meet specific limitations on error rates. Instead, the Department, based on those consultations, decided that States would be required to release the results of the QC program at the same time each year in a standardized format. In the event that a State did not release this information, the Department would do so. These agreements were incorporated in the QC final rule, 20 CFR Part 602 issued on September 3, 1987.

An important consideration was what incentives exist or need to be provided to achieve QC program objectives. States are highly motivated to try to lower their UI error rates, since State UI tax dollars finance the regular UI benefit costs, and employers, labor organizations, and State legislatures actively oversee the payment of benefits and collection of taxes. As public officials, State administrators are responsible to the voters and taxpayers in their States. If employers, labor orgnaizations and others have sufficient information on error rates or procedural deficiencies, they will likely demand that problems be corrected. The QC program establishes error rates on the basis of analyses to determine the frequency of errors and their causes and to enable States to reduce them through program improvements.

Program improvement is the key to error reduction. QC design anticipates that States will utilize data from the QC effort as a primary basis for statistical and program analyses and for the development of management initiatives to solve the operational problems that have been pinpointed or otherwise bring about program improvements. States may augment QC data with other data in developing program improvement plans, e.g., raw data gathered by QC field investigators, data from management reviews of State QC operations, and information from other management systems which might exist within the respective agencies.

Program improvement strategies generally fall into one of the following categories:

- Policy/law changes
- Procedural changes
- Training
- Process enhancements

Therefore, it can be reasonably expected that some improvements can be accomplished at minimal cost and within a State's existing resources while others will have resource implications. Until QC program results become publicly available, it is not possible to determine the extent to which such resources are appropriate or needed. With the initiation of a mandatory program beginning in October 1987, data will be generated and reported to the Department of Labor and other interested parties.

The regulation to establish the QC program for the Federal-State unemployment insurance system was published in the **Federal Register** at 52 FR 33520 on September 3, 1987 with an effective date of October 5, 1987. Section 602.21(g) of the regulation provides that each State shall:

> Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

The notice of September 4, 1987, set forth design issues and requested public comment on issues relating to the format, method, and timing of the release. The seven design issues are identified below:

1. What should be the objectives and focus of the QC data release?
2. What level of detail should the report include?
3. How much explanatory information should accompany the data?
4. Who should release the data?
5. What type of publication should be used to disseminate data?
6. What should be the timing and scope of data in the first report?
7. Are there any other issues and recommendations which should be considered during design of procedures for release of benefit payment QC data?

Discussion of Responses

Written responses were received by the Department from the following: State Employment Security Agencies (SESAs) (45), Governors (20), labor organizations (2), businesses/business organizations (7), and others (14). All comments were given careful consideration in preparing the proposed procedures and format. The following summarizes the responses to the design questions:

1. Objectives and Focus

Thirteen respondents stated that the primary objective should be the improvement of UI program operations. Others suggested that it should provide information as to the accuracy of benefit payments to those responsible for program administration (4 respondents) or to the other interested parties (6). Additional respondents said it should provide information for a data base (4) or for analysis purposes (5).

Fifteen respondents stated that the focus of the release should be on improper payments, while nine contended that it should be on proper payments. Six respondents requested that any summary of data on improper payments be limited to cases meeting the official definitions of improper payments. Six said that the release should identify the percentage of dollars paid improperly rather than the percentage of cases with improper payments, while one said that the focus should not be on dollar figures.

One other respondent suggested that the focus of the release should be on trends and indicators.

2. What level of detail should the report include?

Eighteen respondents stated that the report should include a minimal level of detail, while three others added that States should have the option to add information of their choosing to any required minimal detail. Three stated that the level of detail should be determined by each State. Seven said that each State should be permitted to explain the effect of its own law and policy. Four stated that the release should only present statewide data

rather than be broken out by regions or areas of states.

3. How much explanatory information should accompany the data?

Eight respondents stated that it is necessary for the release to contain explanatory factors, and twelve respondents suggested that the inclusion of any explanatory information should be left to the discretion of each individual State. One responsdent requested that a preface be included to explain that comparisons of data cannot be made among States.

Five respondents suggested that program improvements should be identified and included in the release, while one respondent was opposed to inclusion of such information. Three said inclusion of information on program improvements should be at the option of the individual States.

4. Who should release the data?

The States should release the data, according to 37 respondents. Five others said that the Department should be responsible for releasing the data. Ten respondents suggested that the release should be a combined effort by the States and the Department.

Two respondents contended that there should be no release until more QC data is available.

5. What type of publication should be used to disseminate data?

Thirty-six respondents stated that the release should be published as an official State report, six said it should be a Federal report, one said there should be Federal and State reports issued concurrently, and two others responded that Federal and State reports should be issued separately.

6. Timing and Scope of Data in the First Report

Two respondents stated that the first release snould be of data for calendar year 1987 and be issued about June 1, 1988. Forty-four respondents stated that the first release should be for calendar year 1988 and be issued about June 1, 1989.

7. Other Recommendations and Issues

One respondent objected to the Department requiring a public release of QC data. It was contended that such a release would be contrary to the stated purpose of the QC program as a tool for State managers to improve their UI programs. This respondent also said that QC data should not be published without also publishing budget data which would demonstrate that the States have not been fully funded.

Two respondents contended that the Random Audit program, which preceded QC, caused a negative public perception of the claimant population. Therefore, QC data should not be used to reinforce this perception until the Department is in the position to provide data on what the employer community is, or is not, doing as it relates to their responsibilities under State UI laws.

A respondent requested the formation of a committee or work group of State public information officers to assist in the design of the release.

Another respondent stated that the complexity of the QC data, combined with the belief that the release of such data will invite unjust comparisons among States with widely varying statutes and program operations, should warrant reconsideration of the decision to make the data public.

Another contended that if the Department feels constrained to issue the results of QC, it should attempt to incorporate two points in the release: (1) The comparisons among States that the report will necessarily imply are not valid and (2) the "error rates" are estimates only and may have a rather broad range in which the "real" error rates exist.

Another suggestion was that the total cost of the QC program be documented in all data releases. This would include total Federal administrative costs as well as funds allocated to the States to operate the QC program.

Policy Decisions

Listed below are the Department's decisions on the design issues for the release of QC results:

1. Objectives and Focus

The focus of the release will be on both proper and improper payment and on actions/plans for program improvement. The primary objective of the release will be to display the results to program administrators and other appropriate in such a way as to encourage UI program improvements.

2. Level of Detail

The level of detail will be comprehensive enough to provide meaningful statewide data on the percentage of errors, where these errors occur in the UI operations, and the responsibility for and causes of the errors.

3. Explanatory Information

The release will be prefaced by a general discussion of the UI and QC processes and the results. An explanation will be provided of how the results must be interpreted, which will be intended to minimize public misinterpretation of the information. States will have the opportunity to provide explanations of their results, the effect of State laws and policies, and any program improvements planned or underway.

4. Who Should Release the Data?

States will be expected to release the data each year according to a pre-set schedule. The Department will also publish all States' data at a later date after the publication date for the States.

5. Type of Publication

The publication issued by the Department will be a digest of State results presented in a standard format. State releases must contain, at a minimum, the information required for the report issued by the Department.

6. Timing and Scope of First Report

The first report will cover the first complete calendar year (1988) and will be issued by the States in June 1989 and the Department in July 1989.

Proposed Format and Procedures

The report will contain three parts devoted to each State: (1) The annual results for each State, (2) narrative explanation: Each State will be afforded the opportunity to explain or interpret the results, and (3) "program improvement: Under the headings "Issue" and "Program Improvement", each State will be afforded the opportunity to describe actions taken to improve UI operations. The manner in which this is described will be left to discretion of each State.

The following five categories identify and define the data to be included in the format for the QC results.

1. Total Dollar Amount of Benefits Paid

This is the amount of benefits paid during the calendar year for the programs included in QC (UI, UCFE, UCX). These payments form the universe from which samples are currently selected for QC.

The remaining items represent the results of the QC investigations of sampled payments and are expressed as percentage rates of dollars affected.

2. Proper Payment Rates

The dollars paid properly are shown as a percentage of dollars paid from the cases sampled. These include amounts of payments coded as proper, as defined in section 3d(1) of the Error Classification chapter in ET Handbook No. 395. It also includes from section 3d(2) those dollars paid properly, part of

which were from claims paid improperly; e.g., $120 payment with $10 overpayment = $110 paid properly.

Additionally, the following payments classified as improper in section 3d(2) are included in the proper payment rate:

—*Subsection (a)14:* Pertains to issuance of "formal warning" to claimant, rather than denial of payment.

—*Subsections (a)16 and (b)23:* Pertain to overpayments and underpayments established as a result of the QC investigations which, upon appeal, were officially modified by a higher SESA authority, but the QC unit disagree with this modification.

3. Improper Payment Rates

The percentages of dollars paid improperly are presented as separate rates for overpayments and underpayments. The figures are derived from those payments coded under section 3d(2) of the Error Classification chapter, but exclude (a)14, (a)16, and (b)23. (See definitions above.) Because the QC system accepts coding for up to three errors per case, in cases with multiple errors, the total dollars affected (for up to three errors per case) will be used in the computations as long as the amount originally paid is not exceeded. (E.g., a weekly payment of $120 was found to have two errors. The first was a missed separation issue that should have disqualified the claimant; this amounts to an overpayment of $120. The second was unreported earnings during the key week resulting in an overpayment of $30. The total dollars used in the computation of improper payment would be limited to $120.) If both an overpayment and an underpayment occur in a single case, the net dollar amount improperly paid will be used, unless payment for the entire week should been disallowed, in which case the dollars used in the computation will be the amount of the payment made.

4. Percentage of Dollars Improperly Paid—By Responsibility

The parties responsible for the dollars being paid improperly are identified. The data are sorted into six categories: Claimant solely responsible, claimant shares responsibility, emplolyer solely responsible, employer shares responsibility, agency solely responsible, and agency shares responsibility. The classification scheme is adapted from the coding for section 3e of the Error Classification chapter; however, the category "other", which is present in section 3e, is disregarded here because of a low incidence of occurence. As a result of this categorization showing multiple responsibility, it is possible that the sum of the individual categories presented here will be slightly more than the total dollars improperly paid.

5. Percentage of Dollars Improperly Paid—By Cause

This shows what requirements were not met which resulted in dollars improperly paid, as coded in section 3f of the Error Classification chapter. The categories are base period wages, benefit year earnings, separation issues (voluntary quits and discharges), eligibility issues (work search and others), dependents allowances, and other causes. The fraud and nonfraud proportions of the total are shown separately.

The eligibility requirements for work search vary significantly from state-to-state. Past experience with program evaluations has demonstrated that work search requirements can be both difficult to interpret and to apply. In order to make the figures presented for work search eligibility more meaningful, each State will be asked to identify itself as falling into one of the three following categories:

—Work search required by State law.

—Work search required by State law but required by policy or procedures.

—No work search requirement.

The Department will calculate each State's results and transmit them to the States for confirmation. Each State will have five working days to review the Department's calculations and either confirm them or show why they should be different. Because of the time allowed for SESAs to complete cases selected at the end of a year (up to 90 days) and the subsequent time necessary to prepare the report, the release date will be in July of the following year.

Each State will be expected to make a public release of its own QC results prior to the release by the Department. This release should contain, at a minimum, the data included in the report prepared by the Department. The method of release will not be prescribed; however, it should be made in a reasonable manner to inform the general public, and it should be consistent with State requirements/common practice on releasing information to the general public.

The Department's first report will be prepared using data from calendar year 1988. For each State, the report will contain the data elements displayed in the Appendix to this notice. The report will be distributed to all SESAs. A notice in the **Federal Register** will announce the availability of the report to other interested parties.

If a State fails to release its QC data in the minimum format prescribed, the Department will still include the data for that State in its release. The Department will also publish in the **Federal Register** the data from that State as compiled by the Department.

Upon receipt of comments on the above proposal, the Department will develop and issue final procedures. These will be announced in a notice published in the **Federal Register.**

Signed at Washington, DC, this 10th day of May, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Appendix A—Format

I. Total Dollar Amount of Benefits Paid		
II. Proper Payment Rate		
III. Improper Payment Rates:		
1. Percentage of Dallars Overpaid		
2. Percentage of Dollars Underpaid		
IV. Percentage of Dollars Improperly Paid by Responsibility:		
1. Claimant		
2. Claimant and Other		
3. Employer		
4. Employer and Other		
5. Agency		
6. Agency and Other		
V. Percentage of Dollars Improperly Paid by Cause:	Fraud	Nonfraud
1. Base Period Wages		
2. Benefit Year Earnings		
3. Separation Issues:		
a. Volunary Quits		
b. Discharges		
4. Eligibility Issues:		
a. Work Search [1]		
b. Others		
5. Dependents Allowance		
6. Other Causes		

[1] Each State will indicate which of the following applies:

—Work search required by State law.

—Work search not required by State law but required by policy or procedures.

—No Work search requirement.

Appendix B—narrative by each State to explain or interpret results presented in Appendix A.

Appendix C—narrative by each State to describe (1) *issues* and (2) *program improvements* made to address issues.

[FR Doc. 88-10939 Filed 5-16-88; 8:45 am]
BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: June 3, 1988, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 2, 1988.

Donald C. Curran,

Acting Associate Librarian for Manageement.

[FR Doc. 88-10941 Filed 5-16-88; 8:45 am]
BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-49]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Cancelled Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement: 53 FR 12835, Notice Number 88-37, April 19, 1988.

Previously Announced Times and Dates of Meeting: May 18, 1988, 8 a.m. to 4 p.m.; and May 19, 1988, 8 a.m. to 4 p.m. Meeting has been cancelled.

Contact Person for more Information: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2835).

May 10, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11005 Filed 5-16-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-50]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: June 9, 1988, 8 am. to 4 p.m.; and June 10, 1988, 8 a.m. to 4 p.m.

ADDRESS: Northrop Corporation, Aircraft Division, Conference Room E-22, Tech Center Building, 1 Northrop Avenue, Hawthorne, CA 90250-3277.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team of Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

June 9, 1988

8 a.m.—Review of Presentation Material.
10 a.m.—Discussion of Findings and Conclusions.
1 p.m.—Assignment of Working Groups.
2 p.m.—Working Group Activities.
4 p.m.—Adjourn.

June 10, 1988

8 a.m.—Working Group Activities.
1 p.m.—Convene Working Groups—Review of Final Report Elements.
4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-11006 Filed 5-16-88; 8:45 am]
BILLING CODE 7510-01-M

[88-48]

Intent To Grant an Exclusive Patent License; Keystone Helicopter Corp.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Keystone Helicopter Corporation of West Chester, Pennsylvania, a limited exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,707,305 for "Helicopter Anti-Torque System Using Fuselage Strakes," which issued November 24, 1988, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain

appropriate terms, limitations and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing will review the written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received July 18, 1988.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2420.

Date: May 11, 1988.

John E. O'Brien,

General Counsel.

[FR Doc. 88–11007 Filed 5–16–88; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and made available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporary identified by its task number, CE 801–5 (which should be mentioned in all corresponding concerning this draft guide), is proposed Revision 2 to Regulatory Guide 8.12, "Criticality Accident Alarm Systems." The guide is being revised to describe a system acceptable to the NRC staff for meeting the Commission's requirements for a criticality accident alarm system. It endorses, with some limitations, ANSI/ANS–8.3–1986, "Criticality Accident Alarm System."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the guide (including any implementation schedule) and the value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washingron, DC. Comments will be most helpful if received by July 8, 1988.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 11th day of May 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88–10978 Filed 5–16–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co., (Surry Power Station, Units 1 and 2); Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR–32, which authorizes operation of Surry Power Station Unit 1, and Operating License No. DPR–37, which authorizes operation of Surry Power Station Unit 2. The operating licenses provide, among other things, that the Surry Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is comprised of two pressurized reactors at the licensee's site in Surry, Virginia.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for Containment Integrated Leakage Rate Tests (CILRTs) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS–56.8–1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the NRC staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4–1972.

III

By letter dated March 1, 1988, as

revised by letter dated April 8, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4–1972. ANSI N45.4–1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method. The March 1, 1988 letter also proposed amendments to the Technical Specifications (TSs) to maintain consistency between the TSs and the requested exemption. The staff will respond to the proposed amendments by separate correspondence.

The licensee indicated that since the issuance of ANSI N45.4–1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as described in ANSI/ANS–56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is divided by the intercept of this line, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours aprart.

On February 29, 1988 (53 FR 5985), the staff published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4–1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with section 7.6 of ANSI N45.4–1972, a test duration of less than 24 hours is only allowed if approved by the NRC staff, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the staff conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated April 8, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the March 1, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Surry pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limit specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed partial exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated March 1, 1988, as revised by letter dated April 8, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule (or may renew its request for exemption). The exemption applies only to the method of calculating leakage rates (by use of the Mass Point method) and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations, providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment May 9, 1988 (53 FR 16479).

A copy of the licensee's request for exemption dated March 1, 1988, as revised on April 8, 1988, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 9th day of May 1988.

[FR Doc. 88–10979 Filed 5–16–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, May 25, 1988
Wednesday, June 1, 1988
Wednesday, June 8, 1988
Wednesday, June 15, 1988
Wednesday, June 22, 1988
Wednesday, June 29, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives form five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability fo the Committee to reach a consensus on the matters beign considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1990 E Street NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

May 11, 1988.

[FR Doc. 88–11016 Filed 5–16–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

AAR Corporation
Common Stock, $1.00 Par Value (File No. 7–3328)
Adobe Resources Corporation
Common Stock, $.01 Par Value (File No. 7–3329)
Basix Corporation
Common Stock, $.05 Par Value (File No. 7–3330)
Belo (A.H.) Corporation
Common Stock, $1.67 Par Value (File No. 7–3331)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7–3332)
CLC of America, Inc.
Common Stock, $.50 Par Value (File No. 7–3333)
Carlisle Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7–3334)
Chicago Pacific Corporation
Common Stock, No Par Value (File No. 7–3335)
Coachman Industries, Inc.
Common Stock, No Par Value (File No. 7–3336)
Commercial Metals Co.
Common Stock, $5.00 Par Value (File No. 7–3337)
Continental Information Systems Corporation
Common Stock, $.03 Par Value (File No. 7–3338)
Convertible Holdings, Inc.
Capital Shares, $.10 Par Value (File No. 7–3339)
Allstate Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3340)
Baltimore Bancorp
Common Stock, $5.00 Par Value (File No. 7–3341)
Blue Chip Value Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–3342)
Crossland Savings Bank
Common Stock, $1.00 Par Value (File No. 7–3343)
Cycare Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7–3344)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10988 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Relese No. 34–25691; File No. SR–DTC–88–6]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change described below. The proposal would approve on a permanent basis DTC's Same-Day Funds Settlement ("SDFS") Service. The Commission is publishing this notice to solicit comments on the proposal.

I. Description

The SDFS Service provides full depository and transaction settlement services for certain securities that settle in sameday funds ("SDFS securities"). DTC accepts SDFS securities for deposit and provides such services as deliver orders, withdrawals, pledges, Institutional Delivery System trade confirmation and affirmation, and underwriting distributions. Pilot operation of the SDFS Service began on June 26, 1987, with transactions in municipal notes [1]. The SDFS Service has since been expanded to include zero-coupon bonds,[2] municipal bonds with short-term demand ("put") options,[3] medium-term notes[4] and collateralized mortgage obligations.[5]

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with the requirements of the Act, because it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. DTC states that the proposed rule change will continue to be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control. DTC states that the SDFS System is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. DTC states in its filing that such collateralization permits the depository to accomplish daily settlement when a participant with a net debit fails to settle for any reason.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld for the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at DTC's principal office. All comments should refer to file number SR–DTC–88–6 and should be submitted by June 7, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 11, 1988.

[FR Doc. 88–10983 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 24689 (July 9, 1987) 52 FR 26613, which approved the SDFS Service on a temporary basis until January 31, 1988, and Securities Exchange Act Release No. 25308 (February 4, 1988) 53 FR 6400 in which the Commission extended temporary approval to June 30, 1988.

[2] *See* Securities Exchange Act Release No. 25031 (October 15, 1987) 52 FR 38982.

[3] *See* Securities Exchange Act Release No. 25317 (February 5, 1988) 53 FR 4249.

[4] *See* Securities Exchange Act Release No. 25478 (March 17, 1988) 53 FR 9530.

[5] *See* Securities Exchange Act Release No. 25586 (April 13, 1988) 53 FR 12481.

[Release No. 34–25690; File No. SR–NASD–88–11]

Self-Regulatory Organization; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change on an Accelerated Basis

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 1, 1988 copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to implement an enhancement to the NASDAQ System known as the Order Confirmation Transaction ("OCT") service and to modify the system's operational procedures. The OCT service provides an auxiliary medium for NASD firms to communicate with one another and confirm the execution of orders.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25601, April 19, 1988) and by publication in the **Federal Register** (53 FR 13367, April 22, 1988). The Commission received one comment letter on the proposed rule change.[2] The commentator expressed concerns regarding best execution of orders, all-or-none treatment of OCT orders, and the potential for price manipulation using the OCT service.

In the filing, the NASD states that it gave active consideration to these concerns while it was monitoring usage of the OCT and was not able to substantiate the commentator's concerns about inferior execution of retail orders or potential price manipulation by the entry of large orders outside the prevailing market. With respect to all-or-none treatment of orders, the NASD has changed the OCT service to permit participants to enter or accept partial executions. Furthermore, the NASD's surveillance staff will monitor usage of the OCT service on a routine basis.[3]

The Commission believes that the NASD adequately has addressed the concerns expressed in the comment letter. Further, the NASD routinely monitors the use of its systems and will be able to detect abuses by firms of the OCT service through surveillance. As noted in the filing, members must comply with all relevant NASD rules; use of OCT does not affect this obligation. Any firm that is violating NASD rules is subject to discipline by the NASD.

Additionally, the NASD states in the filing that since the OCT's initial implementation, the system's daily

[1] OCT has been the subject of two previous filings: SR–NASD–87–54 and SR–NASD–88–10. The first filing described the terms of access and the operational procedures for OCT and was granted accelerated approval for a ninety-day period. *See* Securities Exchange Act Release No. 25263 (January 11, 1988); 53 FR 1430. The second filing permitted OCT to operate through May 11, 1988. *See* Securities Exchange Act Release No. 25523 (March 28, 1988), 53 FR 10965. The operational procedures subsequently were modified in File No. SR–NASD–88–11, the subject of this approval order, to allow OCT participants to enter or accept partial executions of individual orders.

[2] Letter from Elroy Krumholz, Executive Vice President of Wechsler & Krumholz, Inc., to John T. Wall, Executive Vice President, Member and Market Services, NASD, dated January 25, 1988.

[3] *See* letter from Michael J. Kulczak, Special Counsel, NASD, to Katherine A. England, Branch Chief, SEC, dated May 3, 1988.

traffic has been approximately 100 entries. The NASD represents that the OCT's capacity is capable of handling the heavy traffic conditions experienced during October of 1987. Traffic through the OCT is a small percentage of the total traffic handled on the NASDAQ network, and thus, the NASD states that heavy traffic flow through OCT would not degrade NASDAQ services. The NASD's daily monitoring of traffic on the NASDAQ network will enable the NASD to make adjustments as necessary.

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**, and, in any event, by May 11, 1988, the date the Commission's extension of the temporary approval of the OCT service expires.[4] The NASD believes accelerated approval is necessary and appropriate for several reasons. First, the OCT service constitutes a critical back-up capability to enable NASD members to continue conducting business during extreme or unusual market conditions. Public investors and NASD member firms would benefit from the immediate availability of this back-up capability. Second, the OCT service has no impact whatsoever on the ability of securities information vendors to service their customers. Third, the NASD believes that implemention of the OCT service will not impose new or more stringent market making obligations of the affected market makers. Finally, retail firms that are eligible to use the OCT service do not incur any additional obligations beyond those already incurred in consummation of transactions via the telephone. For these reasons, the NASD requests that the Commission find good cause to grant accelerated approval of the proposed rule change no later than May 11, 1988.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(A)–(D) and 15A(b)(6) of the Act, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, pursuant to section 19(b)(2)(B) of the Act, in that without accelerated approval, authorization for the OCT service will expire on May 11, 1988. OCT provides an alternate method of communication for firms, it can be used in place of the telephones. During the market break, many firms had trouble contacting other firms by telephone [5] and the Commission believes that the OCT service is a positive development by the NASD to address this problem. Moreover, although OCT has been in effect since January 1988, the NASD has represented, and the Commission is aware of, no problems with the operation of the OCT. In addition, the NASD has responded to the one comment letter which it received.

It is therefore ordered, pursuant to section 19(b)(2)(B) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May, 11, 1988.

[FR Doc. 88–10984 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* letter from Lynn Nellius, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC, dated April 26, 1988.

[5] *See The October 1987 Market Break*, A Report by the Division of Market Regulation, SEC, February 1988.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Pegasus Gold, Inc.
Common Stock, No Par Value (File No. 7–3323)
Dreyfus Strategic Municipals, Inc.
Common Stock, $0.01 Par Value (File No. 7–3324)
First Boston Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3325)
First Wisconsin Corporation
Common Stock, $1.25 Par Value (File No. 7–3326)
Fruehauf Corporation
Class B Common Stock, $0.01 Par Value (File No. 7–3327)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the informaiton available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10989 Filed 5–16–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25685; File No. SR–Phlx–88–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change

On March 24, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to revise certain of its strike price policies to permit the orderly introduction of one quarter point ($.025) strike price intervals for French franc put and call options contracts.

The proposed rule change was noticed in Securities Exchange Act Release No. 25538 (March 31, 1988), 53 FR 11388 (April 6, 1988). No comments were received on the proposed rule change.

The purpose of the proposed rule change is to reduce maximum strike price intervals in French franc options contracts from one half ($.05) to one quarter point. Because for French franc is less volatile than the United States dollar, market participants have found the half point strike price intervals inadequate to meet their trading and hedging needs. The addition of quarter point strike prices will enable investors in French franc options to manage and hedge their currency risk more effectively.

The Phlx is aware or the potential operational burdens that have resulted from the proliferation of options series in recent months. Therefore, to minimize any potential burdens of the rule change, Phlx will introduce quarter point strike prices gradually, coordinating their introduction with the expiration or removal of current deep-in or deep-out-of-the-money strikes.

The Phlix contends that the statutory basis for the proposed rule change is section 6(b) of the Act in that it is designed to facilitate transactions in French franc foreign currency options contracts. In addition, Phlx believes the proposal promotes the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a National Securities Exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. By introducing quarter point intervals, the proposal provides investors in a nonvolatile currency with greater flexibility and precision in managing their currency risk. Moreover, to avoid a proliferation of series, Phlx will add quarter point strikes gradually and only for at-or near-the-money strikes. Finally, the strike price revision is similar to others the Commission has approved in options for other non-volatile currencies.[1]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10985 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25686; File No. SR-Phlx-88-14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change

On March 24, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to reduce the minimum fractional change for dealing on the Exchange in option contracts on the British pound.

The proposed rule change was noticed in Securities Exchange Act Release No. 25539 (March 31, 1988), 53 FR 11389 (April 6, 1988). No comments were received on the proposed rule change.

The purpose of the rule change is to enable market participants to transact business more competitively in Phlx—listed British pound foreign currency options contracts. Decreasing the minimum fractional change from $.0005 to $.0001 (*i.e.*, the minimum premium change from the equivalent of $6.25 per tick to $1.25 per tick) will enable market participants to more effectively trade and hedge their over the counter currency risk with Exchange traded British pound foreign currency options since over the counter British pound currency option are usually transacted on a one thick basis. Moreover, the ability of the Phlx to offer a one tick minimum premium change will enable the Phlx to be competitive with the options or British pound futures contracts presently traded on a two tick differential basis on the Chicago Mercantile Exchange ("CME").

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. In particular, the Commission believes that the proposal will permit market participants to hedge more effectively their over the counter currency risk since the Phlx's British pound option contracts will conform directly to the minimum price fluctuations that occur in the over the counter foreign currency markets. As a results, market participants will be better able to manage their foreign currency trading risk. Additionally, the Commission believes the proposal will facilitate transactions in British pound foreign currency options contracts by enabling Phlx to be competitive with the options on foreign currency futures traded on the CME.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commision, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10986 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25687; File No. PHLX 88-18]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Business Hours of Foreign Currency Options Evening Trading Segment

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), proposes to amend its Exchange Rule 101 to modify the hours business trading may be conducted in foreign currency options. Italics indicates material proposed to be added; brackets indicate material proposed to be deleted.

Dealings Upon the Exchange

Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 a.m. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia.

The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 p.m. except that Value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 p.m. each business day. The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the Foreign Currency Options Committee or the Exchange official or

[1] *See Securities Exchange Act Rel. No. 23886 (December 12, 1986), 51 FR 45979 and Securities Exchange Act Rel. No. 24103 (February 13, 1987), 52 FR 5605.*

officials designated by the Board) foreign currency option trading sessions shall be conducted in the evenings [from] *between the hours of 6:00* [7:00] p.m. *and* [to] 11:00 p.m. Sundays through Thursdays and in the daytime from 8:00 a.m. to 2:30 p.m. Mondays through Fridays.

* * * *Commentary .01*

The Board of Governors has determined that the Foreign Currency Options evening trading segment generally shall correspond to 8:00 a.m. to 12:00 noon Tokyo, Japan time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to provide the Exchange with the flexibility to conform its evening trading segment hours to coincide with the opening of trading in the Far Eastern foreign exchange markets. The PHLX believes that, by coordinating evening trading segment business hours in foreign currency options with the opening trading session hours in the prime Far Eastern foreign exchange markets, it will better be able to meet the Exchange rate risk protection and related hedging needs of Far Eastern manufacturing, banking and other commercial firms. The flexibility built into the proposed rule is necessary because of changes in time differences that arise when Philadelphia changes from Eastern Standard Time to Daylight Savings Time each fall and spring. The Exchange will provide foreign currency options participants and participant organizations with adequate notice of each timing change made as a result of implementation of the proposed rule change. The Exchange would anticipate making the first such time change with the start of Eastern Standard time on October 30, 1988.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 10, 1988.

[FR Doc. 88-10987 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16398; 812-6987]

American Capital California Tax-Exempt Trust et al.; Application

May 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: American Capital California Tax-Exempt Trust, American Capital Comstock Fund, Inc., American Capital Corporate Bond Fund, Inc., American Capital Enterprise Fund, Inc., American Capital Federal Mortgage Trust, American Capital Government Money Market Trust, American Capital Government Securities, Inc., American Capital Harbor Fund, Inc., American Capital Life Investment Trust, American Capital Over-The-Counter Securities, Inc., American Capital Pace Fund, Inc., American Capital Reserve Fund, Inc., American Capital Tax-Exempt Trust, American Capital Venture Fund, Inc., American General High Yield Accumulation Fund, Inc., American General Money Market Accumulation Fund, Inc. and all future investment companies which are part of the American Capital Mutual Fund Group (the "Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: The Funds seek an order exempting them from section 32(a)(1) of the 1940 Act to permit them to file financial statements signed or certified by an independent public accountant selected at a board of directors' or trustees' meeting held within ninety days before or after the beginning of the Applicants' fiscal year.

Filing Dates: The application was filed on February 2, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on June 3, 1988. Request a hearing in writing.

giving the nature of your interest, the reason for the request, and the issues you contest. Serve 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.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Funds, 2800 Post Oak Blvd., Houston, Texas 77056 Attention: Nori L. Gabert, Esq.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is an open-end management investment company organized either under the laws of the State of Maryland as a corporation or under the laws of the State of Massachusetts as a business trust.

2. For a number of years, each Fund has held its annual meeting of stockholders during each fiscal year. At the last annual meeting in December, 1987, a number of the Funds took such action as was necessary so that the Funds need not hold annual meetings. Neither the laws of Maryland pertaining to corporations nor the laws of Massachusetts applicable to business trusts require the holding of an annual meeting. Therefore, unless stockholder action is required for some other reason, it is the intention of each Fund that an annual meeting will not be held. Accordingly, under the provisions of section 32(a)(1) of the 1940 Act the Funds now will have to select their independent public accountant within thirty days before or after the beginning of each Fund's fiscal year.

3. The selection of independent public accountants is based on the work of an Audit Committee ("Committee") which is composed of directors who are not interested persons of the Applicants and who serve on the boards of directors of each of the Applicants. The Committee meets with the independent public accountants at least twice each year, once to discuss the scope of the audits and estimated costs and a second time to review the results of such audits. Based on these meetings, the Committee makes its recommendation to the respective boards of each Fund with respect to the selection of the independent public accountants.

4. The boards of directors of all Applicants generally meet jointly. It is the usual practice to consider an issue that affects more than one of the Applicants at the same meeting. In the case of selecting the independent public accountant, it is particularly desirable to follow this practice. Since all the boards of directors of the Applicants meet in joint session, the most convenient way to proceed with the selection of the independent public accountant is to have the matter appear on one agenda during the year instead of on some of the Funds' agenda virtually every meeting throughout the year. In the past, the March meeting has been the usual month for the selection.

5. The same independent public accountant presently serves each Applicant. The accountant's audit programs are designed so that the test work is often done for all Funds at the same time. Unless an unforeseen conflict of interest were to arise, it is anticipated that in the future the independent public accountant selected to serve one Applicant also will be selected by each of the other Applicants. The Applicants, however, have staggered the beginning of their fiscal years. The staggering of the fiscal year-ends was designed to permit economic utilization of resources for both the accounting personnel of the investment manager and the personnel of the independent public accountant. As a result, the decision to continue with the same or to appoint a new accountant really must occur for all Funds at the same point of time each year. Therefore, each Applicant is seeking an order to permit it to file financial statements signed or certified by an independent public accountant which has been selected at a meeting held within ninety days before or after its fiscal year end. By so doing, directors' meetings on a complex-wide basis could be arranged so that the selection of an independent public accountant need be considered only twice each year.

6. Each Applicant submits that it is desirable for it to consider the selection of its independent public accountant at the same during the year as each of the other Applicants. The Applicants believe that expanding the thirty-day window under section 32(a)(1) of the 1940 Act ("section 32(a)(1) Window") will permit a regular and structural consideration of the independent public accountant for the American Capital Mutual Fund Group at a meaningful interval of time. The Applicants submit that this is preferable to the almost monthly selection which would be required if the thirty-day window is not expended, and that such practice is more convenient for the Applicants and is consistent with the policies underlying the 1940 Act.

7. By permitting the scheduling of the independent public accountant twice a year on a complex-wide basis through expanding the section 32(a)(1) Window from 30 to 90 days, the Commission will allow a director review procedure to be put in place that will ensure that selection of the Funds' independent public accountant is considered on a systematic basis. The review procedures will (1) provide for detailed review of the services furnished by the independent accountant to the Fund, and (2) result in directors' consideration of all information developed by the Committee. Further, the process will more accurately reflect the reality of doing business in complexes having a substantial number of funds which is different from the time the 1940 Act was passed when funds were operated on an individual basis or in small fund groups.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10990 Filed 5-16-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Graves County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Graves County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P. O. Boix 536, Frandfort, Kentucky 40602-0536. Phone (502) 227-7321; FTS 352-5468 or Mr. G. F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622. Phon3 (502) 564-7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

Kentucky Transportation Cabinet, is preparing an environmental impact statement in Graves County. The proposed improvement (Mayfield Truck Route/Eastern Bypass) is an urban arterial on the east side of Mayfield, Kentucky, from its southern terminus with KY 121, extending north and then west to its ending point with KY 121 on the northwest side of Mayfield, approximately 3.06 miles in length. The proposed project is needed to reduce congestion and truck traffic through Mayfield and its Central Business District, as well as improve traffic flow, safety and accessibility. The proposed roadway is planned to be two lanes initially (four lanes ultimately) with a 50 mile-per-hour design speed. Although there are three alternative approach alignments at each terminus, only one mainline alignment is under consideration at this time. Development on the west from the city of Mayfield and physical constraints to the east make the proposed alignment the only reasonable location that would meet the intended function of the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An interdisciplinary team meeting will be scheduled. In addition, a public meeting soliciting project input will be held. A scoping meeting will be combined with the public meeting early in the project development process. A formal public hearing will be conducted upon approval of the DEIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

It is estimated that the draft EIS will be available for public review in December 1988.

Issued on: May 5, 1988.

Robert E. Johnson,

Division, Administrator, Frankfort, Kentucky.

[FR Doc. 88-10942 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Approval of Request for Removal, Without Disapproval From Roster of Approved Trustees

Notice is hereby given, pursuant to 46 CFR 221.28, that Terrebonne Bank & Trust Company, with offices at 720 Main Street, Houma, Louisiana, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Terrebonne Bank & Trust Company stated it is no longer necessary for the bank to maintain its status as a Maritime Administration trustee.

Therefore, pursuant to Pub. L. 89-346 and 46 221.21-221.30, Terrebonne Bank & Trust Company, Houma, Louisiana, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: May 10, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-11017 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Research Study To Explore Impact Measures of Safety Belt Use Laws

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

ACTION: Notice of grant availability.

SUMMARY: The National Highway Traffic Safety administration announces that applications for grants are being accepted to conduct research to explore the feasibility of using data from a variety of existing and potential sources for better monitoring of the impacts of State safety belt use laws by national and State officials.

Eligible Applicants: States, interstate agencies and non-profit research institutions, including universities and schools of public health.

DATE: Applications must be submitted on or before Thursday, June 23, 1988.

ADDRESS: Applications must be submitted to the attention of Barbara Hansberry, Department of Transportation, National Highway Traffic Safety Administration, Office of Contracts and Procurement, NAD-30, 7th St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This research is authorized under section 106(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89-563) and Chapter 11 of the Supplemental Appropriations Act of 1987 (Pub. L. 100-71).

Following the recent enactment of State laws requiring safety belt use, concerned safety officials and the public have been interested in learning their impacts. Typical current indicators of the laws' consequences have been "belt use levels" and "fatalities". Alternative indicators are needed for measuring the impacts of use laws. For example, if more people are wearing belts, we might expect to see a variety of injury reductions, costs-savings and other effects.

The research envisioned by this announcement would constitute a seven month project that will identify added indicators and their sources (e.g., hospitals, disability groups) and characterize their measures of belt law impacts. Based on an evaluation of data availability, costs, applications, and other features, the project will recommend a set of potentially useful indicators for future research and possible adoption. The project will assess how NHTSA might work with the institutional sources of these measures to provide realistic, ongoing, diverse and affordable information.

Preferably, this research will be supported by one seven-month grant of $90,000 or less. The project will start no later than September 30, 1988, and the revised final report will be submitted as soon as possible, but not later than seven months after award. Note, however, that if several suitable proposals of limited scope would need support to achieve the objectives of this project, two grants totaling $90,000 or less might be awarded instead of a single grant.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

FOR FURTHER INFORMATION CONTACT: For a detailed project description, required application instructions, and the required "Federal Assistance" Standard Form 424, send two self-addressed labels and a written request for grant project DTNH22-88-Z-07391 to Barbara Hansberry, at the above address.

Issued on: May 11, 1988.

Kennerly H. Digges,

Deputy Associate Administrator for Research and Development.

[FR Doc. 88-10953 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-59-M

Announcement; First Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the first meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

(MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW. This meeting will seek to identify the specific research activities that the Rollover Subcommittee will initially address.

DATE AND TIME: The meeting is scheduled for June 2, 1988, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor verhicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will include an examination of published data on the magnitude, nature, and scope of the rollover crash problem. The technical literature concerning factors influencing rollover crash protection will be discussed including analytical computer models, test procedures, and test facilities for both crash avoidance and crashworthiness.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Rollover Subcommittee) has been established to contain the products of the subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Louis Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: May 12, 1988.

Kennerly H. Digges,

Chairman, Rollover Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88–10958 Filed 5–16–88; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration Office of Hazardous Materials Transportation

Applications for Renewal or Modification of Exemptions or Applications to become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expendite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes May 31, 1988.

ADDRESS Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal or exemption
3330–X	Babcock and Wilcox Co., Lynchburg, VA.	3330
3330–X	Western Zirconium, Inc., Ogden, UT.	3330
5493–X	Montana Sulphur & Chemical Co., Bilings, MT.	5493
5948–X	U.S. Department of Energy, Washington, DC.	5948
5951–X	Van Waters & Rogers, Inc., Spartanburg, SC.	5951
6642–X	U.S. Department of Defense, Falls Church, VA.	6442
6518–X	Union Carbide Corporation, Danbury, CT.	6518
6518–X	Syntex Chemicals, Inc., Boulder, CO.	6518
6530–X	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA.	6530
6538–X	Pan Products, Inc. Macedonia, OH.	6538
6543–X	Union Carbide Corp., Danbury, CT.	6543
6724–X	U.S. Department of Defense, Falls Church, VA.	6724
6810–X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1).	6810
6874–X	Harrisons & Crosfield (Pacific), Inc., Emeryville, CA.	6874
6927–X	Great Lakes Chemical Corp., El Dorado, AR.	6927
6927–X	Bromine Compounds, Ltd., Beer-Sheva, Isreal 84101 (See Footnote 2).	6927
6932–X	Eurotainer, S.A., Paris, France	6932
6932–X	Compagnie des Containers Reservoirs Paris, France.	6932
6944–X	U.S. Department of Defense, Falls Church, VA.	6944
6960–X	Pepsi–Cola Co., Purchase, NY	6960
7052–X	W.R. Grace & Co., Columbia, MD.	7052
7052–X	Motorola, Inc., Ft. Lauderdale, FL.	7052
7052–X	Moli Energy, Ltd., Burnaby, B.C., Canada (See Footnote 3).	7052
7070–X	American Chemical & Refining Company, Inc., Waterbury, CT.	7070
7247–X	U.S. Department of Defense, Falls Church, VA.	7247
7285–X	Compagnie des Containes Reservoirs, Paris, France.	7285
7601–X	Atlantic Research Corp., Gainesville, VA (See Footnote 4).	7601
7616–X	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	7616
7638–X	Minnesota Valley Engineering, inc., New Prague, MN (See Footnote 5).	7638
7802–X	Bennett Industries, Peotone, IL.	7802
7873–X	Bromine Compounds, Ltd., Beer Sheva, Israel (See Footnote 6).	7873
8009–X	Pressure Transport, Inc., Austin, TX.	8009
8013–X	Air Products and Chemicals, inc., Allentown, PA.	8013
8013–X	Union Carbide Corp., Danbury, CT.	8013
8023–X	EFI Corp., d/b/a EFIC San Jose, CA.	8023
8037–X	Mauser Packaging, Ltd., Litchfield, CT.	8037

Application No.	Applicant	Renewal or exemption
8084-X	IRECO, Inc., Salt Lake City, UT (See Footnote 7).	8084
8115-X	EFI Corp., d/b/a EFIC, San Jose, CA.	8115
8125-X	Compagnie des Containers Reservoirs, Paris, France.	8125
8214-X	Morton Thiokol, Incorporated-Automotive Products, Ogden, UT (See Footnote 8).	8214
8387-X	FMC Corp Philadelphia, PA	8387
8388-X	Ecolab Inc., Eagan, MN (See Footnote 9).	8388
8397-X	Mauser Packaging, Ltd., Litchfiled, CT.	8397
8445-X	University of Maryland, Baltimore, MD.	8445
8445-X	CECOS International, Inc., Buffalo, NY.	8445
8450-X	Atlantic Research Corp., Camden, AR.	8450
8458-X	E.I. du Pont de Nemours & Company Inc., Wilmington, DE.	8458
8509-X	Mobay Corp. Pittsburgh, PA	8509
8526-X	Birko Corp., Wastminster, CO	8526
8555-X	Morton Thiokol, Inc. Brigham City, UT (See Footnote 10).	8555
8723-X	Harrison Explosives, Inc., Allentown, PA.	8723
8733-X	ICI Americas, Inc., Wilmington, DE.	8733
8747-X	Copps Industries, Inc., Menomonee Falls, WI.	8747
8760-X	Barton Solvents, Inc., Des Moines, IA.	8760
8809-X	Sonoco Fibre Drum Inc., Lombard, IL.	8809
8812-X	The Protectoseal Co., Bensenville, IL.	8812
8845-X	Pro-Log, Denver City, TX	8845
8850-X	Hoover Group, Inc., Beatrice, NE.	8850
8854-X	Compagnie des Containers Reservirs, Paris, France.	8854
8860-X	E.I. du Pont Nemours & Co., Inc., Wilmington, DE.	8860
8862-X	Union Carbide Corp., Danbury, CT.	8862
8885-X	Copps Industries, Inc., Menomonee Falls. WI.	8885
8893-X	Atlas Powder Co., Dallas, TX	8893
9002-X	PepsiCo, Inc., Purchase, NY	9002
9074-X	U.S. Department of Energy, Washington, DC.	9074
9166-X	Comptank, Corp. Bothwell, Ontario, CN (See Footnote 11).	9166
9211-X	Waterman Steamship Corp., New Orleans, LA.	9211
9221-X	Applied Companies, San Fernando, CA.	9221
9235-X	Bennett Industries, Peotone, IL.	9235
9347-X	Boondock International, Inc. Houston, TX (See Footnote.	9347
9386-X	Pacific Scientific, HTL Division, Duarte, CA (See Footnote 13).	9386
9388-X	Cominco American, Inc., Spokane, WA.	9388
9419-X	FIBA Compressed Gas Equipment, Westboro, MA (See Footnote 14).	9419
9508-X	Callery Chemical Co., Pittsburgh, PA.	9508
9566-X	United Techologies Corp., San Jose, CA.	9566
9610-X	Hercules, Inc. Wilmington, DE	9610
9632-X	Eurotainer S.A., Paris, France	9632
9659-X	Compositek Engineering Corp., Brea, CA (See Footnote 15).	9659
9746-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 16).	9746
9763-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 17).	9763
9817-X	Hoover Group, Inc., Beatrice, NB (See Footnote 18).	9817
9841-X	Consani Engineering (Pty) Ltd., Elsies River 7480, South (See Footnote 19).	9841
9861-X	Degussa Corp., Ridgefield Park, NJ (See Footnote 20).	9861
9941-X	Morton Thiokol, Inc., Huntsville, AL.	9941
9941-X	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	9941

(1) To reinstate exemption originally issued for shipment of Helium, classed as nonflammable gas, in DOT Specification 107A tanks mounted on motor vehicles chassis.
(2) To authorize rail freight as an additional mode of transportation.
(3) To authorize an additional material, described as Lithium batteries, classed as Flammable Solid.
(4) To authorize renewal and an additional destination for shipments of High explosives, liquied, Class A explosive.
(5) To authorize and additional model of the exempted cylinder.
(6) To authorize rail freight as an additional mode of transportation.
(7) To authorize an additional packaging for shipment of High explosive, Class A explosive.
(8) To authorize and additonal packaging for shipment of inflators and modules for passive restraint systems, described as Flammable solid, n.o.s., classed as Flammable solid.
(9) To issue an exemption similar to DOT-E 8388 (manufacture mark and sell) which would authorize the use of non-DOT 5 gallon capacity open head pails for packaging certain corrosive and flammable liquids.
(10) To authorize an additional rocket motor for shipment.
(11) To update exemption reference for Acoustic Emission Tests to the most recent edition of the published standard.
(12) To authorize deletion of sub-paragraphs 8.d. and 8.e. of the exemption, which pertain to retest and reinspection of the exemption cylinders.
(13) To Authorize an additional material of construction for a non-DOT Specification cylinder in which Nitrogen, classed as nonflammable gas, is shipped.
(14) To authorize the use of cylinders that have retested by means of acoustic emissions testing.
(15) To authorize mixtures of nonflammable gases, all of which are presently authorized, as additional materials.
(16) To authorize cargo vessel as an additional made of transportation.
(17) To authorize cargo vessel as an additional mode of transportation.
(18) To authorize an additional outer packaging.
(19) To authorize additional packagings, similar to those presently authorized, for shipment of materials classed as flammable gas or flammable liquid.
(20) To authorize DOT Specification 44P polyethylene bags, as additional inside packagings, for shipment of a certain Oxidizer, n.o.s.

Application No.	Applicant	Parties to exemption
4453-P	Cherokee Products, Inc., Jefferson City, TN.	4453
4453-P	Northeast Pump Service Corp., Keene, NH.	4453
4850-P	Teledyne McCormick Selph Hollister, CA.	4850
5022-P	Hercules, Inc., Magna, UT	5022
7052-P	Adcour, Inc., Sharon, MA	7052
7607-P	I.T. Corp., Torrance, CA	7607
7607-P	Wapora, Inc., Atlanta, GA	7607
8526-P	Stoops Express, Inc., Anderson, IN.	8526
8554-P	Cherokee Products, Inc., Jefferson City, TN.	8554
8569-P	Allied-Signal Aerospace Co., Torrance, CA.	8569
8917-P	Fluor Daniel, Sugar Land, TX	8917
9275-P	Giorgio of Beverly Hills, Santa Monica, CA.	9275
9275-P	Parfums Stern, New York, NY	9275
9359-P	ENPAC Corp., Jacksonville, FL.	9359
9430-P	ENPAC Corp., Jacksonville, FL.	9430
9554-P	ENPAC Corp., Jacksonville, FL.	9554
9618-P	ENPAC Corp., Jacksonville, FL.	9618
9769-P	Aqua-Tech, Inc., Port Washington, WI.	9769

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 10, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-10956 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes June 14, 1988.

Address Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9929-N	Morton Thiokol, Inc.—Elkton Division, Elkton, MD.	49 CFR 172.101, 173.92, 175.30	To authorize shipment of rocket motor, Class B explosive with igniter assembly installed and exceeding the weight limitations presently authorized to be contained in a specially, designed metal container. (Modes 1, 4.)
9964-N	United Technologies—Chemical System Division, San Jose, CA.	49 CFR 173.88(e)(2)(ii), 173.92(a)	To authorize shipment of a Rocket motor, Class B explosive, in a propulsive state and in a package that will exceed the prescribed gross weight limit. (Mode 1.)
9965-N	HazMat Environmental Group, Inc., Buffalo, NY.	49 CFR 172.331	To authorize shipment of Polychlorinated biphenyls, classed as ORM-E, in motor vehicles bearing placards in lieu of marking the bulk packaging. (Mode 1.)
9966-N	Olin Corp.—Defense Systems Group, East Alton, IL.	49 CFR 173.53(q), 173.86, Part 107, Subpart B, Appendix B.	To authorize certain ammunition, classed as Class A, to be shipped as C explosive. (Modes 1, 2, and 4.)
9967-N	Department of Energy, Washington, DC	49 CFR 173.420(a)(4)	To authorize shipment of Uranium hexafluoride, classed as Radioactive material, low specific activity, in a non-DOT specification cylinder that contains more material than is prescribed. (Mode 1.)
9968-N	Moli Energy, Ltd., Burnaby, BC, Canada	49 CFR 173.206	To authorize shipment of Lithium batteries, classed as Flammable solid, or devices containing these batteries, classed as Flammable solid, with the quantity of lithium and number of cells in the batteries exceeding those prescribed. (Modes 1, 2, 3, and 4.)
9969-N	G.C. Industries, Inc., Chatsworth, CA	49 CFR Subparts F, G and H	To manufacture, mark and sell a non-DOT specification permeation device overpacked in specially designed packagings for the shipment of certain flammable or nonflammable gases and liquids that are poisonous, flammable or corrosive materials. (Modes 1, 4.)
9970-N	Hercules Inc., Wilmington, DE	49 CFR 175.65(e)	To authorize shipment of Cyclotrimethylenetrinitramine, wetted with ethyl acetate, classed as Class A explosive, in non-DOT Specification packaging. (Mode 1.)
9971-N	Fisher Scientific Co., Fair Lawn, NJ	49 CFR 178.210, Part 173	To authorize shipment of certain materials classed as Flammable liquid, Corrosive material, Poison B, ORM-A or ORM-E in non-DOT Specification packaging consisting of a DOT Specification 12A box with hand holes containing four 4-liter glass bottles. (Modes 1, 4.)
9972-N	The Lubrizol Corp., Wickliffe, OH	49 CFR 173.225	To authorize shipment of Phosphorus pentasulfide, classed as Flammable solid, in a non-DOT Specification packaging, identified as a AAR Specification 207W tank car. (Mode 2.)
9973-N	Morton Thiokol, Inc.—Ordnance Operations, Shreveport, LA.	49 CFR 173.56	To authorize shipment of an Explosive projectile, in a propulsive state in a non-DOT Specification packaging. (Mode 1.)
9974-N	S.S.I. Group, Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize carriage of Calcium carbide, classed as Flammable solid, by motor vehicle without placards when the quantity of the material does not exceed 350 pounds. (Mode 1.)
9975-N	Allied-Signal, Inc. Morristown, NJ	49 CFR 173.154	To authorize shipment of a certain aluminum/lithium alloy, described as Flammable solid, n.o.s. classed as Flammable Solid, in a non-DOT Specification container. (Mode 1.)
9976-N	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.304	To authorize shipment of Ammonia, anhydrous, classed as Nonflammable gas, in non-DOT packaging identified as heat pipes, overpacked in wooden shipping containers. (Modes 1, 4.)
9978-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.304	To authorize shipment of certain nonflammable gases, compressed gas, n.o.s. and a flammable liquid in non-DOT specification cylinders. (Modes 1, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 9, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-10957 Filed 5-16-88; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Thursday, May 12, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: May 13, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-11134 Filed 5-13-88; 3:46 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 12, 1988.

TIME AND DATE: 10:00 a.m., Thursday, May 19, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 2274, UMWA* v. *Clinchfield Coal Co.*, Docket No. VA 83-55-C. (Issues include whether the Administrative Law Judge erred in awarding compensation to miners in proceedings on remand from a prior Commission decision.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-11110 Filed 5-13-88; 1:54 pm]

BILLING CODE 6735-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, June 8, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of May, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: May 9, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-11061 Filed 5-13-88; 10:01 am]

BILLING CODE 7550-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, May 24, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head on Collision of Southern Pacific Transportation Company Freight Trains Extra 7267 East and Extra 7791 West, at Yuma, Arizona, June 15, 1987.

2. Highway Accident Report: Academy Lines, Inc., Intercity Bus Run-Off-Road and Overturn, Middletown, New Jersey, September 6, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty

Federal Register Liaison Officer.

May 13, 1988.

[FR Doc. 88-11135 Filed 5-13-88; 3:46 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 16, 23, 30, and June 6, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 16

Tuesday, May 17

2:00 p.m.
Briefing by DOE on High Level Waste Program (*Public Meeting*)

Wednesday, May 18

2:00 p.m.
Annual Briefing by INPO (*Public Meeting*)

Thursday, May 19

2:00 p.m.
Briefing on NAS Human Factor Recommendations (*Public Meeting*)

3:30 p.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Friday, May 20

10:00 a.m.
Discussion/Possible Vote of Full Power Opeating License for Braidwood-2 (*Public Meeting*)

Week of May 23—Tentative

Thursday, May 26

3:30 p.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

Week of May 30—Tentative

Tuesday, May 31

2:00 p.m.
Briefing on Human Factors Program and NRC Views of NAS Recommendations (*Public Meeting*)

Wednesday, June 1

2:00 p.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (*Public Meeting*)
3:30 p.m
Affirmation//Discussion and vote (*Public Meeting*) (if needed)

Friday, June 3

10:00 a.m.
DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (*Public Meeting*)

Week of June 6—Tentative

Thursday, June 9

10:00 a.m.
Briefing on Status of Pilgrim (*Public Meeting*)
11:30 a.m.
Affirmation/Discussion and Vote (*Public Meeting*) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Motion to Modify or Quash Subpoenas in Farley Nuclear Plant Investigation" (*Public Meeting*) was held on May 6. Affirmation of "Final Rule Amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72: General Requirements for Decommissioning Nuclear Facilities (SECY–87–309)" (*Public Meeting*) was held on May 12.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

May 12, 1988.

[FR Doc. 88–11137 Filed 5–13–88; 4:02 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 95
Tuesday, May 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Navy

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[8-00154 I-LM]

Special Nevada Report; Meetings

Correction

In notice document 88-9473 beginning on page 15272 in the issue of Thursday, April 28, 1988, make the following correction:

On page 15272, in the third column, under **DATES**, in the 13th line, the date for the Fallon, Nevada, meeting should read "May 18".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82032; FRL-3372-6]

EDTMPA and its Salts; Submission of Notice of Manufacture or Import

Correction

In proposed rule document 88-9522 beginning on page 15428 in the issue of Friday, April 29, 1988, make the following corrections:

1. On page 15429, in the table, in the right column, in the 12th entry, after "(methylene)]" insert "]".

§ 704.95 [Corrected]

2. On page 15431, in § 704.95(a), in the table, in the right column, in the fifth entry, after "[[" insert "[".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51703; FRL-3370-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-9100 beginning on page 14839 in the issue of Tuesday, April 26, 1988, make the following corrections:

1. On page 14840, in the third column, under "*P 88-668*", in the fifth line, "l-amino" should read "1-amino".

2. On page 14842, in the second column, in the last line, insert a hyphen between "4" and "isononyl".

3. On page 14843, in the first column, under "*P 88-729*", in the fifth line, insert a dash between "10,200" and "42,000".

4. On page 14849, in the first column, under "*P 88-882*", in the third line, insert a hyphen between "2-" and "Propenoxy".

5. On page 14850, in the first column, under "*P 88-907*", in the eighth line ">0" should read ">4.0".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 83N-0193]

Medical Devices; Offers To Submit or To Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor)

Correction

In proposed rule document 88-8874 beginning on page 13296 in the issue of Friday, April 22, 1988, make the following correction:

On page 13297, in the third column, in the third complete paragraph, in the sixth line, "FDS" should read "FDA".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in General Internal Medicine and General Pediatrics

Correction

In proposed rule document 88-9779 beginning on page 15710 in the issue of Tuesday, May 3, 1988, make the following corrections:

1. On page 15712, in the first column, in paragraph 6., in the third line, "residency" was misspelled.

2. On the same page, in the second column, in the paragraph headed **Regulatory Flexibility Act and Executive Order 12291**, the 15th and 16th lines should be removed.

§ 57.3104 [Corrected]

3. On page 15713, in the second column, in paragraph (d), in the last line, between "of" and "§ 57.3105(a)(11)", insert "§ 57.3105 with special attention to the requirements of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; COC 48469]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

Correction

In notice document 88-9933 beginning on page 16196 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16196, in the third column, under "*Pike National Forest*" the eighth line should read "Sec. 33, SE¼SE¼ and S½NE¼SE¼".

2. On page 16197, in the first column, "T. 13 S., R. 73 W.," should read "T. 13 S., R. 72 W.,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ANM-11]

Alteration of Transition Area, Missoula, MT; Correction

Correction

In rule document 88-7885 beginning on page 11840 in the issue of Monday, April 11, 1988, make the following corrections:

§ 71.181 [Corrected]

. On page 11841, in the first column, in § 71.181, under "Missoula, Montana (Revised)", in the 7th line, "northwest" should read "northeast", and in the 12th line "southwest" should read "southeast".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-18]

Alteration of VOR Federal Airways; TX

Correction

In rule document 88-10146 beginning on page 16387 in the issue of Monday, May 9, 1988, make the following correction:

On page 16387, in the third column, under **DATES**, in the fourth line, "June 7, 1988" should read "June 17, 1988".

BILLING CODE 1505-01-D

federal register

Tuesday
May 17, 1988

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 19, etc.

Occupational Taxes Relating to Alcohol, Tobacco, and Firearms; Treasury Decision, Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 19, 20, 22, 25, 70, 179, 194, 197, 231, 240, 250, 270, 285, and 290

[T.D. ATF-271]

Occupational Taxes Relating to Alcohol, Tobacco, and Firearms

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

ACTION: Treasury decision, Final rule.

SUMMARY: This final rule implements section 10512 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203. This section amended the Internal Revenue Code to require alcohol, tobacco and National Firearms Act (NFA) proprietors to pay new or increased special (occupational) taxes. Proprietors become liable for the new or increased special taxes as of January 1, 1988. However, proprietors in business on January 1, 1988, will have until April 1, 1988, to file special tax returns and pay these occupational taxes. Thereafter, the taxes will be due July 1 of each year.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert White or Steve Simon, Wine and Beer Branch (202–566–7626), or Shirley Osborne, Distilled Spirits and Tobacco Branch (202–566–7531), Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

Special (occupational) tax is imposed on persons who are engaged in certain specified occupations. Prior to Pub. L. 100–203, the tax was imposed on the following occupations under ATF's jurisdiction: Wholesale and retail dealers in liquor (spirits, wine, and/or beer), wholesale and retail dealers in beer only, limited retail dealers, brewers, manufacturers of nonbeverage products (MNBP), and importers, manufacturers and dealers in NFA firearms (including importers, manufacturers and dealers in weapons classified as "any other weapon"). Public Law 100–203 increased the special tax rates for most proprietors who currently pay special tax, and imposed new special taxes on proprietors under ATF's jurisdiction who do not currently have to pay special tax. The new law repealed the special (occupational) tax formerly imposed upon limited retail dealers. The term "limited retail dealer," which is defined in 26 U.S.C. 5122(c), refers to persons who sell alcoholic beverages at events of limited duration, such as lodge picnics, county fairs, etc.

New Occupational Taxes

Special (occupational) taxes have been imposed for the first time on the occupations shown in the following chart. These new taxes apply equally to Federal, State, and local government agencies and instrumentalities engaged in any of the taxable activities. The new special taxes are imposed at the following rates:

RATES OF NEW TAXES

Type of proprietor	Rate per year
Distilled spirits plant (including alcohol fuel plants, experimental plants, and university research plants)	$1,000
Distilled spirits plant (gross receipts in previous taxable year less than $500,000)	500
Bonded wine cellar	1,000
Bonded wine cellar (gross receipts in previous taxable year less than $500,000)	500
Bonded wine warehouse	1,000
Bonded wine warehouse (gross receipts in previous taxable year less than $500,000)	500
Taxpaid wine bottling house	1,000
Taxpaid wine bottling house (gross receipts in previous taxable year less than $500,000)	500
Dealer in specially denatured distilled spirits	250
User of specially denatured distilled spirits (including recoverer of specially or completely denatured distilled spirits)	250
Proprietor who procures or uses tax free alcohol under 26 U.S.C. 5214(a) (2) or (3)	250
Manufacturer of tobacco products	1,000
Manufacturer of tobacco products (gross receipts in previous taxable year less than $500,000)	500
Manufacturer of cigarette papers and tubes	1,000
Manufacturer of cigarette papers and tubes (gross receipts in previous taxable year less than $500,000)	500
Export warehouse proprietor	1,000
Export warehouse proprietor (gross receipts in previous taxable year less than $500,000)	500

Increased Occupational Taxes

Special (occupational) taxes have been increased for wholesale and retail liquor dealers, wholesale and retail beer dealers, manufacturers of nonbeverage products (MNBP), brewers, and importers, manufacturers and dealers of National Firearms Act (NFA) firearms. The new law also eliminated the separate tax category for importers, manufacturers, and dealers in weapons classified as "any other weapon." These proprietors must pay special taxes at the same rate as other NFA firearms proprietors. The increased tax rates are shown below:

INCREASED ANNUAL TAX RATES

Type of proprietor	Old rate	New rate
Wholesale liquor dealer	$255	$500
Wholesale beer dealer	123	500
Retail liquor dealer	54	250
Retail beer dealer	24	250
Brewer	110	1,000
Brewer (less than 500 barrels per year)	55	1,000
Brewer (gross receipts in previous taxable year less than $500,000)	110	500
Brewer (less than 500 barrels per year; gross receipts in previous taxable year less than $500,000)	55	500
Manufacturer of nonbeverage products (25 proof gallons or less)	25	500
Manufacturer of nonbeverage products (50 proof gallons or less)	50	500
Manufacturer of nonbeverage products (more than 50 proof gallons)	100	500
Class 1—Importer of NFA firearms	500	1,000
Class 1—Importer of NFA firearms (gross receipts in previous taxable year less than $500,000)	500	500
Class 2—Manufacturer of NFA firearms	500	1,000
Class 2—Manufacturer of NFA firearms (gross receipts in previous taxable year less than $500,000)	500	500
Class 3—Dealer in NFA firearms	200	500
Class 4—Importer only of weapons classified as "any other weapon"	25	[1]
Class 5—Manufacturer only of weapons classified as "any other weapon"	25	[2]
Class 6—Dealer only in weapons classified as "any other weapon"	10	[3]

[1] Same as class 1.
[2] Same as class 2.
[3] Same as class 3.

Reduced Occupational Taxes for Small Proprietors

For certain occupations, as indicated in the above charts, small proprietors are taxed at a reduced rate. To qualify for the reduced rate, a proprietor must have gross receipts (for the most recent taxable year) of less than $500,000. "Taxable year" in this context refers to the taxpayer's income tax year, not the special (occupational) tax year. The term "gross receipts" means all of the taxpayer's gross receipts—not just those derived from the business subject to special tax. Gross receipts are reduced by returns and allowances made during the taxable year, as provided in 26 U.S.C. 448(c)(3). Gross receipts for any taxable year of less than 12 months shall

be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) (pertaining to "controlled groups") shall be treated as one taxpayer for purposes of determining eligibility for the reduced rate of tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, are eligible for the reduced tax rate unless the business is a member of a "controlled group." Complete rules for determining eligibility for the reduced special (occupational) tax rate are contained in the regulations prescribed by this Treasury decision.

Filing of Return and Payment of Special Tax

Every person who engages in a business subject to special (occupational) tax is required to file a special tax return, ATF Form 5630.5, with payment of tax, before commencing operations. Form 5630.5 shall be completed in accordance with the instructions on the form and shall be mailed, along with remittance, to the address indicated on the form. Thereafter, the taxpayer will receive a bill on Form 5630.5 prior to the first day of July in each year. The bill will contain certain preprinted information. The taxpayer shall complete and sign the Form 5630.5 in accordance with the instructions on the form and mail the form, along with remittance, to the address indicated on the form. If the taxpayer does not receive a renewal notice on ATF Form 5630.5 before the tax is due, the taxpayer shall obtain a blank ATF Form 5630.5 from any ATF office and complete the form in accordance with the instructions on the form. The taxpayer shall then mail the completed tax return form, with remittance, to the address indicated on the form.

Special (occupational) taxes are normally prorated for new proprietors who commence operations after July 1 of the tax year. The only exceptions are manufacturers, importers, and dealers in NFA firearms, and manufacturers of nonbeverage products. Those proprietors must pay the full annual special tax for the tax year during which they commence operations. For all others, the initial tax is computed from the first day of the month in which liability is incurred until the 30th day of June following. Tax in subsequent years is computed for the entire tax year (July 1 through June 30). Complete procedures for the preparation and filing of special tax returns and the payment of the tax are prescribed in the regulations amended by this final rule.

Any person required by law to file a return and pay tax who fails to file the return and pay tax on or before the last day prescribed shall pay, as an addition to the tax, a penalty for both failure to file a return and for failure to pay the tax. In addition, interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest shall be charged for each day at the rate prescribed by law in effect on that day. For more information concerning the computation of penalties and interest, refer to Subpart E of 27 CFR Part 70 and Subpart H of 27 CFR Part 194.

Transition Rule

The new regulations on special (occupational) tax take effect on January 1, 1988. However, taxpayers who were in business on that date will not have to file a tax return and pay the increased or new tax until April 1, 1988. Thereafter, the tax return must be filed and the tax paid on or before July 1 of each year.

For purposes of determining the amount of increased or new occupational tax due on April 1, 1988, under this transition rule, any person engaged on January 1, 1988, in any trade or business subject to such a tax shall be treated as having first engaged in the taxable trade or business on that date. If the taxpayer previously paid an occupational tax in respect of any premises for taxable period which began before January 1, 1988, and includes that date, the increased occupational tax imposed by this transition rule in respect of those premises shall not exceed one-half the excess (if any) of—

(a) The annual rate of occupational tax in effect on January 1, 1988, over

(b) The annual rate of such tax in effect on December 31, 1987.

Filing of Return and Payment of Special Tax During Transition Period

During the period between January 1, 1988, and April 1, 1988, taxpayers of record will be sent a bill on one of three supplemental forms. If the taxpayer owed but did not pay special tax for the current tax year, then the taxpayer will be sent ATF Form 5630.5 Supplemental 1 to cover the delinquent tax due plus the tax for the transition period between January 1, 1988, and June 30, 1988. If the taxpayer paid special tax for the current year, the taxpayer will be sent ATF Form 5630.5 Supplemental 2 to cover the increased tax for the transition period between January 1, 1988, and June 30, 1988. If the taxpayer was not previously required to pay special tax but is now required to pay special tax due to the change in the law, the taxpayer will be sent AFT Form 5630.5 Supplemental 3 to cover the tax for the transition period between January 1, 1988, and June 30, 1988.

Taxpayers who receive either ATF Form 5630.5 Supplemental 1, 2, or 3 shall fill out the form in accordance with the instructions on the form and shall mail the form, with remittance of tax, on or before April 1, 1988, to the address indicated on the form. If a taxpayer does not receive a bill on ATF Form 5630.5 Supplemental 1, 2, or 3, he or she is still required to file a tax return and pay the tax on or before April 1, 1988, in accordance with the transition rule described earlier in this preamble. Tax returns may be obtained by contacting any ATF office. The taxpayer shall then mail the return, with remittance, to the address indicated on the form.

Examples of Transition Rule

Example 1

A wholesale beer dealer is in business as of January 1, 1988, and has previously paid special tax at the rate of $123 a year for the period July 1, 1987, through June 30, 1988. This dealer would become liable for the additional tax on January 1, 1988, but would not have to file the tax return or pay the additional tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($500−$123)= ½($377)=$188.50.

Example 2

A proprietor of a distilled spirits plant is in business as of January 1, 1988. Previous law and regulations did not require such proprietors to pay special (occupational) taxes so none was paid. The distilled spirits plant proprietor would become liable for the new tax on January 1, 1988, but would not be required to file the tax return or pay the new tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($1000−$0)= ½($1000)=$500.

If the gross receipts of the distilled spirits plant proprietor (for the most

recent taxable year ending before the first day of the taxable period to which the special (occupational) tax relates) are less than $500,000, then the proprietor would qualify for the reduced rate of $500 per year. In this example, such a small proprietor would only be required to pay one-half the reduced rate. Therefore, the proprietor would pay $250 on or before April 1, 1988.

Example 3

A manufacturer of NFA firearms began business on December 15, 1987. Since special tax for this proprietor is not prorated, the proprietor filed a tax return and paid tax in the amount of $500 for the period covering December 15, 1987 through June 30, 1988. The proprietor would become liable for the additional tax on January 1, 1988, but would not have to file the tax return or pay the additional tax until April 1, 1988. The tax would cover the period from January 1, 1988, through June 30, 1988. The tax would be computed as one-half the difference between the new tax rate and the old tax rate. This computation would be as follows: ½($1000 −$500)=½($500)=$250.

If this manufacturer had gross receipts of less than $500,000 and thus qualified for the reduced rate as a small proprietor, the tax owed in this example would be ½($500 − $500) which would be zero. In this case, the proprietor should file a tax return but would show zero balance due.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule," because the economic effects flow directly from the underlying statute and not from this final rule. Therefore, it is found that this final rule will not result in:

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

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

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

Paperwork Reduction Act

The requirement to file a special (occupational) tax return has been previously approved by the Office of Management and Budget under Control Number 1512–0472.

Administrative Procedure Act

Because this final rule merely implements a law which has increased special (occupational) taxes and imposed new special (occupational) taxes on alcohol, tobacco and NFA firearms proprietors, and because immediate guidance is necessary to implement the new and increased tax rates, it is found to be unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal authors of this document are Robert White and Steve Simon of the Wine and Beer Branch, and Shirley Osborne of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

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

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegatons (Government agencies), Chemicals, Claims, Cosmetics, Excise taxes.

27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Tobacco.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations (Government agencies), Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 231

Administrative practice and procedure, Authority delegations (Government agencies), Labeling, Packaging and containers, Reporting requirements, Wine.

27 CFR Part 240

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

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

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

27 CFR Part 285

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

Issuance

Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

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

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 2. The table of sections for Part 19 is amended (1) to remove §§ 19.26 and 19.27, as well as the center heading immediately preceding § 19.26, (2) to add new Subpart Ca immediately following Subpart C, and (3) to add new § 19.906 in Subpart Y immediately following § 19.905. As amended, the table of sections reads as follows:

Subpart Ca—Special (Occupational) Taxes

Sec.

19.49 Liability for special tax.
19.50 Rates of special tax.
19.51 Special tax returns.
19.52 Employer identification number.

Special Tax Stamps

19.53 Issuance, distribution, and examination of special tax stamps.
19.54 Changes in special tax stamps.

* * * * *

Subpart Y—Distilled Spirits for Fuel Use

* * * * *

19.906 Special (occupational) tax.

* * * * *

§§ 19.26 and 19.27 [Removed]

Para. 3. Sections 19.26 and 19.27, as well as the undesignated center heading immediately preceding § 19.26, are removed from Part 19.

Para. 4. New Supbart Ca is added immediately following the regulations in Subpart C, to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant*—(1) *General.* Every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(2) *Transition rule.* For purposes of paragraph (a)(1) of this section, a proprietor engaged in distilled spirits plant operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(b) *Liquor Dealer*—(1) *General.* A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 194 of this chapter.

(2) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax as a wholesale or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax for each distilled spirits plant. The distiller may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the distilled spirits plant.

(c) *Each place of business taxable*—(1) *General.* A proprietor of a distilled spirits plant incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partititions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) *Exception for contiguous areas.* A proprietor of a distilled spirits plant does not incur additional special tax liability for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

(26 U.S.C. 5081, 5111, 5113, 5142, 5143)

§ 19.50 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081(a)(1) imposes a special tax of $1,000 per year on every proprietor of a distilled spirits plant.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any distilled spirits plant proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 19.49 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that

have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 19.51 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 19.52).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 19.723(c).

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

§ 19.52 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 19.53 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated

stamp for each location listed on the attachment required by § 19.51(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 19.54 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a distilled spirits plant, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

§ 19.63 [Amended]

Para. 5. Section 19.63 is amended by adding, right after the word "tax" in the last sentence, the following: ", including special (occupational) tax,".

Para. 6. Section 19.65 is amended by adding the following sentence at the end of the section:

§ 19.65 Experimental distilled spirits plant.

* * * * *

* * * A proprietor of an experimental distilled spirits plant established under this section is subject to special (occupational) tax under Subpart Ca of this part and shall hold a separate special tax stamp to cover the experimental operations.

Para. 7. Section 19.67 is amended by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 19.67 Spirits produced in industrial processes.

(a) *Applicability.* (1) Persons who produce spirits in industrial processes (including spirits produced as a by-product in connection with chemical or other processes) are distillers and are required to qualify and pay special (occupational) tax under provisions of 26 U.S.C. Chapter 51 and this part.

(2) The Director may, however, waive any provision of 26 U.S.C. Chapter 51, or of this part, with respect to the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification (except the payment of special (occupational) tax), if such mixtures are produced:

* * * * *

Para. 8. Section 19.71 is amended by adding, at the end of paragraph (a), the following new sentence:

§ 19.71 Experimental or research operations by scientific institutions and colleges of learning.

(a) * * *

A person conducting experimental or research operations authorized under this section is subject to special (occupational) tax under Subpart Ca of this part and shall hold a special tax stamp to cover the experimental or research operations.

* * * * *

Para. 9. New § 19.906 is added in Subpart Y immediately following § 19.905, to read as follows:

§ 19.906 Special (occupational) tax.

A proprietor of an alcohol fuel plant established under this subpart shall be subject to a special (occupational) tax as prescribed in Subpart Ca of this part, and shall hold a separate special tax stamp to cover the alcohol fuel operations.

(26 U.S.C. 5081)

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Para. 10. The authority citation for Part 20 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 5607, 6055, 6061, 6065, 6109, 6151, 6806, 7011, 7805.

Para. 11. The table of sections for Part 20 is amended to add Subpart Ca immediately following Subpart C, and to add new § 20.241a in Subpart N, immediately following § 20.241, to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.
20.38 Liability for special tax.
20.38a Special tax returns.
20.39 Employer identification number.

Special Tax Stamps

20.40 Issuance, distribution, and examination of special tax stamps.
20.40a Changes in special tax stamps.

* * * * *

Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency

* * * * *

20.241a Special (occupational) tax.

* * * * *

Para. 12. New Subpart Ca is added, immediately following the regulations in Subpart C, to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 20.38 Liability for special tax.

(a) *Industrial alcohol permittee.* Every person required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover denatured distilled spirits for industrial purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each industrial alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a permittee engaged in denatured distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* Special (occupational) tax liability is incurred at each place of business for which a permit under Subpart D of this part to procure, use, sell, and/or recover denatured distilled spirits has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5276)

§ 20.38a Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 20.39).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10 percent of more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF is accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 20.267.

(d) *Signing of ATF Forms 5630.5—(1) Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 20.39 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer indentification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 20.40 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 20.38a(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

§ 20.40a Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of an industrial alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Para. 13. New § 20.241a is added in Subpart N, immediately following the regulations in § 20.241, to read as follows:

§ 20.241a Special (occupational) taxes.

Special (occupational) tax at the rate of $250 per year is imposed upon agencies and instrumentalities of the United States required by 26 U.S.C. 5271 to obtain permits to procure and use specially denatured spirits. Permits issued under this part shall not be valid unless the permittee pays the special (occupational) tax. Special tax liability is incurred for each permit held and each location receiving denatured distilled spirits by virtue of such permit. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, and thereafter every year on or before July 1. On commending operations, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(26 U.S.C. 5143, 5214, 5271, 5276)

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Para. 14. The authority citation for Part 22 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

Para. 15. The table of sections for Part 22 is amended to add new Subpart Ca immediately following Subpart C, and to add § 22.171a in Subpart N, immediately following § 22.171, to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.
22.37 Liability for special tax.
22.38 Special tax returns.
22.38a Employer identification number.

Special Tax Stamps

22.39 Issuance, distribution, and examination of special tax stamps.
22.40 Changes in special tax stamps.

* * * * *

Subpart N—Use of Tax Free Spirits by the United States or Government Agency

* * * * *

22.171a Special (occupational) tax.

* * * * *

Para. 16. New Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 22.37 Liability for special tax.

(a) *Tax-free alcohol permittee.* Every person who is required to hold a permit under 26 U.S.C. 5271 to procure, use, and/or recover alcohol free of tax for nonbeverage purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each tax-free alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing the business of a tax-free alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a permittee engaged in nonbeverage tax-free

distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* Special (occupational) tax liability is incurred at each place of business for which a permit under Subpart D of this part to procure, use, and/or recover distilled spirits free of tax has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5276)

§ 22.38 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 22.38a).

(4) The exact location of the place of business, by name and number of building or street, of if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of corporate taxpayer) for the period specified on § 22.164.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7100)

§ 22.38a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 22.39 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 22.38(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for

inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

§ 22.40 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a tax-free alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the permittee shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The permittee shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the permittee does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Para. 17. New § 22.171a is added in Subpart N, immediately following the regulations in § 22.171, to read as follows:

§ 22.171a Special (occupational) taxes.

Special (occupational) tax at the rate of $250 per year is imposed upon agencies and instrumentalities of the United States required by 26 U.S.C. 5271 to obtain permits to procure and use tax-free spirits under this part. Permits issued under this part shall not be valid unless the permittee pays the special (occupational) tax. Special tax liability is incurred for each such permit held and each location receiving tax-free spirits by virtue of such a permit. The tax shall be paid on or before the date of commencing operations as an industrial alcohol permittee, and thereafter every year on or before July 1. On commencing operations, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(26 U.S.C. 5143, 5214, 5271, 5272, 5273, 5274, 5275, 5276)

PART 25—BEER

Para. 18. The authority citation for Part 25 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Para. 19. The table of sections in 27 CFR Part 25, Subpart I, is amended to add §§ 25.111a, 25.111b, and to add § 25.120 under the center heading "Execution of Special Tax Returns" and to revise the titles of §§ 25.118, 25.119, 25.123, and 25.125, and the center heading immediately preceding § 25.125, as follows:

* * * * *

Subpart I—Special Taxes

Sec.

* * * * *

25.111a Special tax rates.
25.111b Reduced rate of tax for small brewers.

* * * * *

25.118 Preparation of AFT Form 5630.5.
25.119 Multiple locations and/or classes of tax.

25.120 Signing of ATF Forms 5630.5.

* * * * *

25.123 Preparation and filing of IRS Form SS–4.

Special Tax Stamps

25.125 Issuance of special tax stamps.

* * * * *

Para. 20. Sections 25.111 and 25.112 are revised, and §§ 25.111a and 25.111b are added in Subpart I, to read as follows:

§ 25.111 Brewer's special tax.

(a) *General.* Every brewer shall pay a special (occupational) tax at the rate specified by § 25.111a or § 25.111b, whichever is applicable. The tax shall be paid on or before the date of commencing business as a brewer, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* A brewer who was engaged in business on January 1, 1988, and paid a special (occupational) tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased special tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(26 U.S.C. 5091, 5142)

§ 25.111a Special tax rates.

(a) *Prior rates.* The special (occupational) tax imposed on brewers prior to January 1, 1988, was $110 a year, except that the special tax for any brewer of less than 500 barrels a year was $55 a year.

(b) *Rate effective January 1, 1988.* The special tax rate imposed on brewers (other than small brewers as defined in § 25.111b) is $1000 a year.

(26 U.S.C. 5091)

§ 25.111b Reduced rate of tax for small brewers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by § 25.111 relates) are less than $500,000. The rate of tax for such a brewer is $500 a year. The

"taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for purposes of paragraph (a) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

§ 25.112 Wholesaler's special tax.

A brewer shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5142)

Para. 21. Section 25.120 is added in Subpart I, and §§ 25.117–25.119, 25.121–25.123, 25.125, and the center heading immediately preceding § 25.125 are revised to read as follows:

Execution of Special Tax Returns

§ 25.117 Special tax returns.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

§ 25.118 Preparation of ATF Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

(a) The true name of the taxpayer.

(b) The trade name(s) (if any) of the business(es) subject to special tax.

(c) The employer identification number (see § 25.121).

(d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(e) The class(es) of special tax to which the taxpayer is subject.

(f) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with the Brewer's Notice, and if the information previously provided is still current.

§ 25.119 Multiple locations and/or classes of tax.

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(a) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(b) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 25.300(c).

§ 25.120 Signing of ATF Forms 5630.5.

(a) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

Employer Identification Number

§ 25.121 Employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(26 U.S.C. 6109, 6676)

§ 25.122 Application for employer identification number.

Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the

number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(26 U.S.C. 6109)

§ 25.123 Preparation and filing of IRS Form SS-4.

The taxpayer shall prepare and file IRS Form SS-4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 25.125 Issuance of Special Tax Stamps.

Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 25.119, but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(26 U.S.C. 6806)

Para. 22. Section 25.131 is revised to read as follows:

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the brewer shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The brewer shall attach the special tax stamp for endorsement of the change in name.

(26 U.S.C. 7011)

Para. 23. Section 25.134 is revised to read as follows:

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The brewer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the brewer does not file the amended return within 30 days, the brewer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 70—PROCEDURE AND ADMINISTRATION

Para. 24. The authority citation for Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6155, 6201, 6203, 6204, 6311, 6313, 6314, 6401, 6402, 6404, 6407, 6423, 6501, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6662, 6671, 6672, 6676, 6701, 6801, 6862, 6863, 7011, 7601–7606, 7608, 7622, 7623, 7653, 7805.

Para. 25. Section 70.109 is amended by revising paragraphs (a)(1)–(4), adding new paragraphs (a)(5)–(7) and concluding text of paragraph (a), and revising paragraph (b), to read as follows:

§ 70.109 Registration of persons paying a special tax.

(a) * * *

(1) Section 5081 (relating to special tax on proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses);

(2) Section 5091 (relating to special tax on brewers);

(3) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

(4) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer);

(5) Section 5276 (relating to special tax on persons holding permits to procure or use tax-free spirits, to procure, deal in, or use specially denatured spirits, or to recover specially or completely denatured spirits);

(6) Section 5731 (relating to special tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors); or

(7) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR Part 197 (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration.* The registration required of a person by reason of the person being engaged in a trade or business, in respect of which one of the special taxes listed in paragraph (a) of this section is imposed, shall be accomplished by timely executing and filing, in accordance with the instructions relating thereto, ATF Form 5630.5, Special Tax Registration and Return.

(26 U.S.C. 5802, 7011)

Para. 26. Section 70.111(a) is amended by revising the second sentence to read as follows:

§ 70.111 Imposition of taxes, qualification requirements, and regulations.

(a) * * * Occupational taxes are imposed upon brewers, dealers in liquors, and proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses; on industrial users of tax-free distilled spirits; on dealers, users, and recoverers of specially denatured spirits; and as a prerequisite for drawback under section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products.

* * * * *

Para. 27. Section 70.112(a) is amended by revising the sixth sentence to read as follows:

§ 70.112 Excise taxes.

(a) * * * Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, manufacturers of nonbeverage products, and industrial users of tax-free distilled spirits; by dealers, users, and recoverers of specially denatured spirits; and by proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses. * * *

* * * * *

Para. 28. Section 70.131(a) is amended by adding the following after the end of the first sentence:

§ 70.131 Imposition of taxes; regulations.

(a) * * * Occupational taxes are imposed by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors. * * *

* * * * *

Para. 29. Section 70.133 is amended by redesignating paragraph (c) as paragraph (d) and by adding the following new paragraph (c) to read as follows:

§ 70.133 Collection of taxes.

* * * * *

(c) *Special tax.* Special (occupational) taxes are paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors on the basis of a return. Special tax stamps are issued to denote the payment of special (occupational) taxes.

* * * * *

Para. 30. Section 70.151(a)(1)(ii) is revised to read as follows:

§ 70.151 Offers in compromise.

(a) * * *

(1) * * *

* * * * *

(ii) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms.

* * * * *

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Para. 31. The authority citation for Part 179 is revised to read as follows:

Authority: 18 U.S.C. 926; 22 U.S.C. 2778; 26 U.S.C. Chapter 53, 6091, 6511, 6676, 6805, 7805.

Para. 32. The table of sections for Part 179 is amended to add new § 179.32a in Subpart D immediately following § 179.32, and to revise the title of § 179.34, as follows:

* * * * *

Subpart D—Special (Occupational) Taxes

* * * * *

Sec.

179.32a Reduced rate of tax for small importers and manufacturers.

* * * * *

179.34 Special tax registration and return.

* * * * *

Para. 33. Section 179.31 is revised to read as follows:

§ 179.31 Liability for tax.

(a) *General.* Every person who engages in the business of importing, manufacturing, or dealing in (including pawnbrokers) firearms in the United States shall pay a special (occupational) tax at a rate specified by § 179.32. The tax shall be paid on or before the date of commencing the taxable business, and thereafter every year on or before July 1. Special (occupational) tax shall not be prorated. The tax shall be computed for the entire tax year (July 1 through June 30), regardless of the portion of the year during which the taxpayer engages in business. Persons commencing business at any time after July 1 in any year are liable for the special (occupational) tax for the entire tax year.

(b) *Each place of business taxable.* An importer, manufacturer, or dealer in firearms incurs special tax liability at each place of business where an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous. See also §§ 179.38–179.39.

(26 U.S.C. 5143, 5801, 5846)

Para. 34. Section 179.32 is revised to read as follows:

§ 179.32 Special (occupational) tax rates.

(a) Prior to January 1, 1988, the special (occupational) tax rates were as follows:

	Per year or fraction thereof
Class 1—Importer of firearms	$500
Class 2—Manufacturer of firearms	500
Class 3—Dealer in firearms	200
Class 4—Importer only of weapons classified as "any other weapon"	25
Class 5—Manufacturer only of weapons classified as "any other weapon"	25
Class 6—Dealer only in weapons classified as "any other weapon"	10

(b) Except as provided in § 179.32a, the special (occupational) tax rates effective January 1, 1988, are as follows:

	Per year or fraction thereof
Class 1—Importer of firearms (including an importer only of weapons classified as "any other weapon")	$1,000
Class 2—Manufacturer of firearms (including a manufacturer only of weapons classified as "any other weapon")	1,000
Class 3—Dealer in firearms (including a dealer only of weapons classified as "any other weapon")	500

(c) A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 35. New § 179.32a is added immediately following § 179.32, to read as follows:

§ 179.32a Reduced rate of tax for small importers and manufacturers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5801(b) provides for a reduced rate of special tax with respect to any importer or manufacturer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 179.32 relates) are less than $500,000. The rate of tax for such an importer or manufacturer is $500 per year or fraction thereof. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, quality for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (a) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be

reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5801)

Para. 36. Section 179.34 is revised to read as follows:

§ 179.34 Special tax registration and return.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form. Properly completing, signing, and timely filing of a return (Form 5630.5) constitutes compliance with 26 U.S.C. 5802.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 179.35).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a license application under Part 178 of this chapter, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for not less than 3 years.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 5802, 5846, 6061, 6065, 6151)

Para. 37. Section 179.35 is revised to read as follows:

§ 179.35 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Para. 38. Section 179.38 is amended by revising the third sentence to read as follows:

§ 179.38 Engaging in business at more than one location.

* * * * *

A manufacturer, upon the single payment of the appropriate special (occupational) tax, may sell firearms, if such firearms are of his own manufacture, at the place of manufacture and at his principal office or place of business if no such firearms, except samples, are kept at such office or place of business. * * *

§ 179.39 [Amended]

Para. 39. Section 179.39 is amended by removing the last two sentences.

Para. 40. Section 179.68 is amended by revising the first sentence to read as follows:

§ 179.68 Qualified manufacturer.

A manufacturer qualified under this part to engage in such business may make firearms without payment of the making tax. * * *

Para. 41. In § 179.88, paragraph (a) and the second sentence of paragraph (b) are revised to read as follows:

§ 179.88 Special (occupational) taxpayers.

(a) A firearm registered to a person qualified under this part to engage in business as an importer, manufacturer, or dealer may be transferred by that person without payment of the transfer tax to any other person qualified under this part to manufacture, import, or deal in firearms.

(b) * * * The application, Form 3 (Firearms), shall (1) show the name and address of the transferor and of the

transferee, (2) identify the Federal firearms license and special (occupational) tax stamp of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that he is entitled to the exemption because the transferee is a person qualified under this part to manufacture, import, or deal in firearms. * * *

* * * * *

PART 194—LIQUOR DEALERS

Para. 42. The authority citation for Part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

Para. 43. The table of sections for Part 194 is amended to reflect the addition of new § 194.187a in Subpart L immediately following § 194.187, and the removal of §§ 194.106b–194.106c from Subpart H and of §§ 194.204–194.205 from Subpart M, as follows:

Subpart L—Exemptions and Exceptions

* * * * *

194.187a Limited retail dealers.

* * * * *

Para. 44. Section 194.1 is revised to read as follows:

§ 194.1 Applicability.

This part contains the substantive and procedural requirements relating to the special taxes imposed on wholesale and retail dealers in liquors and in beer, requirements and procedures pertaining to operations of such dealers prescribed under Title 26 of the United States Code, as amended, and provisions relating to entry of premises and inspection of records by ATF officers.

§ 194.21 [Amended]

Para. 45. Section 194.21 is amended by replacing, at the end of the second sentence, the regulatory citation "194.28" with the citation "194.26."

Para. 46. Section 194.23 is amended by revising paragraph (c)(3) to read as follows:

§ 194.23 Retail dealer in liquors.

* * * * *

(c) * * *

(3) A person who is exempt from special tax under the provisions of §§ 194.181–194.184, 194.187, or 194.187a.

Para. 47. Section 194.25 is amended by revising paragraph (c)(2) to read as follows:

§ 194.25 Retail dealer in beer.

* * * * *

(c) * * *

(2) A person who is exempt from special tax under the provisions of §§ 194.181, 194.184, 194,187, or 194.187a.

Para. 48. Section 194.27 is revised to read as follows:

§ 194.27 Limited retail dealer; persons eligible.

Any person selling distilled spirits, beer or wine, or any combination thereof, to members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or similar outings, and any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization selling distilled spirits, beer or wine, or any combination thereof, on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, is a "limited retail dealer," if the person or organization is not otherwise engaged in business as a dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1344; sec. 1905, Pub. L. 94–455, 90 Stat. 1819, as amended (26 U.S.C. 5122))

§ 194.29 Clubs or similar organizations.

Para. 49. Section 194.29 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a "limited retail dealer" under § 194.27 (the special tax stamp of the proprietor of the premises where the bar is located will not relieve the club or organization of special tax liability); or

* * * * *

Para. 50. Section 194.101 is revised to read as follows:

§ 194.101 Special tax rates.

(a) *Previous rates.* Prior to January 1, 1988, the special (occupational) taxes imposed on dealers in liquors and beer were as follows:

(1) *Annual (tax year) rates:*

Wholesale dealer in liquors (spirits, wines, beer)	$225.00
Wholesale dealer in beer (beer only)	123.00
Retail dealer in liquors (spirits, wines, beer)	54.00
Retail dealer in beer (beer only)	24.00

(2) *Monthly (calendar month) rates:*

Limited retail dealer (spirits, wines, beer)	$4.50
Limited retail dealer (wines, beer)	2.20

(b) *Current rates.* Effective January 1, 1988, special (occupational) taxes are imposed on dealers in liquors and beer at the following rates:

Wholesale dealer in liquors (spirits, wines, beer)	$500
Wholesale dealer in beer (beer only)	500
Retail dealer in liquors (spirits, wines, beer)	250
Retail dealer in beer (beer only)	250

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, 1343; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5121))

Para. 51. Section 194.103 is amended by designating the existing material as paragraph "(a) *General.*" and by adding a new paragraph (b), which reads as follows:

§ 194.103 Computation of special tax.

(a) *General.* * * *

(b) *Transition rule.* A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 52. Section 194.106 is revised to read as follows:

§ 194.106 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with AFT in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 194.106a).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of

the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 194.237.

(26 U.S.C. 6011, 6151, 7011)

Para. 53. Section 194.106a is revised to read as follows:

§ 194.106a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§§ 194.106b and 194.106c [Removed.]

Para. 54. Sections 194.106b and 194.106c are removed from the part.

§ 194.151 [Amended]

Para. 55. Paragraph (a) of § 194.151 is amended by replacing, in the first proviso, the words "who filed an original return, Form 5630.5, under the provisions of § 194.106(b)" with the words "whose original return on ATF Form 5630.5 covered only one location".

Para. 56. New § 194.187a is added immediately following § 197.187, to read as follows:

§ 194.187a Limited retail dealers.

Limited retail dealers, as specified in § 194.27, are not required to pay special tax.

§§ 194.204–194.205 [Removed.]

Para. 57. Sections 194.204 and 194.205 are removed from Part 194.

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Para. 58. The authority citation for Part 197 is revised to read as follows:

Authority: 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 59. The table of sections for Part 197 is amended (1) to revise the heading for § 197.25, (2) to add new § 197.25a, (3) to remove §§ 197.29b–197.29c and 197.55–197.56, and (4) to revise the undesignated center heading following § 197.54, as follows:

* * * * *

Subpart C—Special Tax

Sec.
197.25 Payment of special tax.
197.25a Rates of special tax.
* * * * *

Refund of Special Tax

* * * * *

Para. 60. Section 197.25 is revised to read as follows:

§ 197.25 Payment of special tax.

Each person who uses distilled spirits in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, in order to be eligible for drawback on the distilled spirits so used, must pay special tax at the proper rate, as specified in § 197.25a. Where a claim is filed in the first quarter of a tax year, covering distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, special tax for the preceding tax year must be paid in the appropriate amount. Special tax may be paid in advance of actual use of distilled spirits. The manufacturer is not required to pay the special tax if he does not claim drawback on the distilled spirits used by him.

Para. 61. New § 197.25a is added immediately following § 197.25, to read as follows:

§ 197.25a Rates of special tax.

(a) *Previous rates.* Prior to January 1, 1988, the rates of special tax were as follows: $25 per tax year for total annual use not exceeding 25 proof gallons of distilled spirits, $50 per tax year for total annual use not exceeding 50 proof gallons, and $100 per tax year for total annual use of more than 50 proof gallons.

(b) *Current rate.* Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

(c) *Transition rule.* Manufacturers engaged in drawback operations on January 1, 1988, who paid special tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax, which shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

Para. 62. Section 197.27 is revised to read as follows:

§ 197.27 Time for payment of special tax.

The special tax shall be paid before a claimant is eligible for drawback. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid.

Para. 63. Section 197.28 is revised to read as follows:

§ 197.28 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 6151)

Para. 64. Section 197.29 is revised to read as follows:

§ 197.29 General.

(a) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 197.29a).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for not less than 2 years.

(26 U.S.C. 6011, 7011)

Para. 65. Section 197.29a is revised to read as follows:

§ 197.29a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS FOrm SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§§ 197.29b–197.29c [Removed]

Para. 66. Sections 197.29b and 197.29c are removed from Part 197.

§ 197.40a [Amended]

Para. 67. Section 197.40a is amended by replacing the regulatory cross reference "§ 197.28" with the reference "§ 197.29(b)".

Para. 68. The undersignated center heading immediately following § 197.54 is revised to read as follows:

Refund of Special Tax

§§ 197.55–197.56 [Removed]

Para. 69. Sections 197.55 and 197.56 are removed from Part 197.

Para. 70. Section 197.111 is revised to read as follows:

§ 197.111 Identification of special tax stamp.

If special tax has been paid, the claim shall be accompanied by a statement identifying the special tax stamp by serial number and tax year for which issued.

PART 231—TAXPAID WINE BOTTLING HOUSES

Para. 71. The authority citation for Part 231 is revised to read as follows:

Authority: 26 U.S.C. 5062, 5081, 5111, 5112, 5121, 5122, 5142, 5143, 5172, 5178, 5352, 5356, 5363, 5367, 5368, 5369, 5552, 5661, 6065, 7011, 7342, 7606, 7805.

Para. 72. The table of sections in 27 CFR Part 231 is amended to remove § 231.52 and to add Subpart CA. As amended, the table of sections reads as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.

231.32 Occupational taxes.
231.33 Rates of special tax.
231.34 Each place of business taxable.
231.35 Dealer's special taxes.
231.36 Special tax returns.
231.37 Employer identification number.

Special Tax Stamps

231.38 Issuance, distribution, and examination of special tax stamps.
231.39 Changes in special tax stamps.

* * * * *

Para. 73. Part 231 of 27 CFR is amended by adding Subpart Ca to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 231.32 Occupational taxes.

(a) *General.* Every proprietor of a taxpaid wine bottling house shall pay a special (occupational) tax at the rate specified by § 231.33. Such a proprietor may also be required to pay a special tax as a dealer (see § 231.35). The tax shall be paid on or before the date of commencing business as a taxpaid wine bottling house proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, proprietors operating a taxpaid wine bottling house on January 1, 1988, shall be treated as having commenced operations on that date. The special tax imposed by this transition rule shall cover the period

January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(26 U.S.C. 5081, 5142)

§ 231.33 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081(a)(4) imposes a special tax of $1,000 per year on every proprietor of a taxpaid wine bottling house.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any taxpaid wine bottling house proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 231.32 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5081)

§ 231.34 Each place of business taxable.

A proprietor of a taxpaid wine bottling house incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143)

§ 231.35 Dealer's special taxes.

(a) *Liability of bottling house proprietors.* A proprietor of a taxpaid wine bottling house who sells wine shall file a special tax return on Form 5630.5 and pay special (occupational) tax as a wholesale dealer or retail dealer, as the case may be, as provided in Part 194 of this chapter.

(b) *Wholesale sales at purchaser's place of business.* A wholesale dealer in liquors who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors or to limited retail dealers, at the purchaser's place of business.

(26 U.S.C. 5111, 5112, 5113, 5121, 5122, 5142, 7011)

§ 231.36 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §231.37).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of very owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Mutiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 231.114.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall

indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 231.37 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 231.38 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 231.36(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 231.39 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a taxpaid wine bottling house, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

§ 231.52 [Removed]

Para. 74. Section 231.52 is removed.

PART 240—WINE

Para. 75. The authority citation for Part 240 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 76. The table of sections in 27 CFR Part 240 is amended to reflect the revision of Subpart N, as follows:

* * * * *

Subpart N—Special (Occupational) Taxes

* * * * *

Para. 77. Subpart N of 27 CFR Part 240 is revised to read as follows:

Subpart N—Special (Occupational) Taxes

§ 240.340 Payment of tax.

(a) *General.* Every proprietor of a bonded wine cellar and every proprietor of a bonded wine warehouse shall pay a special (occupational) tax at the rate specified by § 240.341. The tax shall be paid on or before the date of commencing business as a proprietor of a bonded wine cellar or a proprietor of a bonded wine warehouse, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a), proprietors operating bonded wine cellars and bonded wine warehouses on January 1, 1988, shall be treated as having commenced operations on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(26 U.S.C. 5081, 5142)

§ 240.341 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081 (a)(2) and (a)(3) impose a special tax of $1,000 per year on every proprietor of a bonded wine cellar and every proprietor of a bonded wine warehouse.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any proprietor of a bonded wine cellar or bonded wine warehouse whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 240.340 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 240.342 Wholesaler's special tax.

(a) *General.* A proprietor of a bonded wine cellar shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5142)

§ 240.343 Exemptions from dealer's special taxes.

(a) *Bonded wine cellar.* A proprietor of a bonded wine cellar is not required to pay special tax as a wholesale or retail dealer because of sales, at the proprietor's principal place of business or at the bonded wine cellar, of wine which at the time of sale is stored at the bonded wine cellar or which had been removed and stored in a taxpaid storeroom operated in connection with the bonded wine cellar. The proprietor of the bonded wine cellar shall have only one exemption from dealer's special tax for each bonded wine cellar. The proprietor of the bonded wine cellar may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the bonded wine cellar.

(b) *Wholesale dealer.* A wholesale dealer in liquors who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors or to limited retail dealers, at the purchaser's place of business.

(26 U.S.C. 5113)

§ 240.344 Each place of business taxable.

(a) *General.* Proprietors of bonded wine cellars and proprietors of bonded wine warehouses incur special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas of bonded wine cellar.* A proprietor of a bonded wine cellar does not incur additional special tax liability for sales of wine made at a location other than on bonded wine cellar premises described in the application, Form 698 (5120.25), if the location where such sales are made is contiguous to the bonded wine cellar premises in the manner described in paragraph (a) of this section.

(26 U.S.C. 5143)

§ 240.345 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 240.346).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 240.924.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased pereson, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agency or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 240.346 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

Special Tax Stamps

§ 240.347 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 240.345(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 240.348 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a bonded wine cellar or a bonded wine warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or

other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

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

Para. 78. The authority citation for Part 250 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5205, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805, 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 79. The table of sections for Part 250 is amended to add the titles of new §§ 250.46 and 250.47 in Subpart Cb, as follows:

* * * * *

Subpart Cb—Products Coming into the United States from Puerto Rico

* * * * *

Sec.

250.46 Distilled spirits plant proprietor's special (occupational) tax.

250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

* * * * *

Para. 80. Section 250.36(b), (c), and (d)(2) are revised to read as follows:

§ 250.36 Products exempt from tax.

* * * * *

(b) *Industrial spirits.* A distiller of industrial spirits who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with Part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit and has paid special (occupational) tax under Part 22 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 22 of this chapter.

(c) *Denatured spirits.* A distiller who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with Part 19 of this chapter and who denatures spirits in accordance with Parts 19 and 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit and has paid special (occupational) tax under Part 20 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 20 of this chapter, and Subpart Ia of this part.

(d) *Products made with denatured spirits.* * * *

(2) A person in Puerto Rico who manufactures products with specially denatured spirits may ship those products to the United States if that person (i) obtains a permit to use specially denatured spirits, and pays special (occupational) tax, under Part 20 of this chapter, and (ii) complies with the requirements of Part 20 of this chapter and Subpart Ia of this part relating to the manufacture and shipment of those products.

Para. 81. New §§ 250.46 and 250.47 are added in Subpart Cb to read as follows:

§ 250.46 Distilled spirits plant proprietor's special (occupational) tax.

Every proprietor of a distilled spirits plant producing industrial spirits, denatured spirits, or products made with denatured spirits, for shipment to the United States, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a distilled spirits plant proprietor in accordance with Part 19 of this chapter.

(26. U.S.C. 5081, 5314)

§ 250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

Every user of specially denatured spirits who manufactures products made with such spirits for shipment to the United States, and every dealer in specially denatured spirits who ships such spirits to the United States, who is required by § 250.36 to obtain a permit under Part 20 of this chapter, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a user or dealer in specially denatured spirits under Part 20 of this chapter.

(26 U.S.C. 5271, 5276, 5314)

Para. 82. Section 250.171 is amended by replacing the third and fourth sentences with the following:

§ 250.171 Special tax.

* * * * *

If special tax is paid for any such business location under Part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

§ 250.173 [Amended]

Para. 83. Section 250.173(c)(1) is amended by removing the words "and denomination".

Para. 84. Section 250.307 is amended by replacing the third and fourth sentences with the following:

§ 250.307 Special tax.

* * * * *

If special tax is paid for any such business location under Part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

§ 250.309 [Amended]

Para. 85. Section 250.309(c)(1) is amended by removing the words "and denomination".

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Para. 86. The authority citation for Part 270 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 87. The table of sections for Part 270 is amended to add Subpart Ca, immediately following Subpart C, to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

Sec.

270.31 Liability for special tax.

270.32 Rates of special tax.

270.33 Special tax returns.

270.34 Employer identification number.

270.35 Issuance, distribution, and examination of special tax stamps.

270.36 Changes in special tax stamps.

* * * * *

Para. 88. Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

Subpart Ca—Special (Occupational) Taxes

§ 270.31 Liability for special tax.

(a) *Manufacturer of tobacco products.* Every manufacturer of tobacco products shall pay a special (occupational) tax at a rate specified by § 270.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing tobacco products on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of $1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.31 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.33 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 270.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.185.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall

indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 270.34 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§ 270.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 270.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a tobacco factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Para. 89. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 90. The table of sections is amended to add Subpart Ca immediately following Subpart C to read as follows:

* * * * *

Subpart Ca—Special (Occupational) Taxes

* * * * *

Para. 91. Subpart Ca is added immediately following the regulations in Subpart C to read as follows:

Subpart Ca—Special (Occupational) Tax

§ 285.30b Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 285.30c of this part. The

tax shall be paid on or before the date of commencing the business of manufacturing cigarette papers and tubes, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing cigarette papers and tubes on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 285.30c Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of $1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 285.30b relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 285.30d Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see paragraph (e) of this section).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 285.31 of this part.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney

in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(e) *Employer identification number.*—(1) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(2) *Application for employer identification number on IRS Form SS–4.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one in accordance with the provisions in §§ 285.30 and 285.30a.

(26 U.S.C. 5142, 6061, 6065, 6109, 6151, 7011)

§ 285.30e Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 285.30c(d)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to AFT Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

§ 285.30f Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Para. 92. The authority citation for Part 290 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 93. The table of sections for Part 290 is amended to add Subpart Ba immediately following Subpart B to read as follows:

* * * * *

Subpart Ba—Special (Occupational) Taxes

* * * * *

Para. 94. Subpart Ba is added immediately following the regulations in Subpart B to read as follows:

Subpart Ba—Special (Occupational) Taxes

§ 290.31 Liability for special tax.

(a) *Export warehouse proprietor.* Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 290.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 290.32 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(3) imposes a special tax of $1,000 per year on every export warehouse proprietor.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 290.31 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 290.33 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 290.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 290.142.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by an officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

§ 290.34 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification

number may result in the imposition of the penalty specified in § 70.105 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

§ 290.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to ATF Form 5630.5 required by § 290.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 290.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the export warehouse proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The export warehouse proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of an export warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the export warehouse proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The export warehouse proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the export warehouse proprietor does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Signed: March 10, 1988.

Stephen E. Higgins,

Director.

Approved: April 7, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88–10321 Filed 5–16–88; 8:45 am]

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Tuesday
May 17, 1988

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement
30 CFR Parts 736, 740, and 750
Surface Coal Mining and Reclamation Operations; Application Fee for Permit To Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; and Fee for Processing Permit Revisions, Transfers and Renewals; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 740, and 750

Surface Coal Mining and Reclamation Operations; Application Fee for Permit To Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Permit Revisions, Transfers and Renewals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its rules to add a system of fees to be paid to OSMRE by applicants to obtain processing and issuance of surface coal mining and reclamation permits and coal exploration permits, and renewals, revisions, and transfers of existing permits.

The regulations are being amended to establish a system of fees to implement the requirement at section 507(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR 777.17 that permit fees shall accompany an application for a permit.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on July 18, 1988.

Public Hearings: Upon request, OSMRE will hold a public hearing on the propose rule in Washington, DC on July 11, 1988, beginning at 9:30 a.m. Eastern time. Upon request, OSMRE will also hold hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington, at times and on dates to be announced prior to the hearings.

OSMRE will accept requests for a public hearing until 4:00 p.m. Eastern time of June 16, 1988. Individuals wishing to attend, but not testify at the hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC 20240; or mail to the Office of Surface Mining Reclamation and Enforcement Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings requested to be scheduled at other locations will be announced prior to the hearings.

Request for Public Hearing: Submit orally or in writing to person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone (202) 343–1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") or delivered to addresses other than those listed above, may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date and address for the hearing to be held in Washington, DC has been specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for other hearings that may be requested at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any such hearings.

Any person interested in participating at a hearing should inform Ms. Merchant (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing by 4:00 p.m. Eastern time June 16, 1988. If no one has contacted Ms. Merchant to express an interest in participating in a hearing, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and to ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who play to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**"), an advance copy of their testimony.

Persons interested in attending the hearing, but not testifying, should contact the individual listed under "**FOR FURTHER INFORMATION CONTACT**" prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

Introduction

Section 507(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides that a permit application "shall be accompanied by a fee as determined by the regulatory authority [which] may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit * * *" and that "[t]he regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit."

The legislative history of section 507(a) indicates that Congress had originally thought to finance the entire cost of implementing the Act through permit fees, but that considerations of fairness and financial burdens on small and medium size operators led to the allowance of a fee "less than" these costs, and for payment over the term of the permit. H.R. Rep. 94–1445, 94th Cong., 2nd Sess., 5–7 (1976).

OSMRE rules at 30 CFR 777.17 incorporate the requirements of SMCRA section 507(a); the language of §777.17 is similar to the SMCRA language.

On February 22, 1985, OSMRE proposed a permit fee rule which would have required collection of application fees to cover the full cost to the Department of the Interior for processing permits to conduct surface coal mining and reclamation operations and coal exploration and for approving mine plans and all other OSMRE permit-related processing actions (50 FR 7522). The rule would have applied to applications for mining on Indian lands, in the Federal program States, and on Federal lands in States not having State-Federal cooperative agreements. Action

to develop a final regulation which would require operators to reimburse DOI for the cost of processing applications was curtailed by passage of House Joint Resolution 465, Further Continuing Appropriation for FY 1986. The conference report for the FY 1986 appropriations required that OSMRE study the issue further and report to the Congress on its findings. Partially in response to this requirement, cost accounting systems were put in place in each OSMRE permitting unit to track costs associated with processing permits. OSMRE collected cost accounting data through fiscal year 1986 and up to June 1987 and has analyzed that data and reported its findings to interested Congressional parties. Copies of these data and analyses are available for review in the Administrative Record.

The Proposed Fee System

OSMRE is proposing a revised fee schedule for OSMRE permitting actions in Federal program States, on Federal lands where OSMRE issues a permit, and on Indian lands. It is based on actual cost accounting data collected.

The fee system proposed in this rulemaking is a combination of a fixed fee plus a per-acre fee (for land included in the permit area) for permit applications to conduct surface coal mining and reclamation operations, and an hourly rate for permit renewals, coal exploration permits and for the transfer, assignment or sale of rights under an existing permit.

The permit fee system is proposed under the authority of section 507(a) of SMCRA and section 9701 of Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 of the Independent Offices Appropriation Act (IOAA). Section 9701 of the IOAA authorizes an agency to prescribe regulations establishing the charge for a service or a thing of value provided by the agency.

Under section 9701 the charge shall be fair and based on the costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant factors. Guidance to the Federal agencies for interpreting section 9701 is provided by Bureau of the Budget Circular No. A–25 of September 23, 1959, and by related judicial precedent.

The United States Supreme Court, in interpreting the IOAA, has held that under that statute an agency must base a fee for a service on its value to an identifiable recipient. *National Cable Television Assn. (NCTA), v. United States*, 415 U.S. 336 (1974); *Federal Power Comm'n v. New England Power Co.* 415 U.S. 345 (1974). In a series of contemporaneous cases on this issue, the United States Court of Appeals for the District of Columbia Circuit specified the requirements an agency must meet to justify a particular fee. *National Cable Television v. Federal Communications Comm'n*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronics Industries Ass'n v. Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976); *National Ass'n of Broadcasters v. Federal Communications Comm'n*, 554 F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc. v. Federal Communications Comm'n*, 554 F.2d 1135 (D.C. Cir. 1976).

Summarizing its interpretation of the "value to the recipient" standard as laid down in *NCTA*, the D.C. Circuit in *National Association of Broadcasters* stated:

> Briefly, we have interpreted the "value to the recipient" standard to include a number of specific requirements. First, the Commission must *justify* the assessment of a fee by a clear statement of the particular service or benefit which it is expected to reimburse. Second, it must calculate the *cost basis* for each fee assessed. This involves (a) an allocation of the specific expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest: and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular items. Finally, the Commission must set a fee calculated to return this cost basis at a *rate* which reasonably reflects the cost of the services performed or the value conferred upon the payer. The fees may be imposed on beneficiaries of agency services who satisfy the criteria of *NCTA* and *New England Power*.
>
> 554 F.2d at 1133 (emphasis in original; footnote omitted).

The fee schedule for permit applications proposed in this notice is based on an analysis of data collected through OSMRE's cost accounting system. Data accumulated on permit processing costs for permits issued by OSMRE in Tennessee from October 1985 through June 1, 1987, were analyzed to determine the variation in costs of processing a permit that could be explained by variations in acreage to be included in the permit, number of administrative completeness reviews, and number of technical deficiency letters for each permit. Tennessee data were used because the OSMRE field office in Knoxville had the most experience in permit processing and therefore would be the most efficient permit processing unit in the agency. The Tennessee program has been administered by OSMRE as the sole regulatory authority since October 1, 1984. The dollar amounts proposed in this rule are the numbers shown by the analysis to best fit the available data and best explain total permitting costs.

These dollar amounts are:

Administrative completeness review	$250.00
Technical review	1,350.00
Plus per acre (of land included in the permit)	13.50
Decision document	2,000.00
Technical deficiency letter	690.00
Total (assuming no deficiencies)	3,600.00
Plus per acre	13.50

Permit renewals, permit revisions and transfers of ownership in existing permits would be charged at a fixed hourly rate multiplied by the number of hours spent on processing the action to renew or revise the permit or transfer ownership. The variation in costs to OSMRE of processing these actions is too great to allow a meaningful fixed fee to be established. Coal exploration permits would also be charged at an hourly rate because there is insufficient data or experience to make a meaningful estimate of a fixed fee. The proposed rate is $24 per hour, which is based on the average salary of permit review technical staff at OSMRE plus overhead (administrative, support and supervisory costs). No fees are proposed for mining plan reviews because these are performed under the Mineral Leasing Act rather than under SMCRA.

Mid-term permit reviews are viewed as being of primarily public benefit and therefore there would be no charge for these reviews. The mid-term permit review conducted under 30 CFR 774.11 does not convey a direct benefit to the permit recipient, but rather serves to protect the public interest by assuring that the permit continues to reflect conditions at the mine site. However, if as a result of the review a permit revision is necessary, permit revision fees would be charged to the applicant.

Fees would be charged to all applicants for surface coal mining operations and coal exploration activities for which the operator is required to obtain a permit from OSMRE. The proposed permit fees would be charged in the Federal program States, on Indian lands, and on Federal lands where OSMRE issues a permit. In States with cooperative agreements where the State issues a permit on Federal lands, the applicant would be required to pay the State permit fee to the State.

Fees would not be charged retroactively. An effective date would

be established at the time of publication of the final rule; all permit processing or issuing actions begun on or after the effective date of the final rule would be charged permit fees.

The proposed permit fees would not contain a special fee for small operators. The proposed permit fee schedule includes a per-acre charge for permit application fees which would tend to minimize the fees paid by small operations relative to large operations.

Previously Proposed Rule

On February 22, 1985, OSMRE published a proposed rule to implement an actual cost accounting permit fees system (50 FR 7522). The proposed rule would have required recipients of OSMRE's permit services to reimburse OSMRE for the actual costs incurred by the Department of the Interior in providing the services.

Numerous comments were received on the proposed rule. Most of the commenters were opposed to one or more aspects of the proposed permit fee system. Most of the commenters from the coal industry objected to the proposed rule for the following reasons: (1) The permit fee would be an unknown expense and therefore an operator would not know "up front" the cost of doing business; (2) an actual cost accounting fee would not provide an incentive to OSMRE employees to provide efficient permitting services; (3) a proposed permit fee system should recognize that the public is a beneficiary of OSMRE's service and should therefore share in the cost of these services; (4) permit fees would be prohibitively high for some operators under the proposed system; and (5) some operators would be at a competitive disadvantage under the proposed system if their proposed operations required extensive National Environmental Policy Act (NEPA) compliance, or other special circumstances required extensive OSMRE review.

Most of the comments received from the State representatives reflected a concern that States would be required to adopt a similar cost accounting permit fee system and that Federal grants to the States would be reduced accordingly to offset any fees collected.

Comments from an environmental group indicated concern that actual cost accounting permit fees would: Bring pressure on the regulatory authority to "cut corners" on permit review in order to keep costs down; undercut the States' desire to obtain and retain primacy; be difficult to collect if allowed to be paid over the life of the permit.

OSMRE has considered these comments in developing this revised proposed permit fee system. OSMRE has also had the opportunity to gather and analyze actual cost accounting data and to consider this data along with these comments. The resulting proposed rule should allay many of the commenters' concerns.

The proposed fee system would enable a permit applicant to determine "up front" the cost of a permit to mine. The proposed system recognizes that permit applicants and the public benefit from regulation of surface coal mining and reclamation activities under SMCRA and that the costs of the program should thus be shared. The proposed fee schedule is not prohibitive even for small operators and recognizes the differences in cost for permitting small mines and larger mines by assessing a per-acre fee. States would not be required to adopt similar systems, nor is OSMRE considering phasing out State grants to encourage that similar systems be adopted; therefore, States are not discouraged from retaining primacy. Collection of permit fees should not present problems since most of the fees under this proposed system would be collected before permit processing began.

Comments were also received strongly objecting to OSMRE's proposal to require the operator to reimburse OSMRE for inspection services. Industry felt that the public was the sole beneficiary of these services and therefore should pay the costs. The environmental group felt that if the proposal were adopted, inspectors would be under pressure to do a quicker and less thorough inspection in order to keep costs down.

OSMRE is proposing not to include the cost of inspections in the proposed permit fee system. As stated in the February 22, 1985 proposed rule, not charging for such activities would ensure that the frequency and intensity of inspection and enforcement practices fully reflect OSMRE's firm commitment to the goals of SMCRA, and that inspectors are not inhibited from full performance of their duties by a concern for the costs that might be imposed on surface mining operators resulting from inspection and enforcement activities. Also, while inspection and enforcement may bestow some benefit on operators by encouraging lawful continuation of responsible mining and thereby improving public relations, these activities protect the health and safety of the public and help preserve environmental and other resources, thereby benefiting the public at large.

III. Discussion of Proposed Rule

A. Basis of Fees for a New Permit

Justification

The proposed fee schedule for new permits is based on data collected by OSMRE under an actual cost accounting system for all permits issued in Tennessee from October 1985 to June 1987. The data were analyzed to determine the equation that would best fit the available data and best explain the variation in costs of permit processing on individual mines.

Data were broken down to show the costs of each step of a permit review including the administrative completeness review, the technical review, and the preparation of a decision document for each permit. Data were also collected which showed the number of administrative completeness reviews that were necessary for each permit, the number of technical deficiency letters necessary to obtain additional technical information needed to process each permit, and the number of acres covered under each permit.

Regression analyses were run on the available data using the total permit costs as the dependent, or "y" variable, with various combinations of independent, or "x" variables. The analysis which gave the best results used a combination of three independent variables: number of acres, number of administrative completeness reviews, and number of technical deficiency letters.

The fees that appear in this proposed fee schedule are based on this regression analysis and also consider the breakdown of costs for each step of the permit review. Overhead costs for support and supervisory personnel and administrative costs are included in the proposed fees.

The proposed permit fee system would be similar to fee systems used by other Federal agencies in that it would employ a fixed fee schedule based on historical costs, and applicants would pre-pay for services. The proposal is consistent with draft guidelines for user charges published in the **Federal Register** by the Administrative Conference of the United States on March 12, 1987 (52 FR 7812).

The proposed schedule for new permit applications would be similar to permit fee systems in other States with primacy in that it would include a per-acre component and a fixed per-permit fee. The per-acre charge allows the costs of permit processing to vary directly by size of operation; it also reflects the

general trend in variation of OSMRE's permit processing costs.

The proposed fee system would encourage operators to submit complete and accurate permit applications since applicants would be charged additional fees for additional administrative completeness reviews or for technical deficiency letters necessary, and since prepayment of fees is required.

The proposed permit fee schedule is designed to recover the full costs to OSMRE to process a permit application. It is not intended to recover the costs to OSMRE to enforce the permit or to fulfill OSMRE's National Environmental Policy Act of 1969 (NEPA) responsibilities.

NEPA Compliance

The proposed permit fee schedule is based on OSMRE's costs to process and issue a permit but does not include costs incurred in fulfilling NEPA obligations. In *Nevada Power Co. v. Watt,* 711 F.2d 913 (10th Cir. 1983), the court made it clear that the Department of the Interior could charge for environmental impact statement (EIS) costs, because they "are a necessary prerequisite to the receipt by the applicant of a special benefit, the grant of a right-of-way." The court said that Interior is not constrained from charging the full cost of the EIS to the applicant.

However, OSMRE believes that NEPA analysis necessary for obtaining a surface coal mining operation permit should not necessarily be charged to the applicant. NEPA compliance costs vary widely from permit to permit and therefore uniform distribution over all permits would not reflect OSMRE's costs to process each permit as required by IOAA. On the other hand, charging an individual permit applicant for preparation of an environmental impact statement for his/her permit may affect the competitive balance, since NEPA compliance costs on some permits are very high while on others they are inconsequential.

Inspection and Enforcement

The proposed permit fee schedule would not recover OSMRE's costs for inspection and enforcement activities. Section 507(a) of SMCRA authorizes OSMRE to collect a permit application fee which "may reflect the cost of * * * enforcing" the permit; that is, the cost for OSMRE to inspect the permit site and enforce the permit requirements. The Secretary believes that the primary benefits of inspection and enforcement activities accrue to the public and that the public stands to gain by OSMRE's not charging the operator for the service. Not charging for inspection and enforcement activities would ensure that OSMRE is not inhibited in its inspection and enforcement duties by the desire to keep expenditures within the bounds of whatever fees might be charged. OSMRE inspectors should have in mind the purpose of upholding the intent of SMCRA rather than concern for the costs of inspection and enforcement activities.

B. Fee for Permit Renewal or Revision; Transfer, Sale or Assignment of Rights; and Coal Exploration Permits

Fees for permit renewal or revision, for the transfer, sale or assignment of rights under an existing permit, and for coal exploration permits, would be charged at an hourly rate for the actual hours spent by OSMRE reviewers in processing the application. Fees would be charged whether the application is approved, denied or withdrawn.

Hourly rates are proposed for these actions due to the great variation in their processing cost and/or insufficient data to validate a fixed fee. As OSMRE gains more experience in these actions a fixed fee for them may become viable.

Fees would not be charged for informal conferences or public hearings held as a result of these actions. These conferences and hearings are beyond the control of the operator and could be very costly. Charging for the conferences and hearings would be unfair since not all actions would result in a conference or hearing.

No fees would be charged for a notice of coal exploration permit is not required. No fees would be charged for mid-term permit reviews, since this action is mainly performed for the benefit of the public; however, any necessary permit revision identified as a result of the mid-term review would require permit revision fees in accordance with the fee schedule.

C. Who Will Be Charged Fees

Fees as proposed in this rule would be charged in States where OSMRE is the regulatory authority, on Federal lands where OSMRE issues a permit and on Indian lands. In States with State-Federal Cooperative Agreements under 30 CFR Part 745 where the State issues a permit on Federal lands, the applicant would be required to pay the State permit fee to the State. Where OSMRE issues a permit on Federal lands, permit fees would be charged in accordance with the OSMRE permit fee schedule. Under this proposed rule, permit fees would not be charged for OSMRE actions on mining plans.

Fees would be charged for permit processing and issuing actions begun on or after the effective date of the final rule. Although the fees would not be charged retroactively, any permit application which was currently in process would be assessed a fee for any action begun after the effective date of the rule. For example, if a permit application were in the administrative completeness review stage when the rule became effective, a technical review fee plus per-acre fee would be collected before the technical review stage of the permit processing would begin. An effective date will be established at the time of publication of the final rule.

Federal Enforcement of a State Program

Where OSMRE institutes action under 30 CFR Part 733 and subsequently becomes the regulatory authority for permitting activities in a State with an approved regulatory program, permit fees as established in that State program would be paid to OSMRE. In States where a Federal program is substituted for an existing State program under 30 CFR Part 733, where the State withdraws its program or OSMRE withdraws approval of the program, OSMRE would charge permit fees according to this proposed fee system but would deduct an amount equal to fees the permit applicant had already paid to the State for the permitting action. If a State regains primacy following OSMRE enforcement of the State or Federal program in that State, OSMRE would not refund permit fees.

Upon substituting Federal enforcement for the permitting portion of a State program, or implementing a Federal program in a State, OSMRE may review existing pemits for compliance with SMCRA. Since the need for this review is not caused by negligence on the part of the permit holder but rather results from a deficiency in administration of a program, fees would not be charged for this permit review. However, if this review resulted in a permit revision, fees would be charged for review of the permit revision.

D. Small Operators

The legislative history of SMCRA indicates that Congress had in mind small and medium size operators when it allowed in SMCRA section 507(a) for a permit fee less than the actual cost to review, administer and enforce the permit, and for payment of the fee over the term of the permit. The proposed permit fee, while reflecting OSMRE's actual cost accounting data, would result in lower fees for small and medium size operators relative to large operators, due to the per-acre fee that is

part of the fee system. OSMRE is proposing not to allow for payment of the permit fee over the term of the permit because the fees that are proposed should not be prohibitive even for small operators, and the administration of a deferred payment system would be costly to OSMRE and could result in imposition of higher fees to compensate for the added costs.

E. Section by Section Analysis

PART 736—FEDERAL PROGRAM FOR A STATE

Section 736.25 Permit Fees. Section 736.25 would establish the fees to be paid for permits for surface coal mining and reclamation operations and permits for coal exploration in States with Federal programs. It would also establish fees to obtain processing of a permit revision or renewal, or the transfer, sale or assignment of rights under an existing permit, for permit holders in Federal program States. Currently there are Federal programs for Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. A Federal program also has been proposed for California (52 FR 39594, October 22, 1987).

Section 736.25(a) Applicability. Paragraph (a) would state that any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration, or for a permit renewal or revision, or the transfer, assignment or sale of rights in an existing permit, shall submit fees as provided in the section.

Section 736.25(b) New Permit and Repermit Applications. Paragraph (b) would provide that fees for a new permit to conduct surface coal mining and reclamation operations would be charged according to the requirements of the schedule listed in paragraph (f) of the section, and the other requirements of the section that follow.

Paragraph (b)(1)(i) would require that applications for a permit to conduct surface coal mining and reclamation operations in States with Federal programs shall be accompanied by the administrative completeness review fee. The fees would be the amount listed for administrative completeness review in paragraph (f). Paragraph (b)(1)(ii) would provide that, if OSMRE's review for administrative completeness of a permit determines that additional information is needed and requests that the applicant submit the additional information, the applicant must submit an additional administrative completeness review fee along with the required information. OSMRE would identify all additional information necessary in the initial letter. If additional letters are needed because the applicant fails to respond adequately to the initial letter, the applicant would be require to pay $250 for each additional letter necessary. If an additional letter is needed due to an oversight on OSMRE's part, the applicant would not have to pay an additional fee.

Paragraph (b)(2) would contain requirements for fees for a technical review of the permit application. Paragraph (b)(2)(i) would provide that when the applicant receives notice from OSMRE that the permit application is administratively complete, the applicant must submit the technical review fee and per-acre fees as listed in paragraph (f) to move the application to the next step of review. Per-acre fees must be submitted for each acre or fraction thereof of land included in the permit area. Technical review of the permit would begin upon receipt of these fees by OSMRE. Paragraph (b)(2)(ii) would require that, if OSMRE notifies the permit applicant of technical deficiencies in the permit and requests additional information, the applicant would be required to pay a technical deficiency fee when the additional information is submitted. OSMRE would cease technical review on the permit while awaiting the required information and would resume review of the application upon receipt of the fee and information. OSMRE would identify all technical deficiencies in the initial technical deficiency letter. If additional technical deficiencies are noted that could have been included in the original letter and consequently an additional letter is sent, no charge would be made for the additional letter.

However, if the applicant fails to respond adequately to the request for additional information contained in the first technical deficiency letter and additional letters are necessary to repeat a request or a portion of a request, the applicant would be charged the technical deficiency fee for additional letters necessary. Further, if the response to a technical deficiency letter raises new issues that require an additional technical letter, the applicant would be charged an additional technical review fee.

Paragraph (b)(3) would provide for payment of the decision document fee. To obtain a permit, the applicant would be required to submit a decision document fee upon being notified by OSMRE that the permit application is technically adequate. When the fee is received by OSMRE, preparation of the decision document would begin.

Section 736.25(c) Permit Renewals and Revisions, Transfer, Assignment or Sale of Rights, Coal Exploration Permits. Under proposed 30 CFR 736.25(c)(1) fees for processing applications for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for coal exploration permits would be charged to the applicant at the hourly rate established in paragraph (f). Fees would be calculated by multiplying the hourly rate by the number of hours of actual time expended by OSMRE staff to review and process the application. Time spent by support staff in support activities and by supervisors in a supervisory capacity would not be added to the fee because the hourly rate includes a factor which takes into account support and supervisory costs and other overhead. Time spent in conducting informal conferences such as those provided for permit renewals and significant permit revisions in 30 CFR Part 744, and in providing for public hearings for coal exploration permits in 30 CFR Part 772, would not be included in the calculation of time expended.

Paragraph (c)(2) would provide that fees due under paragraph (c) shall be paid within 30 days of receipt of a bill from OSMRE even if approval is denied or the application is withdrawn. Approval of the permit renewal or revision application, the transfer, assignment or sale of rights in an existing permit, or the permit to conduct coal exploration, would be issued upon receipt of the fees.

Under proposed § 736.25(c)(3), if the fees are not paid within 30 days they would be considered delinquent and would 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 fees would run from the 31st day after the bill from OSMRE is received until the date of payment. Failure to pay overdue fees may result in one of more of the actions specified in 30 CFR 870.15 (e)(1) through (e)(5). Delinquent fees may be subject to late payment penalties specified in 30 CFR 870.15(f) and processing and handling charges specified in 30 CFR 870.15(g).

Concerning hourly fees paid for services under this paragraph, OSMRE is soliciting comment on the possibility of pre-collecting these fees also. OSMRE

could estimate the costs beforehand and collect the estimated cost from the applicant before the action is processed. Excess money would be refunded to the applicant; if additional funds were found to be necessary, further processing would cease until OSMRE collected an additional estimated amount. This would eliminate the problem of delinquent fees and of trying to collect fees for time spent processing applications that are later denied or withdrawn by the applicant.

Section 736.25 (d), (e). Section 736.25(d) would state that all fees are non-refundable. Section 736.25(e) would require that all fees be submitted in the form of a certified check, bank draft, or money order.

Section 736.25(f) Fee Schedule. Section 736.25(f) would establish the fee schedule to apply to § 736.25.

The administrative completeness review would be $250 for the initial review and for any subsequent reviews necessary because of insufficient information in the permit application.

The fee for the technical review would be $1,350.00 plus $13.50 per acre or fraction thereof of land to be included in the permit area.

The fee for technical deficiency letters would be $690, for each technical deficiency letter necessary to obtain the required permit application information.

The decision document fee is proposed at $2,000.00. This fee would cover the costs of OSMRE's preparation of all documentation necessary to prepare the permit for issuance.

Hourly fees would be $24.00 per hour. When hourly fees are charged, fees would be prorated for charges for less than a full hour.

PART 740—FEDERAL LANDS

Section 750.25 Permit Fees. Section 750.25 would establish the required permit fees to be paid for permits for surface coal mining and reclamation operations and for coal exploration on Federal lands where OSMRE issues a permit. It would also establish required fees for processing of a permit revision or renewal, or for the transfer, sale or assignment of rights in an existing permit, where OSMRE was required to process these actions. These fees would not apply in States with State-Federal Cooperative Agreements where OSMRE does not issue a permit.

The rules in this section would parallel the rules in proposed § 736.25 and therefore the preamble explanation for those proposed rules would apply to this section also.

PART 750—INDIAN LANDS

Section 750.25 Permit Fees. Section 750.25 would establish the required permit fees to be paid for permits for surface coal mining and reclamation operations on Indian Lands. OSMRE is the regulatory authority on Indian lands for surface coal mining and reclamation operations. The Bureau of Land Management has primary responsibility for coal exploration activities involving Indian coal. Proposed § 750.25 would also establish required fees for processing of a permit revision or renewal, or for the transfer, sale or assignment of rights in an existing permit.

The rules in this section would parallel the rules in proposed § 736.25 and therefore the preamble explanation for those proposed rules would apply to this section also, except that permits for coal exploration are not issued by OSMRE on Indian lands; therefore the coal exploration permit fee is omitted.

IV. Procedural Matters

Effect in Federal Program States

Proposed 30 CFR 736.25 would apply in those States with Federal programs. These include 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. Comments are specifically solicited as to whether unique conditions exist in any of these States which should be reflected as specific amendments to any or all of the Federal programs.

OSMRE has issued a proposal to implement a Federal program for the State of California (52 FR 39594, October 22, 1987). Comments are also specifically solicited as to whether conditions exist in California that should be reflected in the proposed Federal program for that State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Out of the nearly 7,000 active mining operations in the United States, the majority (over 95%) are governed by State programs, and not affected by the rule. Most of the operations in the minority potentially affected by the proposed rule already have surface mining and reclamation permits, so for this minority of operations the rule would apply only to the typically less costly renewal of, revision of, or transfer, assignment or sale of rights in existing permits. Since permit renewal is required only at five year intervals, the potential number of renewal applications in a given year is only one-fifth of the total number of permits outstanding. Adding to these the permits for new operations and for coal exploration for the anticipated number of applications processed annually by OSMRE the anticipated fees are expected to fall below the criteria established by the Executive Order.

Against this background of limited activity, the Department has concluded that the proposed rule would not have an annual effect on the economy of $100 million or more, or result in a substantial increase in costs or prices for the Federal government, consumers, individual industries, State or local government agencies, or geographic regions.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made an interim 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). It is anticipated that a finding of no significant impact (FONSI) will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding will be made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Adele Merchant, Chief, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1864 (Commercial or FTS).

List of Subjects

30 CFR Part 736

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

Accordingly, it is proposed to amend 30 CFR Parts 736, 740, and 750 as set forth below:

Dated: February 18, 1988.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 736—FEDERAL PROGRAM FOR A STATE

1. The authority citation for Part 736 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

2. Section 736.25 is added to read as follows:

§ 736.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations in Federal program States according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations pursuant to a Federal program shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical review will resume upon receipt of the fee and information.

(3) *Permit issuance.* Following receipt of a notice from OSMRE of technical adequacy, the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights; coal exploration permits.* (1) The applicant for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for a coal exploration permit, shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE even if the permit action is denied or the application is withdrawn. The permit renewal or revision, the transfer, assignment or sale of rights, or the coal exploration permit will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the 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 fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in § 870.15(e)(1) through (e)(5) of this chapter. Delinquent fees may be 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.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New Permit:	
Administrative completeness review	$250.00
Technical review	1,350.00
Per-acre of permit area	13.50
Technical deficiency	690.00
Decision document	2,000.00
Hourly fees	24.00

PART 740—FEDERAL LANDS PROGRAM

3. The authority for Part 740 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* as amended, and 30 U.S.C. 181 *et seq.*

4. Section 740.25 is added to read as follows:

§ 740.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations or coal exploration; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations on Federal lands according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations on Federal lands shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical

review will resume upon receipt of the fee and information.

(3) *Permit issuance.* Following receipt of a notice from OSMRE of technical adequacy the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights; coal exploration permits.* (1) The applicant for a permit renewal or revision, for the transfer, assignment or sale of rights in an existing permit, or for a coal exploration permit shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE, even if the permit action is denied or the application is withdrawn. The permit renewal or revision, the transfer, assignment or sale of rights, or the coal exploration permit will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the 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 fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in § 870.15(e)(1) through (e)(5) of this chapter. Delinquent fees may be 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.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New permit:	
Administrative completeness review	$250.00
Technical review	1,350.00
Per-acre	13.50
Technical deficiency	690.00
Decision document	2,000.00
Hourly fees	24.00

PART 750—INDIAN LANDS PROGRAM

5. The authority for Part 750 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and 5 U.S.C. 301.

6. Section 750.25 is added to read as follows:

§ 750.25 Permit fees.

(a) Any person who submits to OSMRE an application for a permit to conduct surface coal mining and reclamation operations; a permit renewal or revision; or the transfer, assignment or sale of rights in an existing permit, shall submit fees to OSMRE as provided in this section.

(b) *New permit applications.* Fees will be charged for reviewing an application for and issuing a permit to conduct surface coal mining and reclamation operations on Indian lands according to the schedule listed in paragraph (f) of this section, as follows:

(1) *Administrative completeness review.* (i) An applicant for a permit to conduct surface coal mining and reclamation operations on Indian lands shall submit the administrative completeness review fee with the permit application.

(ii) Upon request from OSMRE for additional information required for administrative completeness, the applicant shall resubmit the permit application with the required information, and an additional administrative completeness review fee pursuant to paragraph (b)(1)(i) of this section.

(2) *Technical review.* (i) Following receipt of a notification of administrative completeness of a permit application the applicant shall submit the technical review fee, plus the per-acre fee for each acre of land or fraction thereof to be included in the permit area. Technical review of the permit will begin upon receipt of these fees.

(ii) Upon notification of technical deficiency(ies) in the application and a request from OSMRE for additional information, the applicant shall submit the technical deficiency fee along with the required information. Technical review will resume upon receipt of the fee and information.

(3) *Permit Issuance.* Following receipt of a notice from OSMRE of technical adequacy the applicant shall submit the decision document fee to obtain a permit decision document and permit issuance.

(c) *Permit renewal or revision; transfer, assignment or sale of rights.* (1) The applicant for a permit renewal or revision, or for the transfer, assignment or sale of rights in an existing permit, shall pay a fee for processing the application that is determined by multiplying the hourly rate listed in paragraph (f) of this section by the actual time expended by OSMRE staff to review and process the application, excluding any time expended to conduct informal conferences and hearings.

(2) Fees due under this paragraph shall be paid within 30 days of receipt of a bill from OSMRE even if the permit action is denied or the application is withdrawn. The permit renewal or revision, or the transfer, assignment or sale of rights will be issued upon approval of the application and receipt of the fees.

(3) Any delinquent fees due under this paragraph shall be subject to interest at the rate established quarterly by the U.S. Department of the 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 fees will begin on the 31st day from receipt of the bill from OSMRE and run until the date of payment. Failure to pay overdue fees may result in one or more of the actions specified in §§ 870.15 (e)(1) through (e)(5) of this chapter. Delinquent fees may be 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.

(d) All fees are non-refundable.

(e) All fees shall be submitted to OSMRE in the form of a certified check, bank draft or money order.

(f) *Fee schedule.*

New Permit	
Administrative Completeness Review	$250.00
Technical Review	$1350.00
Per-Acre of permit area	$13.50
Technical Deficiency	$690.00
Decision Document	$2000.00
Hourly Fees	$24.00

[FR Doc. 88–10852 Filed 5–16–88; 8:45 am]

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federal register

Tuesday
May 17, 1988

Part IV

Environmental Protection Agency

40 CFR Part 264, etc.

Land Disposal Restrictions for First Third Scheduled Wastes (OSW-FR-88-006); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 266 and 268

[SWH-FRL-3364-2; OSW-FR-88-006]

Land Disposal Restrictions for First Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to RCRA section 3004(g)(5), EPA is proposing to prohibit the land disposal of certain untreated hazardous wastes listed in 40 CFR 268.10 (the first one-third of the schedule of restricted hazardous wastes). Today's action proposes treatment standards and prohibition effective dates for these wastes. Today's action also reproposes the prohibition effective dates for certain "First Third" wastes that were the subject of a recent, related proposed rulemaking (53 FR 11742, April 8, 1988). EPA is proposing these changes based on data from the Agency's recently conducted survey of available alternative capacity at treatment, storage, disposal, and recycling facilities. In addition, the Agency is proposing to rescind the nationwide variance based on inadequate treatment capacity promulgated for hazardous wastes containing halogenated organic compounds (other than soils), and for F001–F005 spent solvent wastes generated by generators of 100–1000 kilograms of hazardous waste per month and solvent wastes resulting from Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) response actions or RCRA corrective actions.

In actions not involving First Third wastes (or not exclusively involving such wastes), EPA is proposing to amend the treatment standard for spent solvent methylene chloride in wastewaters from the pharmaceutical industry. Also, EPA is proposing to require all hazardous waste derived products that are used in a manner constituting disposal and whose placement on the land is exempt from regulation pursuant to 40 CFR 266.20(b) to meet any applicable treatment standard for each hazardous waste that they contain as a condition of retaining that exemption. With respect to California list wastes containing halogenated organic compounds (HOCs), the Agency is soliciting additional comment on an approach that would allow these wastes to be burned in industrial boilers and furnaces in accordance with applicable regulatory standards. Finally, EPA is making certain corrections to the April 8, 1988 proposed rule and is including regulatory language to § 268.30(a) that was inadvertently omitted from the April 8, 1988 proposal.

If these proposed actions are finalized, these First Third wastes can be land disposed after the applicable effective dates if the respective treatment standards are met or if disposal occurs in units that satisfy the statutory no migration standard (see 40 CFR 268.6).

DATE: Comments on this proposed rule must be submitted on or before June 16, 1988.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S–205) (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–88–LDR8–FFFFF on your comments. The OSW docket is located at EPA RCRA Docket (sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346 (toll free) or (202) 382–3000 locally.

For general information on specific aspects of this proposed rule, contact Stephen Weil, Lisa Faeth or William Fortune, Office of Solid Waste (WH 562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4770. For specific information on BDAT/treatment standards, contact Jim Berlow, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917. For specific information on capacity determinations/national variances, contact Jo-Ann Bassi or Linda Malcolm, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7917.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background

A. The Statute

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, require the Agency to promulgate regulations that prohibit the land disposal of untreated hazardous wastes, except in land disposal units that satisfy the "no migration" standard contained in RCRA sections 3004 (d), (e) and (g). Specifically, the amendments include dates when particular groups of untreated hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection into deep injection wells of solvent- and dioxin-containing hazardous wastes and wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)).

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed.

Although these prohibitions normally take effect immediately, the Agency is authorized to grant national variances from statutory dates and case-by-case extensions of effective dates. The Administrator may grant a national variance from a statutory date and establish a different date, not to exceed two years beyond the statutory deadline, based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may grant a case-by-case extension of an effective date for up to one year, renewable once for up to one additional year, when an applicant "demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date" (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)).

In addition to restricting the land disposal of hazardous wastes, Congress also restricted the treatment and storage of hazardous wastes. The statute allows treatment of restricted wastes in surface impoundments which meet minimum technological requirements (certain exceptions are allowed). Treatment in

surface impoundments is permissible provided the treatment residues that do not meet the treatment standards, or applicable statutory prohibition levels where no treatment standards have been established, are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)). Storage of restricted wastes is prohibited unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

1. Scheduled Wastes

The amendments require the Agency to prepare a schedule, by November 8, 1986, for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984, in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes covered under section 3004(e). The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

"Soft hammer" provisions specify that if EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first-third or second-third of the schedule, the waste may continue to be disposed in a landfill or surface impoundment provided that (1) the unit is in compliance with minimum technological requirements and (2) prior to disposal, the generator has certified to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal are not similarly restricted and may continue to be used for disposal of the untreated waste until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from land disposal unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(6), 42 U.S.C. 6924(g)(6)).

B. Regulatory Framework

By way of preface, EPA notes that the following description of existing rules is for the readers' convenience, and is not intended to reopen any of these rules for public comment.

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) establishing the regulatory framework for implementing the land disposal restrictions program. This rule also implemented the first phase of the program with regulations prohibiting the land disposal of solvent- and dioxin-containing wastes. Corrections to the November 7, 1986, rule were included in a June 4, 1987, **Federal Register** notice (52 FR 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were made in a July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment. Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in § 268.4 and 3005(j)(11). Also, the storage restrictions apply to wastes placed in storage after the effective dates. If, however, hazardous wastes subject to the land disposal restrictions are removed from either a storage or land disposal unit, or treated in surface impoundments after the applicable effective date, such wastes are subject to the restrictions and treatment standards.

For the purposes of the restrictions, land disposal includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The Agency also considers placement in a concrete vault or bunker intended for disposal purposes to be land disposal.

The provisions of the land disposal restrictions program apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions.

The land disposal restrictions apply to both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline the Agency must establish the applicable treatment standards under 40 CFR Part 268 Subpart D for each restricted hazardous waste. After the applicable effective dates, restricted wastes may be land disposed in Subtitle C facilities if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal with the exception of first-third and second-third ranked hazardous wastes. The first- and second-third wastes for which EPA has not promulgated treatment standards can continue to be disposed in landfills and surface impoundments, provided certain demonstrations are made, and provided these units meet the minimum technology requirements of section 3004(o), until May 8, 1990, or until EPA promulgates treatment standards, whichever is sooner. Other types of land disposal are not restricted until EPA promulgates treatment standards or until May 8, 1990, whichever is earlier.

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste. EPA may establish treatment standards either as specific technologies or performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the

concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Variances From the Effective Dates

The Agency has the authority to grant national variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make this determination EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a 1-year extension (renewable only once) of a ban effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity.

5. "No Migration" Exemptions From the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous. 40 CFR 268.6. If a petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units and for no longer than the term of the RCRA permit for disposal in permitted units. 40 CFR 268.6(h)

6. Variances From the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes which are unable to be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used. 40 CFR 268.44. Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard and the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could result in the establishment of a new treatability group and corresponding treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal. 40 CFR 268.50. A facility which stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not necessary to facilitate proper treatment, recovery, or disposal.

II. Summary of Today's Proposed Rule

A. Regulatory Approach

On May 28, 1986, EPA published a notice in the **Federal Register** (51 FR 19300) promulgating a schedule for prohibiting the land disposal of hazardous wastes. This schedule is found in 40 CFR 268.10 for so-called "First Third" wastes, 40 CFR 268.11 for "Second Third" wastes, and 40 CFR 268.12 for "Third Third" wastes. In an April 8, 1988, **Federal Register** notice (53 FR 11742) EPA proposed treatment standards and effective dates for complying with the provisions of the land disposal restrictions program applicable to certain First Third wastes. In addition, the Agency proposed an interpretation of the "soft hammer" provisions of section 3004(g)(6) of RCRA, which allow disposal in a surface impoundment or landfill of first- and second-third scheduled wastes for which EPA has not established treatment standards by the statutory deadline. Today's notice proposes treatment standards and effective dates for additional First Third wastes not addressed in the April 8, 1988 proposal.

The proposed effective dates for prohibitions for these wastes are based on a determination of available alternative capacity derived from a recently conducted survey of treatment, storage, disposal, and recycling facilities. In addition, the Agency is revising its proposal regarding effective dates for the First Third wastes for which treatment standards were proposed in the April 8, 1988, **Federal Register** notice based on the new capacity data derived from this survey.

The two notices do not propose treatment standards and effective dates for all of the First Third wastes listed in 40 CFR 268.10. It was not possible to develop and analyze treatment data for all of the First Third wastes within the time limits imposed by the statute. EPA intends to promulgate regulations prohibiting the land disposal of the wastes having proposed standards and effective dates on August 8, 1988. All other wastes listed in 40 CFR 268.10 will be subject to the "soft hammer" provisions of RCRA section 3004(g)(6) (42 U.S.C. 6924 (g)(6)). The Agency's interpretation of these provisions will be codified in final form when EPA promulgates the First Third prohibitions as a final rule.

B. Best Demonstrated Available Technologies (BDAT)

This notice discusses the technologies the Agency considered in determining proposed treatment standards for First Third wastes addressed in this proposal. Since the standards are expressed as performance levels of treatment determined by performance of BDAT, any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet these concentration-based treatment standards. The model BDAT technologies on which these performance standards are based are summarized below.

For F006 and K046 nonwastewaters, the BDAT performance standard is based on stabilization; for F006 and K046 wastewaters, the standard is "No Land Disposal". For wastes K001 and K086 (solvent washes and sludges subcategory), the performance standard is based on incineration followed by stabilization of nonwastewater residuals and chromium reduction followed by chemical precipitation for wastewater residuals. BDAT for nonwastewater forms of K022 is based on fuel substitution followed by metals stabilization and metals precipitation of scrubber water. Fuel substitution or incineration is the basis for BDAT for K083. EPA is proposing rotary kiln incineration as the basis for BDAT for K087 and is soliciting information to support a conclusion that total recycling can be accomplished for some K087 subcategories. Proposed BDAT for K099 is based on chemical oxidation with chlorine. The performance achieved by incineration followed by metal stabilization of ash residues represents proposed treatment by BDAT for both K101 and K102. Treatment standards are based on thermal recovery for K106 nonwastewaters and sulfide precipitation followed by filtration for K106 wastewaters. "No Land Disposal" is the proposed BDAT treatment standard for K021, K025, K060, K044, K045, and K047.

EPA is also proposing to revise the performance standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry to be based on steam stripping. This would change the actual performance standards for these wastewaters in § 268.41(a). Furthermore, EPA is soliciting additional comment on an approach that would amend the § 268.42(c)(2) treatment standards to allow burning of California list HOCs in industrial boilers and furnaces in accordance with applicable regulatory requirements.

BASIS FOR TREATMENT STANDARDS

[BDAT]

Waste code	BDAT
F006:	
Nonwastewaters	Stabilization.
Wastewaters	["No land disposal"].
K001	Rotary kiln incineration; stabilization (nonwastewater residuals); chemical precipitation (wastewater residuals).
K022:	
Nonwastewaters	Fuel substitution; metals stabilization; metals precipitation of scrubber water.
Wastewaters	["No land disposal"].
K046:	
Nonwastewaters	Stabilization.
Wastewaters	["No land disposal"].
K083	Liquid injection incineration or fuel substitution.
K086 (solvent washes and sludges subcategory):	
Nonwastewaters	Incineration; stabilization of ash.
Wastewaters	Chromium reduction; chemical precipitation; filtration.
K087	Rotary kiln incineration.
K099	Chemical oxidation using chlorine.
K101	Incineration; metal stabilization.
K102	Incineration; metal stabilization.
K106:	
Nonwastewater	Thermal recovery.
Wastewaters	Sulfide precipitation; filtration.
K021	["No land disposal"].
K025	["No land disposal"].
K060	["No land disposal"].
K044	["No land disposal"].
K045	["No land disposal"].
K047	["No land disposal"].

C. Waste Analysis Requirements

Today's proposed treatment standards are based on the concentration levels of the hazardous constituents in the waste/treatment residual, the extract of the waste/treatment residual developed using the TCLP, or both the total composition and the extract. Wastes for which destruction and/or removal technologies are BDAT would require a total composition analysis. These wastes are K001, K022, K086, K087, K099, K101, K102, K106, and methylene chloride in F001–F005 wastewaters from the pharmaceutical industry. Wastes for which stabilization technologies are BDAT would require an extract analysis. These wastes are F006 and K046. Proposed treatment standards for wastes requiring a total composition analysis are found in 40 CFR 268.43, and proposed treatment standards for wastes requiring an extract analysis are found in 40 CFR 268.41.

D. National Variances from the Effective Date

EPA is proposing to grant a two-year national variance from the August 8, 1988, effective date of the land disposal restrictions for K106 wastes. The Agency is not proposing to grant a variance to wastes F006, K001, K022, K046, K083, K086, K087, K099, K101 and K102. We are proposing (consistent with drafting in sections 268.30–268.32) that the proposed August 8, 1988, and August 8, 1990 effective dates be codified in § 268.33 of the proposed regulations.

In addition, today's action proposes to grant a two year variance from the applicable effective dates for certain contaminated soils that require solids incineration capacity. EPA is also proposing to change its proposed decision (addressed in the April 8, 1988 notice) to grant a variance from the effective date to wastes K016, K018, K019, K020, K024, K030, and K037. Based on new data, it appears that there is adequate treatment capacity for these wastes and therefore the prohibition effective date should be August 8, 1988.

Among the wastes for which EPA will not set treatment standards by August 8, 1988, are wastes K011, K013, and K014 resulting from production of acrylonitrile. Information received from the industry trade association states that currently, wastes K011 and K013 are all treated by filtering the wastes, underground injecting the filtrate into deep injection wells, and burning the separated suspended matter. The industry association also notes that the producers of the wastes intend to file "no migration" petitions for continued underground injection of these wastes.

The Agency is preparing procedures to evaluate "no migration" petitions for underground injection wells. If the petitions are granted, the waste could be injected into a "no migration" underground injection unit. If no (or insufficient) "no migration" petitions are granted, the Agency may not have sufficient time to set treatment standards for the K011 and K013 filtrate by May 8, 1990, the date these wastes will be absolutely prohibited from land disposal (except in "no migration" units).

EPA is developing treatment standards, which will be promulgated after August 8, 1988, for the separated suspended matter filtered from K011 and K013 wastes, and for K014 still bottoms; these wastes are currently being burned, thus resulting in a residue that will be land disposed, at least in some cases, in units that would not meet the "no migration" standard. These residues

must therefore meet BDAT standards before they are land disposed.

E. Rescission of National Variances for Certain Solvents and California List Wastes

The Agency is proposing today to rescind parts of the November 7, 1986, nationwide variances from the prohibition effective date granted for solvents and the July 8, 1987 variances granted for HOCs. The wastes which would be covered by this action are:

(a) Spent solvent wastes identified as EPA Hazardous Wastes Nos. F001–F005 generated by small quantity generators producing from 100–1,000 kilograms of hazardous waste per month;

(b) Solvent waste generated from section 104 or 106 response actions under CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris; and

(c) Hazardous wastes containing HOCs in concentrations greater than or equal to 1,000 mg/l, except for California list HOC contaminated soils.

Based on revised estimates of the treatment capacity available to treat these wastes, EPA has determined that sufficient capacity exists to incinerate or thermally combust these wastes. The revised capacity estimates are discussed in section III.E. of this proposal.

F. Corrections to the April 8, 1988 Proposal (53 FR 11742)

Today's proposal also makes certain corrections to the April 8, 1988 proposal (53 FR 11742). Specifically, these corrections address the following errors: (1) Neglecting to propose regulatory language reflecting the Agency's approach, as currently regulated by § 268.30(a)(3); (2) incorrectly identifying a hazardous constituent in K103 and K104 (2,4-dinitrophenol) as 2,3-dinitrophenol and stating incorrect levels for aniline, nitrobenzene, and phenol in the regulatory text; (3) incorrectly stating the total composition treatment standard for toluene in K015 waste (0.148 mg/l) as 1.00 mg/l; (4) incorrectly heading the wastewater treatment standard tables for K016 and K018 wastes as "nonwastewater", and the K051 tables in the preamble as "K050"; (5) incorrectly stating the hazardous constituent tetrachloroethene as tetrachloroethane in the preamble tables for K019 wastewaters and nonwastewaters and K020 nonwastewaters; (6) stating the incorrect treatment standard for hexachloroethane in K016 wastewater (preamble) and K030 wastewater (regulatory text); and (7) neglecting to include chlorobenzene in the preamble table for K019 nonwastewater.

III. Regulatory Approach for the First Third Wastes

A. Determination of Treatability Groups and Development of BDAT Treatment Standards

1. Waste Treatability Groups

For the First Third wastes, EPA used the individual listed waste codes as the starting point for developing waste treatability groups. In cases where EPA believed that wastes represented by different codes could be treated to similar concentrations using identical technologies, the Agency combined the codes into one treatability group. EPA based its initial treatability group decisions primarily on whether the waste codes were generated by the same or similar industries from similar processes. EPA believes that such groupings can be made even with limited data because of the high likelihood that the waste characteristics which affect treatment performance will be similar for these different waste codes. For example, two codes pertaining to wastes from the production of veterinary pharmaceuticals (K101 and K102) were combined into a single treatability group.

2. Demonstrated Treatment Technologies

As discussed in EPA's promulgated methodology for determining BDAT (see November 7, 1986, 51 FR 40572), a technology is considered to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of that waste or a similar waste. For some of the First Third waste codes covered by today's proposal, EPA identified demonstrated technologies either through review of literature discussing current waste treatment practices or on the basis of information provided by specific facilities currently treating the waste or similar wastes.

In cases where the Agency did not identify any facilities currently treating wastes represented by a particular waste code, EPA identified demonstrated technologies in the following manner. The Agency first characterized each waste for those parameters which the Agency believes affect the selection of applicable treatment technologies (including recycling). EPA then compared these parameters to other wastes for which these technologies are demonstrated. If the parameters were similar, the Agency considered the technology also to be demonstrated for the waste of interest. For example, EPA considers rotary kiln incineration a demonstrated technology for many waste codes containing hazardous organic constituents, high total organic content, and high filterable solids, regardless of whether any facility is currently incinerating these wastes in a rotary kiln. The basis for this determination is data found in literature, as well as data generated by EPA confirming the use of rotary kiln incineration on wastes having the above characteristics. EPA's rationale for determining demonstrated technologies for each waste treatability group is explained in the section III.A.10. in this preamble which describes the waste-specific treatment standards.

3. Selection of Facilities for Engineering Visits and Sampling

In those instances where additional data were needed to supplement the Agency's current knowledge of treatment performance on the demonstrated technologies, EPA arranged engineering visits to facilities that treat wastes with a demonstrated technology that potentially could be the basis for the treatment standards. The purpose of the engineering visits was to confirm that candidates for sampling, in fact, met EPA's criteria of being well designed facilities and that the necessary sampling points were accessible. During the visit, EPA also would confirm that the facility appeared to be well operated, although the actual operation that occurs during sampling is the basis for EPA's decisions regarding whether the sampling data represented the performance of a properly operated treatment unit.

In general, the Agency considers a well designed facility to be one that contains all the unit operations necessary to treat the various hazardous constituents of the waste and any other nonhazardous materials in the waste that may adversely affect treatment performance. For example, a waste containing hazardous metals and a high concentration of oil and grease would require removal of potentially nonhazardous oil and grease in order to facilitate the subsequent removal of the hazardous metals by precipitation. EPA also places considerable emphasis on the levels of performance the system is designed to achieve in determining whether to sample a particular treatment facility, since the facility will seldom exceed the goals of its original design.

In addition to ensuring that a system is reasonably well designed, the engineering visit is designed to examine whether the facility has a measurable way of describing the operation of the treatment system during the time the

waste is being treated. For example, EPA may choose not to sample a continuous treatment system for which an important design parameter cannot be continuously recorded through the use of a strip chart. In continuous systems, such instrumentation is important in determining whether the treatment system was operating within the design requirements during the period in which the waste was being treated and the samples obtained.

In addition to the design and operation of the treatment system, EPA also bases its decision to sample a facility on whether the piping layout is such that all samples necessary to evaluate treatment performance can be collected. If piping is not suitable or cannot be easily modified, EPA would not perform a sampling visit.

In order to select potential sites for sampling, EPA has established a hierarchy for conducting its engineering visits. The hierarchy is (1) generators treating single wastes on-site; (2) generators treating multiple wastes together on-site; (3) commercial TSDFs; and (4) EPA in-house treatment. The basis of this hierarchy is founded on two major concepts: (1) EPA believes, to the extent possible, that it should try to develop treatment standards from data produced by treatment facilities handling only a single waste; and (2) facilities that routinely treat a specific waste have had the best opportunity to optimize design parameters. Although excellent treatment can occur at many facilities that are not high in this hierarchy, EPA has adopted this approach to avoid, when possible, ambiguities related to the mixing of wastes (particularly wastes from different treatability groups). Therefore, EPA prefers sampling from on-site treatment facilities where the waste of interest is treated alone or as a major component of the total waste handled. If such well designed on site facilities are not available, the Agency then looks to commercial treatment facilities where mixing of many wastes is generally practiced but where extensive optimization of treatment may still have occurred. If no suitable TSDF facilities are identified, EPA conducts in-house tests and optimizes the process itself on a more limited basis.

EPA used a number of data bases to determine if any generators were treating specific wastes on-site or if there were any commercial TSDFs treating this waste. EPA's documentation for locating on-site generating facilities and/or commercial TSDFs for each waste can be found in the Docket for today's rulemaking. Although EPA's data bases provided potential sites of treatment of individual wastes, the data bases provided no data that would preferentially support the selection of one facility for sampling over another. In cases where several treatment sites appear to fall into the same level of the hierarchy, EPA selected sites for visits strictly on the basis of what facility could be visited most expeditiously and later sampled if justified by the engineering visit.

A secondary consideration involved with the selection of technologies for testing was the need to develop data within an ambitious statutory deadline. When selecting technologies to test for performance, these deadlines required that EPA, in some cases, select demonstrated technologies for performance tests based on the Agency's technical judgement. This judgement considered the underlying principles of operation of the various technologies and any available data pertaining to the performance of these technologies on specific types of wastes. EPA's rationale for selecting a given technology is presented by treatability group in Section III.A.10. of this preamble.

4. Hazardous Constituents Considered and Selected for Regulation (BDAT List)

The target list of hazardous constituents to be regulated for all waste codes covered by today's rule is referred to by the Agency as the BDAT List. This BDAT List is derived from a composite of 396 compounds and/or classes of compounds that are presented in 40 CFR Part 261, Appendix VII and Appendix VIII. This composite number includes compounds selected by EPA as representatives of some of the classes. EPA then identified 175 of these 396 for which EPA could not perform an analysis of treatment performance due to one of three reasons: (1) EPA does not presently have an analytical method; (2) there are no analytical standards available for calibrating the instruments; or (3) the analytical method requires the use of an extraction solvent in which the compound would quickly dissociate (break down). The remaining 221 compounds comprise the BDAT List.

For certain treatability groups, the BDAT List was then shortened because it was unlikely that particular constituents would be present. EPA's rationale for shortening the BDAT List for a given waste code or waste treatability group is presented in the Sampling and Analysis Plan (SAP) developed for each Agency sampling visit. The SAP for each tested waste code can be found in the On-site Engineering Reports in the Docket for today's rulemaking.

The specific constituents that the Agency selected for regulation in each treatability group were, in general, those found in the untreated wastes at significant (i.e., treatable) concentrations. EPA does not propose to regulate constituents where data show that they would be effectively treated by use of BDAT and through the regulation of other constituents (i.e., treatment of the regulated constituent naturally results in treatment of other constituents). EPA's rationale for the selection of regulated constituents can be found in the BDAT background document for the treatability group (or waste code) in question.

In some cases, control of indicator pollutants or parameters serves as a means of assuring proper treatment performance. EPA has documented in the record when and why it has selected such indicator pollutants or parameters.

5. Compliance With Performance Standards

All of the treatment standards proposed in today's rule reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that the treatment level be achieved prior to land disposal. It does not require the use of any particular treatment technology. While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal, all treatment standards proposed today are expressed as a concentration level.

In today's rulemaking, EPA has used both total constituent concentration and TCLP analyses of the treated waste as a measure of technology performance. EPA's rationale for when each of these analytical tests is used is explained in the following discussion.

For all organic constituents, EPA is basing the treatment standards on the total constituent concentration found in the treated waste. EPA based its decision on the fact that technologies exist to destroy the various organic compounds. Accordingly, the best measure of performance would be the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

Note.—EPA's land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572)

uses the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for F001–F005, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP data were considered to be the best measure of performance.

For inorganic constituents, EPA is using either total constituent concentration, the TCLP, or in some cases, both, as the basis for treatment standards. EPA is using total constituent concentrations when the technology basis includes a metal recovery operation. The underlying principle of metal recovery is the reduction of the amount of metal in a waste by separating the metal for recovery; therefore, total constituent concentration in the treated residual is an important measure of performance for this technology. EPA also believes that it is important that any remaining metal in a treated residual waste not be in a state that is easily leachable; accordingly, EPA also is using the TCLP as a measure of performance. It is important to note that, for wastes where treatment standards are based on a metal recovery process, the waste has to meet both the total constituent concentration and the TCLP concentration prior to land disposal.

In cases where treatment standards for metals are not based on recovery techniques but rather on stabilization, EPA is using the TCLP as the measure of the treatment technology's performance. The Agency's rationale is that stabilization is not meant to reduce the concentration of metal in a waste but only to chemically and physically minimize the mobility of the metals in the waste. These are parameters measured by the TCLP protocol.

6. Identification of BDAT

A detailed discussion of the Agency's general methodology for establishing BDAT standards is provided in 51 FR 40572 (November 7, 1986) and is not reopened for comment here. This section discusses the specific application of the methodology to the First Third wastes, and provides a summary of some of the principal elements of the BDAT methodology.

As a first step in the development of BDAT treatment standards, EPA screened the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening step is consistent with EPA's promulgated approach in the November 7, 1986, rulemaking for solvent waste codes F001–F005. Also, this screening step recognizes the fact that different performance measures may be appropriate depending on the technology used (i.e., total constituent analysis for incineration versus TCLP for stabilization) as discussed earlier. EPA was able to emphasize the design and operation of the treatment system for the First Third wastes because its field tests have been modified to gather detailed data to support these analyses. As discussed earlier, the EPA field tests include data describing the operating conditions of the treatment unit during the time that treatment samples were collected.

After the initial screening test, EPA adjusted all treated data values based on the analytical recovery obtained in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg. In developing recovery data (also referred to as accuracy data), EPA would first analyze a waste for a constituent and then add a known amount of the same constituent (i.e., spike) to the waste material). The total amount recovered after spiking minus the initial concentration in the sample divided by the amount added is the recovery value.

After adjusting the data, EPA then averaged the performance values for the various treatment operations and compared the mean values using the analysis of variance test (ANOVA), as described in the November 7, 1986, preamble (see 51 FR 40591), to determine if one technology performed significantly better. EPA's decisions regarding selection of one technology over another that resulted from this methodology can be found in the "Identification of BDAT" sections that follow for each treatability group.

7. BDAT Treatment Standards for "Derived-From" and "Mixed" Wastes

a. *Applicability of BDAT to "Derived-From" Wastes from Treatment Trains Generating Multiple Residues.* In a number of instances in this proposed rule, the proposed BDAT consists of an operation or series of treatment operations which generate additional waste residues. For example, the proposed BDAT treatment for wastes K101 and K102 is based on incineration followed by metals (ash) stabilization. Incineration generates two residues requiring treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters (to remove metals) may generate further additional inorganic residues which also may require stabilization. Ultimately, these additional wastes may require land disposal and must, therefore, meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize the following points:

(1) All of the residues from treating the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2) (this point is discussed more fully in the subsection below). Consequently, all of the wastes generated in the course of treatment would be prohibited from land disposal unless they satisfy the treatment standard or meet one of the exceptions to the prohibition.

(2) The Agency's proposed treatment standards generally contain constituent concentrations for "wastewaters" and constituent concentrations for "nonwastewaters". The treatment standards apply to all of the wastes generated in treating the original prohibited waste. Thus, for example, all solids generated from treating K101 and K102 would typically have to meet the treatment standards for nonwastewaters and all wastewaters generated from treating these wastes would have to meet the treatment standards for wastewaters. (For the purposes of this rule, the Agency defines wastewaters as those wastes, mixed wastes, or derived-from wastes that contain less than 1% total organic carbon (TOC) and less than 1% filterable solids. Those wastes, mixed wastes or derived-from wastes that do not meet this definition are defined as nonwastewaters. A facility is not allowed to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard or vice versa.)

The Agency has not performed tests, in all cases, on every waste that can result from every part of the treatment train. However, the Agency's treatment standards are based on treatment of the most concentrated form of the waste. Consequently, the Agency believes that the less concentrated wastes generated in the course of treatment also will be able to be treated to meet these standards.

b. *Applicability of BDAT to Mixtures and Other "Derived-From" Residues.* There is a further question as to the applicability of the BDAT treatment levels to residues generated not from treating the waste (as discussed above), but generated instead from other types of management. Examples are

contaminated soil, or leachate that is derived from managing the waste. In these cases, the mixture is still deemed to be the listed waste, either because of the derived-from rule, the mixture rule (40 CFR 261.3(a)(2)(iv)), or because the listed waste is contained in the matrix (see, e.g., 40 CFR 261.33(d)). The prohibition for the particular listed waste consequently applies to this type of waste.

The Agency believes that the majority of these types of residues can meet the treatment standards for the underlying listed wastes (with the possible exception of contaminated soil and debris for which the Agency is currently investigating whether it is appropriate to establish a separate treatability subcategorization). For the most part, these residues will be less concentrated than the original listed waste. By assuming that the values used to establish the treatment standard exhibit a lognormal distribution, the Agency is allowing for a reasonable amount of process variability in the generation and treatment of the waste. The waste also might be amenable to a relatively nonvariable form of treatment technology such as incineration. Finally, and perhaps most important, the rules contain a treatment variance procedure that allows a petitioner to demonstrate that its waste cannot be treated to the level specified in the rule (40 CFR 268.44(a). This provision provides a safety valve that allows persons with unusual waste matrices to demonstrate the appropriateness of a different standard. The Agency notes that to date it has not received any petitions under this provision (for example, for residues contaminated with a prohibited solvent waste), indicating, in the Agency's view, that the existing standards are generally achievable.

c. *Residues from Managing Listed Wastes, or that Contain Listed Wastes, are Covered by the Prohibitions for the Listed Waste.* In response to inquiries, EPA confirms its long-standing interpretation that residues (leachate, for example) that derive from treatment, storage, or disposal of wastes that were disposed before the effective date of the listing are nevertheless subject to the derived-from rule. These residues therefore could become subject to the land disposal ban for the listed waste from which they derive if they are managed actively after the effective date of the land disposal prohibition for the underlying waste. This result follows from direct application of the regulations and the statute.

First, hazardous waste listings are retroactive—that is, once a particular material is identified as a hazardous waste, all of that material, no matter when disposed, is a listed hazardous waste (albeit, not subject to Subtitle C regulations if in an inactive unit, and not subject to the land ban if disposed of before the ban effective date and not removed or exhumed thereafter). See CERCLA section 103(c) (owners of inactive sites that handled hazardous waste identified or listed by EPA, where the identification or listing occurred after the site was closed, must still notify EPA of their existence); 46 FR 22146, 22149 (April 15, 1981) (same); RCRA sections 3004(d)(3), 3004(e)(3), and 3020(b) (application of RCRA Subtitle C requirements to listed wastes and residues from CERCLA response actions, most of which involve wastes disposed of before the listing date); 50 FR 1994 (Jan. 14, 1985) (listing of dioxin-containing waste applies to waste and residues like contaminated soil, disposed before the listing effective date—and before the Subtitle C regulation effective date). Second, residues derived-from treating, storing, or disposing (including leaking—see, *e.g.* RCRA section 1004(3) and *United States* v. *Waste Industries, Inc.*, 743 F.2d 159, 164 (4th Cir. 1983)), of these wastes are also hazardous by virtue of the derived-from rule.

Thus, residues from managing First Third wastes, listed California list wastes, and spent solvents and dioxin wastes are all considered to be subject to the prohibitions for the underlying hazardous wastes. As explained above, this result stems directly from the derived-from rule in 40 CFR 261.3(c)(2), or in some cases because the waste is mixed with or otherwise contains the listed waste. The underlying principle stated in all of these provisions is that listed wastes remain hazardous until they are delisted.

Nor is there any argument that a residue from managing a listed waste is not considered to be the listed waste. For example, the Agency's historic practice in processing delisting petitions addressing mixed residuals has been to consider them to be the listed waste and to require that delisting petitioners address all constituents for which the original derived-from waste (or other mixed waste) was listed. The language in 40 CFR 260.22(b) states that mixtures or derived-from residues can be delisted provided a delisting petitioner makes the identical demonstration that a delisting petitioner would make for the underlying waste. These residues consequently are treated as the underlying listed waste for delisting purposes. The statute likewise takes this position, indicating that soil and debris that are contaminated with listed spent solvents or dioxin wastes are subject to the prohibition for these wastes even though these wastes are not the originally generated waste, but rather are a residual from the waste's management (RCRA section 3004(e)(3)). It is EPA's view that all such residues are covered by the existing prohibitions and by the treatment standards for the listed hazardous waste that these residues contain and from which they are derived.

8. Transfer of Treatment Standards

In today's notice, EPA is proposing some treatment standards that are not based on testing of the treatment technology of the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes for which EPA has previously developed treatment data. EPA believes transferring treatment performance for use in establishing treatment standards for untested wastes is valid technically in cases where the untested wastes are generated from similar industries or from similar processing steps. As explained earlier in this preamble, transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics. However, in the case where only the industry is similar, EPA more closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes.

EPA undertakes a two-step analysis when determining whether wastes generated by different processes within a single industry can be treated to the same level of performance. First, EPA reviews the available waste characteristic data for identifying those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents and other parameters needed to select the treatment technology appropriate for a given waste. A detailed discussion of each analysis, including how each parameter was selected for each waste, can be found in the background document for each waste.

Second, when an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, EPA then

analyzes a more detailed list of constituents that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process for each waste and constituent can be found in the BDAT background documents for each waste or waste treatability group.

9. No Land Disposal as the BDAT Treatment Standard

EPA is proposing "no land disposal" as BDAT for several of the First Third wastes. This standard is analogous to the no discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. It indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated.

An alternative to establishing no land disposal as BDAT would be to indicate that the BDAT treatment standard is a concentration level of "0" for all hazardous constituents. This appears to the Agency to be a less desirable way to proceed, given that the analytical limit of detection is always greater than zero. Given that technologies exist that make land disposal unnecessary, and that "0" really means the analytic detection limit and not truly zero, EPA thinks that specifying no land disposal as BDAT is a better way of expressing its intention.

The Agency notes that it could simply allow the statutory prohibition to take effect (at least by May 8, 1990, the date of the absolute statutory prohibition) to achieve the intended result of no land disposal. The drawback with this approach is that it allows no possibility of granting a variance from a treatment standard for those wastes that might not be amenable to the BDAT treatment technology. In the absence of a treatment standard, a facility would have to initially petition the Agency to establish a treatment standard for the waste, a more cumbersome and time-consuming process than applying for a variance under 40 CFR 268.44. This approach would also allow the waste to be land disposed until May 8, 1990, under the "soft hammer" of section 3004(g)(6) of RCRA. Accordingly, the Agency believes the best way to proceed is to establish "no land disposal" as the treatment standard.

EPA has recently learned that some F006, K022 and K083 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard proposed for these wastewaters would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which these wastes are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of F006, K022 and K083 wastes, and on the nature of the wastes being injected.

10. Waste Specific Treatment Standards

This section describes the development of BDAT treatment standards for all of the First Third treatability groups covered by today's rule. It includes tables showing the specific constituents regulated, as well as the treatment standards.

a. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

1. *Industry Affected and Waste Description.* The listed waste F006 is primarily generated by facilities in the electroplating or metal finishing industries. However, F006 is often generated by many industries where electroplating is a secondary operation. The Agency estimates that there are approximately 4,500 facilities that potentially generate F006. While this waste is generated in just about all portions of the United States, a large proportion of the facilities generating F006 are located in the Midwest, Northeast, and Southeast.

Electroplating has been broadly defined by the Agency to include electrodeposition of common and precious metals, anodizing, chemical conversion coating, electroless plating, immersion plating, chemical etching and milling, and printed circuit board manufacture (51 FR 43350). The overall process is usually conducted in a series of baths used for various operations such as degreasing, acid etching, prerinsing, passivation, electrodeposition, and/or product rinsing. These baths often generate wastewater streams containing metals, metal salts, acids, alkalis, and various bath control compounds. These wastewater streams are typically combined and treated to generate a precipitated, nonwastewater residual defined as F006. The treated wastewater is typically discharged to a POTW or to a surface water under a NPDES permit.

Untreated F006 wastes are typically aqueous sludges containing up to 60% by weight filterable solids comprised primarily of hydroxide or sulfide salts of the metals used in the electroplating process. Since at different plants, different combinations of metals are being plated and since a variety of rinse waters and bath solutions are mixed and treated in the wastewater treatment systems, concentrations of BDAT List metals can vary widely. Wastes identified as F006 are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* Because of the high water content of the waste, dewatering technologies such as vacuum filtration, plate and frame pressure filtration, and centrifugation have been identified as applicable technologies for reducing the water entrained in the waste. This generally will reduce the volume of solid residuals that require disposal. These technologies, however, are merely simple physical treatment technologies. The Agency does not believe that such technologies provide any significant treatment of the metals or cyanide contained in the sludge. Dewatering technologies are not designed to provide chemical binding of constituents. Thus, little reduction in leachability of metals and/or cyanide is achieved. However, dewatering can be considered an applicable technology when incorporated into a treatment train that includes wastewater treatment technologies such as chromium reduction, cyanide destruction, metals precipitation, settling, filtration (or centrifugation), and solidification.

The Agency has identified a few cases where metal recovery processes for F006 wastes have been performed. The concentrations and identity of metals in F006 wastes vary widely depending on the specific metals used in the plating process. The Agency has determined that while metal recovery processes are applicable technologies for some F006 wastes, at this time, it has not been able to define any particular subcategories of F006 wastes that would be amenable to

a particular recovery process. EPA is currently investigating F006 wastes that are now being recovered, in order to determine the waste characteristics that would define these subcategories. Specifically, EPA is investigating high temperature metals recovery for those F006 wastes that contain greater than 2.5% zinc. EPA solicits comments and data that can be evaluated for this purpose.

EPA has identified stabilization as an applicable technology for treatment of nonwastewater forms of F006. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals. The Agency has data that indicate that this technology is both applicable and demonstrated for F006. EPA does not consider stabilization to be an applicable technology for the treatment of cyanide.

EPA has identified alkaline chlorination, wet air oxidation, ozonation, electrolytic oxidation, and other chemical oxidation as applicable technologies for the treatment of cyanide contained in F006 wastes. All of these technologies are designed to destroy cyanide by converting it to carbon dioxide and nitrogen gas. The Agency is currently investigating the use of these technologies for F006 wastes that contain treatable quantities of cyanide to establish that it is demonstrated for these wastes.

3. *Data Base.* The Agency has nine TCLP data points for nonwastewater F006 (sludges) treated at a commercial treatment, storage, and disposal facility using a stabilization technology. Cement kiln dust was used as the chemical binding agent. All of the data points appear to represent well-designed and well-operated treatment. These data points were used for the development of the BDAT treatment standards for the metal constituents.

The Agency has three TCLP data points for nonwastewater F006 (sludges) treated at a generator's facility using a stabilization technology. Analysis of the quality assurance information for this data was incomplete at the time of this proposal. Therefore, these data points were not used for the development of the BDAT treatment standards for the metal constituents. This data is presented in the background document for this waste.

4. *Identification of BDAT.* BDAT for nonwastewater F006 (sludges) was determined to be stabilization for the metal constituents. Data and information submitted by the commercial hazardous waste treatment industry indicates that this technology is being widely used throughout the United States. EPA has determined that this technology is both applicable and demonstrated for nonwastewater F006 sludges. The Agency currently has no data demonstrating any other treatment or recycling technology for metal constituents that would be applicable to all F006 wastes. Stabilization is judged to be available to treat the metal constituents of F006 wastes because (1) it is commercially available or can be purchased from the technology developer and (2) it provides a substantial reduction in the leaching potential of hazardous constituents.

BDAT for F006 wastes that also contain cyanide is stabilization of the metal constituents preceded by a pretreatment step to destroy the cyanide. The Agency is currently investigating the use of technologies such as alkaline chlorination, wet air oxidation, ozonation, electrolytic oxidation, and other chemical oxidation as applicable technologies for F006 wastes that contain treatable quantities of cyanide. EPA will confirm these technologies as BDAT when this data becomes available.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as F006 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i) *Nonwastewaters.* For wastes identified as F006 nonwastewaters, EPA is proposing to regulate twelve constituents from the BDAT List as indicators of effective treatment of these wastes. Eleven of these are metal constituents including antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, selenium, silver, and zinc. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment information for antimony, arsenic, barium, selenium and cyanide. Therefore, as noted above, the Agency is proposing to reserve BDAT standards for antimony, arsenic, barium, selenium and cyanide until this evaluation can be completed.

(ii) *Wastewaters.* F006 waste is a sludge consisting of precipitated residues generated following treatment of electroplating wastewaters. The treated wastewater is typically discharged to a POTW or to a surface water under a NPDES permit. No additional wastewater is typically generated during the stabilization of nonwastewater F006 sludges.

EPA recognizes that wastewater forms of F006 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from a treatment process such as sludge dewatering or a process other than stabilization (one that can achieve the same performance). Since generation of these types of wastewaters may occur, the Agency is, therefore, proposing a "treatment standard" for F006 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few, if any, petitions for a variance will be submitted because facilities generally will discharge these wastewaters to a POTW or surface water under a NPDES permit. However, EPA solicits comments from any facility that believes that elimination of land disposal of these wastewaters is not feasible and that numerical treatment standards should be promulgated.

EPA has recently learned that some F006 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been

granted. The Agency intends to seek clarification of the circumstances in which F006 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of F006 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Antimony	(1)	(2)
Arsenic	(1)	(2)
Barium	(1)	(2)
Cadmium	(1)	0.066
Chromium (Total)	(1)	3.8
Copper	(1)	0.71
Lead	(1)	0.53
Nickel	(1)	0.31
Selenium	(1)	(2)
Silver	(1)	0.26
Zinc	(1)	0.086
Cyanide	(2)	(2)

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR F006

[Wastewaters]

NO LAND DISPOSAL

b. K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

1. *Industry Affected and Waste Description.* The listed waste K001 is generated by facilities in the wood preserving industry. The Agency estimates that there are approximately 400 facilities that have wood preserving processes that could potentially generate K001 waste. While this waste can be generated in just about all portions of the United States, a large proportion of the facilities generating K001 are located in the Southeast, Northwest, and Central parts of the United States.

The preservation of wood using creosote and/or pentachlorophenol generates wastewaters containing hazardous constituents present in the preservatives. The treatment by any means (including simple settling) of these wastewaters generates the listed waste K001.

Untreated K001 sludges consist of approximately 35% soil, 20% water, and 25% total organics. The organic constituents present in the wastes include pentachlorophenol, creosote, phenolics, polynuclear aromatics, and some nonhalogenated volatiles. These wastes also contain less than 1% BDAT List metals. K001 wastes are characterized by their high filterable solids concentration and high organic content. These wastes are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified incineration in a rotary kiln followed by stabilization of the resultant incinerator ash as applicable technologies for treatment of all nonwastewater forms of K001. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids that are difficult to atomize through a liquid injector. Many rotary kiln incinerators are also designed to simultaneously incinerate other liquid wastes or supplemental fuel. The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction of sludges, solids, or tarry wastes is potentially applicable to these wastes. However, the Agency believes that the performance of rotary kiln incineration attains the performance achievable by other thermal destruction technologies that are well designed, well operated, and can handle sludges of this type. These incinerators generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are often generated and are classified as wastewaters. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

EPA has identified stabilization as an applicable technology for treatment of certain nonwastewater forms of K001. These include precipitated residues from the treatment of wastewaters (such as scrubber waters), as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

The Agency has also identified a wastewater treatment system as an applicable technology for removal of metals from wastewater residuals (such as scrubber waters) generated during treatment or handling of the nonwastewater forms of K001, followed by stabilization of the solid wastewater treatment residues. This wastewater treatment system includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for nonwastewaters.

EPA has not identified any facility currently performing incineration and metals (ash) stabilization of K001 on a commercial scale. However, EPA believes this technology is demonstrated for K001 in that it is being used to treat wastes similar to K001. EPA has confirmed this judgment by using a test facility to incinerate representative samples of K001 wastes.

3. *Data Base.* For K001 waste, the Agency tested rotary kiln incineration at two facilities. The Agency has nine data sets for incineration of K001 waste collected from two facilities representing both creosote waste and pentachlorophenol waste. Data collected during the testing of rotary kiln incineration technologies show that the treatment systems were well operated. The treatment residuals from rotary kiln incineration (ash and scrubber water) are expected to contain metals in treatable concentrations. The Agency has data for stabilization of metals in other incinerator ash and for chemical precipitation of BDAT List metals in wastewaters.

The Agency examined all available treatment data for stabilization of similar incinerator ash as well as chemical precipitation for similar wastewaters. These data were used to develop treatment standards for BDAT List metals in the treatment residuals.

4. *Identification of BDAT.* EPA has determined that the treatment train consisting of rotary kiln incineration followed by stabilization of nonwastewater residuals, and chemical

precipitation of metals for wastewater residuals from incineration, achieves a level of performance that represents treatment by BDAT. The Agency believes that these technologies are available to treat K001 because (1) these technologies are commercially available technologies and (2) incineration provides substantial reduction of organic hazardous constituents, stabilization reduces the leachability of metals in the nonwastewater residual, and chemical precipitation removes BDAT List metals from the wastewater residual.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K001 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

The Agency has recently become aware that data exist that indicate the presence of trace levels of polychlorinated dibenzofurans and polychlorinated dibenzodioxins in some K001 wastes. At the time of this proposal, EPA has not completed its evaluation of these data and thus, defers its decision to regulate these constituents as indicators of BDAT performance until after this evaluation can be completed.

(i) *Nonwastewaters.* For wastes identified as K001 nonwastewaters, EPA is proposing to regulate six BDAT List organic constituents as indicators of effective incineration of these wastes. These include naphthalene, pentachlorophenol, phenanthrene, pyrene, toluene, and xylenes. EPA is also proposing to regulate three metal constituents, copper, lead and zinc, as indicators of effective stabilization of these wastes (based on data from the stabilization of the ash from incineration). EPA's proposed standard for pentachlorophenol is the result of a relatively high analytical quantitation limit observed for this particular K001 waste. EPA solicits data reflecting the quantitation limits attainable in other K001 wastes.

(ii) *Wastewaters.* For wastes identified as K001 wastewaters, EPA is proposing to regulate the same six BDAT List organic constituents as indicators of effective destruction of organics in the combustion unit, thus preventing accumulation of organics in scrubber waters. EPA is also proposing to regulate copper, lead and zinc as indicators of effective precipitation of metal constituents from these scrubber waters.

BDAT TREATMENT STANDARDS FOR K001

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Naphthalene	7.98	(1)
Pentachlorophenol	36.75	(1)
Phenanthrene	7.98	(1)
Pyrene	7.28	(1)
Toluene	0.143	(1)
Xylenes	0.162	(1)
Copper	(1)	0.71
Lead	(1)	0.53
Zinc	(1)	0.086

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K001

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Naphthalene	0.148	(1)
Pentachlorophenol	0.875	(1)
Phenanthrene	0.148	(1)
Pyrene	0.140	(1)
Toluene	0.143	(1)
Xylenes	0.161	(1)
Copper	0.42	(1)
Lead	0.037	(1)
Zinc	1.0	(1)

[1] Not applicable.

c. K022—Distillation bottom tars from the production of phenol/acetone from cumene.

1. *Industry Affected and Waste Description.* The listed waste K022 is generated by facilities in the organic chemicals manufacturing industry. The Agency estimates that there are eight facilities that have this specific production process that could potentially generate K022 waste. These are located in the Eastern, Central, and Southern parts of the United States.

The cumene hydroperoxide process used in manufacturing acetone and phenol from cumene involves: (1) Oxidation of cumene to a concentrated cumene hydroperoxide; (2) acid cleavage of the hydroperoxide to phenol and acetone along with a variety of other products (e.g., cumylphenols, acetophenone, dimethylphenylcarbinol, and alpha methylstyrene); (3) neutralization of the cleaved products with sodium hydroxide or other suitable base or with ion-exchange resins; and (4) separation of the phenol and acetone using a series of distillation columns. The still bottoms from the distillation columns are RCRA waste K022.

As initially generated, K022 wastes are still bottoms that are typically pumped directly from the distillation unit as viscous organic liquids, while they remain hot. Upon cooling, the viscosity of the waste will increase and K022 can become tarry and viscous. It can be kept fluidized by mixing it with various light hydrocarbons, waste olefinic oils or solvents. If not fluidized or kept hot, the waste will eventually harden into an organic solid. K022 consists primarily of partially polymerized phenolics. Major constituents include acetophenone, phenol, and cumyl phenol. A total carbon content of approximately 82–93% makes the waste an excellent fuel substitute with a very high heat content reported as high as 35,300 BTU per pound. A low ash content and a low chlorine content are further indications of its usefulness as a fuel substitute. BDAT List organic constituents reported in significant concentrations are acetophenone, and phenol. Two other BDAT list constituents also were identified in the raw waste from one plant but were claimed as confidential business information. Wastes identified as K022 are typically generated as still bottoms that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution and liquid injection incineration as applicable technologies for treatment of BDAT List

organics contained in nonwastewater K022 wastes. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals with sufficient heat content (BTU per pound). It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K022 in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid injection incinerators. These thermal destruction units often generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are not typically generated from the units using K022 as a fuel substitute. If they were generated, they would be classified as wastewaters. Both of these residues, if generated, must meet the BDAT treatment standards prior to placement in land disposal units.

EPA has identified stabilization as an applicable technology for treatment of BDAT List metals contained in the inorganic nonwastewater forms of K022. These include precipitated residues from the treatment of wastewaters (mixed with or derived from K022 wastes), as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

The Agency has determined that six of the eight facilities that generate K022 are subsequently using the waste as a fuel substitute. The Agency has data that indicate incineration can achieve treatment levels similar to these fuel substitution processes on wastes with similar waste characteristics. Therefore, the Agency has determined that both fuel substitution and incineration are demonstrated for K022 nonwastewaters.

3. *Data Base.* For waste code K022, the Agency has treatment data from two facilities using fuel substitution. EPA has twelve untreated and treated data points.

4. *Identification of BDAT.* EPA has determined that fuel substitution followed by metals (ash) stabilization and metals precipitation of scrubber water achieves a performance level that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K022. While no specific data are available on incineration of K022 in a rotary kiln, EPA believes that it would achieve the same level of performance as fuel substitution. This treatment system is judged to be available to treat K022 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of BDAT List organic constituents in K022.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K022 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i) *Nonwastewaters.* For wastes identified as K022 nonwastewaters, EPA is proposing to regulate eight constituents from the BDAT List as indicators of effective treatment of these wastes. These include toluene, acetophenone, phenol, diphenylamine, diphenyl nitrosamine, sulfide, nickel and total chromium. The standard for diphenylamine and diphenylnitrosamine is listed as the sum of these constituents. This is necessary because the two compounds cannot be distinguished using EPA's standard analytical testing procedure. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for sulfide. Therefore, the Agency is proposing to reserve a standard for sulfide until this evaluation can be completed.

A sample of untreated ash from the burning of K022 as a fuel substitute was analyzed for isomers of chlorinated dibenzofurans and chlorinated dibenzodioxins. A trace amount (parts per trillion) of tetrachlorodibenzofurans (TCDF) was detected in this sample. This amount was determined to be below the typical BDAT quantitation level for these compounds. Therefore, the Agency is not proposing a treatment standard for TCDF. The Agency is currently reexamining the validity of the quantification of this analysis. K022 wastes do not typically have any chlorinated organics that could be the source or precursor of the TCDF. The Agency is investigating potential mechanisms for its formation due to the presence of other chlorinated organics in the wastes that were blended with the K022.

(ii) *Wastewaters.* No scrubber waters are typically generated during the use of nonwastewater K022 as a fuel substitute. No additional wastewater is typically generated during the stabilization of the resultant ash residues. EPA recognizes that wastewater forms of K022 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from an incineration process that does generate a scrubber water. Since generation of these types of wastewaters may occur, the Agency is therefore, proposing a "treatment standard" for K022 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few petitions for a

variance will be submitted. However, EPA solicits comments from facilities that believe that land disposal of K022 wastewaters is unavoidable.

EPA has recently learned that some K022 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which K022 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of K022 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARD FOR K022

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetophenone	19.0	(1)
Phenol	12.0	(1)
Toluene	0.034	(1)
Sum of diphenylamine and diphenylnitrosamine	13.0	(1)
Sulfide	Reserved	(1)
Chromium (Total)	(1)	3.4
Nickel	(1)	0.25

[1] Not applicable.

BDAT TREATMENT STANDARD FOR K022

[Wastewaters]

[No land disposal]

d. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead based initiating compounds.

1. *Industry Affected and Waste Description.* The listed waste K046 is generated by facilities in the explosives manufacturing industry. The Agency estimates that there are approximately 150 facilities that have processes that could potentially generate treatment sludges identified as K046. Approximately 35 of these are government owned military facilities. While these wastes are generated in just about all portions of the United States, a large proportion of the nonmilitary facilities are located in California, Utah, Missouri and Pennsylvania and the military facilities are located primarily in Tennessee, Wisconsin, Virginia and Illinois.

Wastewaters are produced during various stages in the manufacture and formulation of lead-based initiating compounds (ones that initiate other explosives) and during the fabrication of these compounds into finished products (such as ammunition). These wastewaters are contaminated with these initiating compounds and with other feedstock chemicals. The wastewater is treated by boiling and/or addition of caustic to decompose residual explosive material. A sludge is generated from this wastewater treatment and is identified as the listed waste K046.

K046 wastewater treatment "sludges" are typically generated as a fluid mixture consisting of approximately 95% by weight water and total organic carbon content of approximately 460 ppm. The primary BDAT List constituent in K046 is lead. Wastes identified as K046 are typically generated as sludges that, for the purposes of BDAT, are classified as nonwastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified stabilization as an applicable technology for treatment of nonwastewater forms of K046. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

EPA has not identified any facility currently performing stabilization of K046 on a commercial scale. EPA believes stabilization is demonstrated for K046, in that, it is being used to treat wastes that EPA believes have treatability characteristics similar to K046. EPA has confirmed this judgment by using a test facility to stabilize this waste.

3. *Data Base.* The Agency has ten data sets for K046 nonwastewaters. Data were collected by the EPA at a single test facility that employs stabilization using various binder materials. The ten data points for K046 waste were obtained using the Toxicity Characteristic Leaching Procedure and appear to represent proper design and operation. These data points were considered in the development of the treatment standards for K046.

4. *Identification of BDAT.* EPA has determined that the performance achieved by stabilization represents treatment by BDAT. The Agency performed an analysis of variance test for TCLP performance levels achieved by stabilization using three different binder materials: Portland cement, kiln dust, and lime/flyash. The results show that stabilization using Portland cement binder provides significantly better reduction with regard to the concentrations of metals in the leachate than the other two binder materials tested. Stabilization is judged to be available to treat K046 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the leachable levels of BDAT List metals present in the K046 wastes.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K046 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

(i). *Nonwastewaters.* For wastes identified as K046 nonwastewaters, EPA is proposing to regulate only lead as an indicator of effective treatment of these wastes. The Agency is also proposing a treatment standard of "No Land Disposal" for K046 nonwastewaters that are explosive. If a K046 waste is explosive and remains explosive after treatment by solidification it should meet the same requirements as the explosive wastes identified as K044.

K045 and K047. The Agency specifically requests comments on this approach.

(ii) *Wastewaters.* No additional wastewater is typically generated during the stabilization of nonwastewater K046 sludges. EPA recognizes that wastewater forms of K046 may be generated at a CERCLA site, during a corrective action at a RCRA facility, as a leachate from a landfill, or as a residual from dewatering or a treatment process other than stabilization (one that can achieve the same performance). Since generation of these types of wastewaters may occur, the Agency is therefore, proposing a "treatment standard" for K046 wastewaters of "No Land Disposal". By establishing this standard, a facility that generates and needs to treat a wastewater, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few, if any, petitions for a variance will be submitted because these wastewaters usually will be discharged to a POTW or to surface waters following treatment to meet NPDES requirements.

BDAT TREATMENT STANDARDS FOR K046

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Lead	([1])	0.176

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K046

[Wastewaters and Explosive Nonwastewaters]

No Land Disposal

e. K083—Distillation bottoms from aniline production.

1. *Industry Affected and Waste Description.* The listed waste K083 is generated by facilities in the organic chemicals manufacturing industry. The Agency estimates that there are six facilities that have this specific production process that could potentially generate K083 waste.

Aniline is produced almost exclusively by the vapor-phase reduction of nitrobenzene in the presence of a copper catalyst. In a typical process, nitrobenzene is vaporized and fed with excess hydrogen into a reactor. The crude product mixture leaving the reactor consists primarily of aniline, water, hydrogen and some unreacted nitrobenzene. This mixture is condensed to separate the aniline/water mixture from the hydrogen gas stream. The two-phase aniline/water mixture is then separated in a decanter and the aniline phase is purified by a two-stage distillation process. The heavy ends from the distillation process is the listed waste K083.

Untreated K083 wastes are viscous organic liquids consisting of 45 to 85% by weight of a mixture of aniline, diphenylamine, nitrobenzene, phenylenediamine, and benzene. It also contains approximately 15 to 55% by weight of other unidentified organics. The BDAT List organic constituents of concern include aniline, phenylenediamine, diphenylamine, nitrobenzene and benzene. The heat content of the waste is approximately 13,500 BTU per pound. The total organic halogen content of K083 has been reported to range from 0.03 to 0.3% (as Chlorine). Copper is the only metal anticipated to be present and has been measured at 2.5 ppm.

2. *Applicable/Demonstrated Treatment Technology.* The Agency has identified liquid injection incineration and fuel substitution as applicable technologies for the nonwastewater forms of K083. These technologies have been selected due to the high heat (BTU) content, the low halogen content, the low metal content, and the fact that the waste can be handled as a liquid.

EPA has identified fuel substitution as an applicable technology for treatment of liquid forms of nonwastewater K083. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have reasonably high concentrations of organic chemicals in order to have sufficient heat content. It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K083 in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid incinerators. Ash residues and scrubber waters are not typically generated using these fuel substitution processes.

EPA has identified incineration in units with liquid injection as an applicable technology for treatment of nonwastewater forms of K083. Many incinerators are designed specifically to handle only liquid wastes, while others are designed to handle both liquids and solids (or sludges). The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology that is designed for thermal destruction of liquids is potentially applicable to these wastes. However, the Agency believes that the performance of liquid injection incinerators attains the performance achievable by other thermal destruction technologies that are well designed and well operated. While many liquid incinerators generate ash residues and scrubber water residues, the Agency believes that all of the facilities that currently incinerate K083 or use K083 as a fuel substitute are not generating either of these residue types.

Liquid injection incineration has been demonstrated on a commercial basis for the treatment of K083 at two of the facilities that generate K083. Fuel substitution in a steam boiler has been demonstrated on a commercial basis at one of the facilities that generates K083.

3. *Data Base.* The Agency visited one facility that employs liquid injection incineration as a treatment for the listed waste K083. According to plant personnel, no residual ash or scrubber wastewaters are generated from this treatment technology. The analyses of the ash content of untreated K083 confirmed that no ash could be detected below the limit of 0.01% by weight. This facility did not have a vent scrubber or other pollution control device on the liquid injection incinerator and, therefore, did not generate any scrubber water.

4. *Identification of BDAT.* EPA has determined that the performance achieved by liquid injection incineration or fuel substitution represents treatment by BDAT. EPA has determined that liquid injection incineration of K083 can be accomplished without generating any residuals, either ash or scrubber water. Therefore, the level of performance achieved by liquid injection incineration obviously cannot be improved upon. Liquid injection incineration has been demonstrated on a commercial basis. The Agency also believes this technology is available because: (1) This technology is commercially available or can be purchased from a proprietor and (2) this technology achieves substantial reduction of the hazardous organic constituents present in waste K083. Fuel substitution of K083 is also considered by the Agency to be BDAT. Fuel substitution has been demonstrated on a commercial basis.

5. *Regulated Constituents and Treatment Standards.* The Agency is proposing that, since no residuals are anticipated from the use of either BDAT technology, the BDAT "treatment standard" for wastes identified as K083 is "No Land Disposal". The Agency recognizes that the possibility exists that these wastes may be generated at a CERCLA site, during a corrective action at a RCRA facility, or from the use of a treatment technology that does produce a residual. By establishing the standard as "No Land Disposal", a facility that does generates a treatment residual, can submit a petition to the Agency for a variance from this treatment standard. The Agency believes that few petitions for a variance will be submitted.

EPA strongly urges facilities that have K083 wastes that they believe will generate a treatment residual, to comment on this rule. Specifically, comments should provide the following: (1) Reasons why the K083 waste generated at their site is believed to be different than the waste described in this preamble; (2) a description of the treatment technology currently being used to treat the K083 generated at their site; and (3) analytical data, including analyses for total constituents, on the residuals (either ash or scrubber water) that are generated by the treatment technology.

EPA has recently learned that some K083 wastewaters may be disposed through underground injection. If this is the case, the "No Land Disposal" standard would preclude continued injection of untreated wastewaters unless a no migration petition had been granted. The Agency intends to seek clarification of the circumstances in which K083 wastewaters are being injected underground in order to determine whether the "No Land Disposal" standard should be modified. The Agency thus seeks comment on the circumstances surrounding injection of K083 wastewaters, and on the types of wastes being injected.

BDAT TREATMENT STANDARDS FOR K083

[Nonwastewaters and Wastewaters]

No Land Disposal

f. K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from the cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.

1. *Industry Affected and Waste Description.* The listed waste K086 is generated by facilities in the ink formulation industry. The Agency estimates that there are approximately 460 facilities that formulate ink and may potentially generate K086 waste. While this waste can be generated in just about all portions of the United States, a large proportion of the facilities generating K086 are located in California, New Jersey, and in states surrounding the Great Lakes.

By definition K086 wastes can be from one of three major subcategories (depending on the material used for washing). These are: (1) Solvent washes; (2) solvent sludges; and (3) caustic/water washes and sludges. However, EPA is not establishing treatment standards at this time for the latter two subcategories. Thus, the discussion that follows relates only to the solvent washes subcategory. K086 solvent washes can also vary depending upon which solvent is used to clean the ink formulating equipment. The principal solvents used include acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and xylenes. It is important to note that some of these solvents also fall under the F001–F005 solvent listings. In such cases, the treatment standards for the F001–F005 wastes that were promulgated in November, 1986, are already in effect. It should be noted, however, that elsewhere in this notice, the Agency is proposing to modify one of the solvent standards. This change is not expected to impact the standards applicable to ink formulators.

For the purposes of investigating BDAT, the solvent washes subcategory is defined as those K086 wastes which are derived from processes which have used any of the following chemicals as a solvent: Acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and/or xylenes.

The solvent washes usually contain relatively high concentrations of the cleaning solvents used and low concentrations of solids. The solvent sludges contain relatively high concentrations of solids. This difference in solids content changes the applicability of the type of incineration unit or fuel substitution unit that would be necessary to destroy the organic constituents in the waste.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution as an applicable technology for treatment of K086 solvent washes. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals in order to have sufficient heat content. It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K086 as a fuel in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as liquid incinerators. Any treatment residues generated from the use of these fuel substitution processes must meet the BDAT treatment standards prior to placement in land disposal units.

Batch distillation and fractional distillation can be used to separate components having different boiling points. Distillation technologies can be used to recover solvents from the solvent washes subcategory. These technologies reduce the amount of material to be treated; nevertheless, the bottoms from this process would require treatment by incineration prior to land disposal.

EPA has identified incineration in units with liquid injection as an applicable technology for K086 solvent washes as well as incineration in a rotary kiln. Liquid injection incinerators are designed to only handle liquid wastes. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids but, simultaneously can also incinerate injected liquid wastes. The purpose of all incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction is potentially applicable to these wastes. However, the Agency believes that the performance of liquid injection incinerators attains the performance achievable by other thermal destruction technologies that are well designed and well operated. For the purposes of BDAT, any solid ash residues are classified as

nonwastewaters. Scrubber waters from air pollution control devices are classified as wastewaters. Both of these residues must meet the BDAT treatment standards for the K086 solvent washes subcategory prior to placement in land disposal units.

EPA has determined that the applicable technology for scrubber waters is a wastewater treatment system that includes a hexavalent chromium reduction step to convert any hexavalent chromium to the trivalent state and a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for K086 nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of K086 nonwastewater residues that do not meet the BDAT standards for K086. These include precipitated residues from the treatment of K086 scrubber waters, as well as ash residues which may be potentially generated from either incineration or fuel subtitution. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are considered nonwastewaters. The Agency believes that the majority of these processes do not generate residuals that are considered wastewaters.

3. *Data Base.* The Agency's preference is for total recycling for the K086 solvent washes. However, residues from batch distillation are still bottoms that need additional treatment (i.e., incineration and stabilization) prior to land disposal. Therefore, the Agency tested incineration for treatment of the K086 solvent washes subcategory.

At an EPA testing facility, K086 wastes from the solvent washes subcategory were incinerated in a rotary kiln/liquid injection incinerator. The data were collected by EPA at its in-house facility. Operating data collected during the treatment test show that the facility was properly operated during the time that the waste was being treated. Treatment standards for the BDAT List metals are being transferred from wastewater metals treatment data for similar wastes that have been previously developed by the Agency.

4. *Identification of BDAT.* Incineration is demonstrated for treatment of BDAT List organics in K086 solvent washes. The resultant quench waters or scrubber waters are, for the purposes of BDAT, classified as wastewaters. Treatment for the removal of BDAT metals contained by these wastewaters will result in a sludge, which for the purposes of BDAT, are classified as nonwastewaters. Further details regarding BDAT development and data transfer are provided in the Background Document for this waste code.

Incineration of BDAT List organics contained in the solvent washes generated a scrubber water that contained BDAT List Metals. EPA does not have treatment data specifically for treatment of this scrubber water. The Agency does have performance data on a metal bearing wastewater judged to be similar to the K086 scrubber water. These data consist of eleven data points from one facility using chromium reduction followed by lime precipitation and sludge filtration. The BDAT List metals contained by the solid residual generated from this treatment system did not require further treatment because TCLP leachate concentrations were not found at treatable levels.

These technologies are judged to be available to treat these wastes because: (1) They are commercially available or can be purchased from a proprietor and (2) they provide substantial reduction of the concentration of hazardous constituents released into the environment.

5. *Regulated Constituents and Treatment Standards.* As noted above, the Agency is not, at this time, proposing treatment standards for K086 wastes in (1) the solvent sludges subcategory or (2) the caustic/water washes and sludges subcategory. Since no standards are being proposed for these subcategories, the "soft hammer" provisions apply.

For the purposes of proposing BDAT treatment standards, the solvent washes subcategory is defined as those K086 wastes which are derived from processes which have used any of the following chemicals as a solvent: Acetone, n-butyl alcohol, cyclohexanone, 1,2-dichlorobenzene, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, naphthalene, nitrobenzene, toluene, 1,1,1,-trichloroethane, trichloroethylene, and/or xylenes. These solvents are chemicals on the BDAT List that are typically used in rinsing inks and could become K086 wastes.

The proposed regulated constituents and BDAT treatment standards for wastes identified as K086 in the solvent washes subcategory are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be controlled by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/1 (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/1 (or parts per million on a weight by volume basis).

The Agency has data that suggests that approximately sixteen different BDAT List solvents could be used to clean ink formulating equipment. EPA is concerned that regulation of only the solvents that were found in the tested waste matrix would present an incentive to simply switch to the use of other solvents. For this reason, EPA is proposing to regulate all sixteen BDAT List solvents. EPA transferred the performance data achieved for some of these sixteen solvents from performance data for other solvents that had similar physical and chemical properties. The Agency believes that the solvents that have been determined to be similar, can be incinerated to the same treatment concentrations. Details on the transfer of standards can be found in the BDAT Background Document for this waste code. EPA solicits comments on this transfer of performance data. The

comments should provide data that document that the proposed BDAT treatment standards are not achievable.

For wastes identified as K086 nonwastewaters and wastewaters in the solvent washes subcategory, EPA is proposing to regulate seventeen organic constituents and two metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include acetone, n-butyl alcohol, ethyl acetate, ethyl benzene, methanol, methyl isobutyl ketone, methyl ethyl ketone, methylene chloride, toluene, 1,1,1,-trichloroethane, trichloroethylene, xylenes, bis(2-ethylhexyl)phthalate, cyclohexanone, 1,2-dichlorobenzene, naphthalene, nitrobenzene, total chromium, and lead.

BDAT TREATMENT STANDARDS FOR K086

[Nonwastewaters; solvent washes subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetone	0.37	(1)
n-Butyl alcohol	0.37	(1)
Ethyl acetate	0.37	(1)
Ethyl benzene	0.031	(1)
Methanol	0.37	(1)
Methyl isobutyl ketone	0.37	(1)
Methyl ethyl ketone	0.37	(1)
Methylene chloride	0.037	(1)
Toluene	0.031	(1)
1,1,1-Trichloroethane	0.044	(1)
Trichloroethylene	0.031	(1)
Xylenes	0.015	(1)
bis(2-ethylhexyl)phthalate	0.49	(1)
Cyclohexanone	0.49	(1)
1,2-Dichlorobenzene	0.49	(1)
Naphthalene	0.49	(1)
Nitrobenzene	0.49	(1)
Chromium (Total)	(1)	0.094
Lead	(1)	0.37

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K086

[Wastewaters; solvent washes subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetone	0.015	(1)
n-Butyl alcohol	0.031	(1)
Ethyl acetate	0.031	(1)
Ethyl benzene	0.015	(1)
Methanol	0.031	(1)
Methyl isobutyl ketone	0.031	(1)
Methyl ethyl ketone	0.031	(1)
Methylene chloride	0.031	(1)
Toluene	0.029	(1)
1,1,1-Trichloroethane	0.031	(1)
Trichloroethylene	0.029	(1)
Xylenes	0.015	(1)
bis(2-ethylhexyl)phthalate	0.044	(1)
Cyclohexanone	0.022	(1)
1,2-Dichlorobenzene	0.044	(1)
Naphthalene	0.044	(1)
Nitrobenzene	0.044	(1)
Chromium (Total)	0.32	(1)
Lead	0.037	(1)

[1] Not applicable.

g. K087—Decanter tank tar sludge from coking operations.

1. *Industry Affected and Waste Description.* The listed waste K087 is generated by facilities in the coking industry. The Agency estimates that there are 36 facilities that have coking plants with decanter tanks and, therefore, could potentially generate K087 waste. The majority of these facilities are located in the Eastern United States.

In the production of coke, gases evolved from the coke ovens are collected and subsequently cooled. The condensates and any entrained particulates are channeled to a decanter tank where tar products and ammonia liquor are separated. The heavy residue (sludge) that settles to the bottom of the tank is K087 waste.

K087 waste generally contains from six to eleven percent water and 89 to 94 percent organic compounds, up to twenty percent of which are BDAT List semivolatile organics. The principal BDAT List metals present are arsenic, lead, copper, and zinc; the maximum concentrations for these metals measured in these wastes are 6, 85, 5, and 66 ppm, respectively. The waste, a viscous semisolid tar, has a heating value of approximately 15,000 Btu/lb.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified fuel substitution and rotary kiln incineration as applicable technologies for treatment of K087 nonwastewaters. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonably high concentration of organic chemicals with sufficient heat content (BTU per pound). It must also have relatively low concentrations of noncombustible materials such as ash, water, metals, and chlorine. Fuel substitution, as a treatment process, has the same purpose as incineration; to thermally destroy (oxidize) the organic constituents of a waste. The Agency believes that burning of K087 in a well designed and well operated high temperature industrial furnace or kiln attains the performance achievable by other thermal destruction units such as rotary kiln incinerators. These thermal destruction units often generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters, from air pollution control devices of units using K087 as a fuel substitute, generally contain less than 1% TOC and less than 1% filterable solids and, therefore, are classified as wastewaters for the purposes of BDAT. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

Total recycling has been identified as a potentially applicable technology for K087 wastes. Total recycling involves treating the K087 waste for (1) reuse in the coke ovens or (2) production of a commercial tar product. Treatment prior to reuse frequently involves mixing the waste with a flushing liquor, grinding in a ball mill, and mixing the milled material with coal. This K087/coal mixture is fed back to the coke ovens for coke production. Alternatively, the waste may be added to hot tar, ground in a ball mill, and packaged as a saleable product. At this time, however, EPA has little data available to define which K087 materials can be benefically recycled. Specific data were submitted by the American Iron and Steel Institute (AISI) to the EPA with respect to the practice of recycling K087 wastes (See Wednesday, May 6, 1987, FR 17019 and 17020). These data characterize the final products (e.g. coal tar and coke) that result from recycling of K087 and from processing that did not involve recycling. Only one data point from AISI characterized the raw K087 decanter tar sludge. Therefore, the Agency solicits comments and data to assist in definition of K087 wastes that can be recycled.

Wastewater residuals are generated by some of the technologies that are designated as applicable to the nonwastewater forms of K087. The applicable technology for these wastewaters is a wastewater treatment system that includes a chemical precipitation step to remove metals from solution and precipitate them as a solid residue and a filtration step to remove these solids. This wastewater treatment system results in a solid residue that generally contains greater than 1% filterable solids and is considered, for

the purposes of BDAT, a nonwastewater. This solid residue must conform with the treatment standards for nonwastewaters. As described below, further application of a stabilization process to this residue may be necessary in order to meet the BDAT standards for metals proposed for nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of BDAT List metals constituents in the nonwastewater K087 wastes identified as treatment residuals. These nonwastewaters include precipitated residues from the treatment of wastewaters forms of K087, and ash residues from incineration or fuel subtitution of K087, and any other nonwastewaters resulting from the "mixture" or "derived-from" rules. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

All of the applicable technologies for BDAT List organics in K087 waste are demonstrated. Data submitted by industry indicate that recycling and fuel substitution are commonly practiced. EPA has identified seven facilities that use recycling and one facility that uses fuel substitution, and believes many other facilities also use these technologies. The Agency has identified one facility that has used rotary kiln incineration of K087 wastes and three generators that send their wastes offsite for multiple hearth incineration of their K087 wastes.

3. *Data Base.* For K087 nonwastewaters, the Agency has five treated data points (ash residues) showing treatment of BDAT List organics by rotary kiln incineration of K087 at an EPA test facility. Also, the Agency has stabilization performance data using lime and fly ash as binders from the treatment of wastes judged to have similar chemical and physical characteristics to K087 ash residues. These stabilization data demonstrate treatment for BDAT List metals.

For K087 wastewaters, the Agency has six treated data points showing the treatment of BDAT List organics by rotary kiln incineration. Also, the Agency has eleven data points showing the treatment of BDAT List metals by chemical precipitation followed by sludge filtration from the treatment of wastes judged to have similar chemical and physical characteristics to K087 scrubber waters.

4. *Identification of BDAT.* EPA is proposing rotary kiln incineration as BDAT for BDAT List organics. EPA is soliciting comments and data that support the fact that total recycling can be accomplished for some subcategory of K087. If EPA receives comments and data that support a determination that total recycling can be accomplished, then EPA will promulgate "No Land Disposal" as a BDAT treatment standard for that subgroup of K087 wastes. EPA has determined that rotary kiln incineration is demonstrated and available, based on its use treating BDAT List organics contained in K087 and on its use for wastes with chemical and physical characteristics similar to K087.

EPA has determined that stabilization of K087 ash is demonstrated for BDAT List metals contained in K087 ash based on a waste judged to have similar chemical and physical characteristics to K087 wastes. With regard to K087 wastewaters, EPA has identified chemical precipitation followed by sludge filtration is demonstrated and available, based on the performance treatment data from wastewaters judged to have similar chemical and physical characteristics to K087 wastewaters.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K087 are listed in the tables at the end of this section. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

Standards for BDAT List organic constituents in K087 wastewaters are based on concentrations found in scrubber waters from rotary kiln incineration. Thermal destruction in a well-designed and well-operated unit results in levels that are at or near the detection limit. Standards for metal constituents in K087 nonwastewaters are based on the transfer of metals precipitation/removal data for treatment of wastewaters containing metals of similar concentrations. These levels are believed to represent performance of the best demonstrated available technologies for these constituents in this waste type.

Standards for BDAT organic constituents in K087 nonwastewaters are based on the concentration found in K087 ashes from rotary kiln incineration. For BDAT List metal constituents, however, EPA transferred stabilization performance data from a waste judged to have similar chemical and physical characteristics to K087 incinerator ashes.

For wastes identified as K087 nonwastewaters and wastewaters, EPA is proposing to regulate nine organic constituents and two metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include acenaphthalene, benzene, chrysene, fluoranthene, indeno (1,2,3-cd) pyrene, naphthalene, phenanthrene, toluene, xylenes, lead, and zinc.

BDAT TREATMENT STANDARD FOR K087

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene	3.4	(1)
Benzene	0.071	(1)
Chrysene	3.4	(1)
Fluoranthene	3.4	(1)
Indeno (1,2,3-cd) pyrene	3.4	(1)
Naphthalene	3.4	(1)
Phenanthrene	3.4	(1)
Toluene	0.65	(1)
Xylenes	0.070	(1)
Lead	(1)	0.53
Zinc	(1)	0.086

[1] Not applicable.

BDAT TREATMENT STANDARD FOR K087

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acenaphthalene	0.028	(1)
Benzene	.014	(1)
Chrysene	.028	(1)
Fluoranthene	.028	(1)
Indeno (1,2,3-cd) pyrene	.028	(1)
Naphthalene	.028	(1)
Phenanthrene	.028	(1)
Toluene	.008	(1)
Xylenes	.014	(1)
Lead	.037	(1)
Zinc	1.0	(1)

[1] Not applicable.

h. K099—Untreated wastewater from the production of 2,4-dichlorophenoxyacetic acid (2,4-D).

1. *Industry Affected and Waste Description.* The listed waste K099 is generated by facilities in the organic chemicals manufacturing industry (specifically pesticides). The Agency estimates that there is only one facility that produces 2,4-D and currently generates K099 waste.

The manufacturing process for 2,4-D includes the reaction of 2,4-dichlorophenol with chloroacetic acid in the presence of sodium hydroxide, hydrochloric acid and a catalyst. The 2,4-D is recovered using a solvent and is then water washed to form the final product. The wastewater generated from the recovery and water-wash processes is RCRA waste K099.

The listed waste K099 principally consists of water, 2,4-D and 2,4-dichlorophenol. The specific concentrations have been claimed by the facility as confidential; however, the organic content of the waste is less than one percent.

2. *Applicable/Demonstrated Treatment Technologies.* The treatment technologies that the Agency believes are applicable are chemical oxidation, wet air oxidation (a specialized form of chemical oxidation), carbon adsorption followed by incineration of the carbon, and biological treatment followed by incineration of the biological sludge. Oxidation is a treatment process that chemically destroys organics found in solution by reaction with an oxidizing agent such as oxygen, chlorine or hydrogen peroxide. Wet air oxidation is a treatment process that chemically destroys organics and some inorganics by reaction with molecular oxygen at elevated temperatures and pressures. Carbon adsorption is the adsorption of hazardous constituents (from a liquid or a gas) by surface attraction within the internal pores of the carbon granules. Biological treatment involves the use of naturally occurring, acclimated microorganisms to degrade organic contaminants in wastewater. Incineration technologies such as fluidized bed, rotary kiln, and liquid injection incineration, are destruction technologies that convert the waste to carbon dioxide, water, and other combustion products.

Of the applicable technologies, the Agency is aware of one facility using oxidation to treat K099. The Agency is not aware of any facility using wet air oxidation, carbon adsorption followed by incineration of the carbon, or biological treatment followed by incineration of the sludge to treat the waste. The Agency did not test these technologies on the waste.

3. *Data Base.* For waste code K099, the Agency has treatment data from one facility. At this facility, the Agency collected two treatment data sets for chemical oxidation of K099 waste using chlorine.

4. *Identification of BDAT.* The best demonstrated available treatment technology (BDAT) for K099 waste was determined to be chemical oxidation using chlorine. This treatment system shows substantial treatment for 2,4-dichlorophenoxyacetic acid (2,4-D). EPA believes that chemical oxidation with chlorine is demonstrated on K099. This treatment system is judged to be available to treat K099 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of the BDAT List organic constituents present in the largest concentrations in K099.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K099 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters.

For wastes and treatment residues identified as K099 nonwastewaters or wastewaters, EPA is proposing to regulate seven organic constituents from the BDAT List as indicators of effective treatment of these wastes. These include 2,4-dichlorophenoxyacetic acid and six chlorinated dioxins and chlorinated dibenzofurans. The 1 ppb analytical detection limit for these constituents described in the final rule for dioxin-containing wastes (51 FR 40643) also is used here. This level represents the analytical limit of detection that can be routinely achieved.

EPA specifically requests comment on the selection of chlorine oxidation as BDAT for K099. Chlorine oxidation was selected as the treatment technology for the destruction of 2,4-dichlorophenoxyacetic acid. The data indicate that this technology provides significant reduction of this chemical. However, the data appear to indicate a slight increase in the concentration of chlorinated dioxins and dibenzofurans (all values below the routine quantitation limit of 1 part per billion) from the untreated waste to the treated residuals. At this time, EPA is not certain that this implies that the chlorine oxidation process is responsible for this slight increase. The Agency is specifically requesting comments and data that would indicate the existence of an alternative treatment technology that could achieve the same performance for the 2,4-dichlorophenoxyacetic acid without an increase in the chlorinated dioxins and dibenzofurans.

BDAT TREATMENT STANDARDS FOR K099

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	0.15	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzofurans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)

BDAT TREATMENT STANDARDS FOR K099—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K099

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2,4-Dichlorophenoxyacetic acid	0.15	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

i. K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

1. *Industry Affected and Waste Description.* The listed wastes K101 and K102 are generated by facilities in the veterinary pharmaceuticals manufacturing industry. The Agency estimates that there are only two facilities that have production processes that could potentially generate K101 or K102 wastes.

Wastewaters containing arsenic are generated in the manufacture of organo-arsenic veterinary pharmaceuticals. These wastewaters are combined with process area wash waters and are pumped into a treatment system that consists of chemical precipitation and resin adsorption. The resin column is regenerated by a backwash of acetone. The spent acetone solvent mixture is recovered in a distillation column. The distillation tar residues from the acetone recovery column constitute the listed K101 waste.

The manufacture of arsenic-containing pharmaceuticals requires the reaction of an organic compound with inorganic arsenic to form the organic arsenical product, and generates arsenic-containing solid wastes including K102 waste. The Agency has detailed process flow information concerning the manner in which K102 waste is generated. This information, however, has been claimed to be confidential business information (CBI).

K101 wastes are viscous organic still bottoms containing approximately 19% by weight ortho-nitroaniline and less than 1% arsenic. The heat content of these wastes is approximately 7,000 BTU per pound. K102 wastes consist primarily of spent activated carbon contaminated with approximately 300 parts per million of ortho-nitrophenol. BDAT List organic constituents identified as present in K102 include phenol and ortho-nitrophenol. BDAT List metal constituents identified as present in K101 and K102 include antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, selenium, and zinc.

2. *Applicable/Demonstrated Treatment Technologies.* EPA has identified incineration in a rotary kiln as an applicable technology for treatment of nonwastewater forms of K101 identified as distillation tar residues and nonwastewater forms of K102 identified as activated carbon residues. Rotary kiln incinerators are designed specifically to handle sludges, solids, tarry wastes, and containerized liquids that are difficult to atomize through a liquid injector. Many rotary kiln incinerators are also designed to simultaneously incinerate other liquid wastes or supplemental fuel. The purpose of incineration is to thermally destroy (oxidize) the organic constituents of a waste. The Agency recognizes that any technology such as a fluidized bed or multiple hearth incinerator that is designed for thermal destruction of sludges, solids, or tarry wastes is potentially applicable to these wastes. However, the Agency believes that the performance of rotary kiln incineration attains the performance achievable by other thermal destruction technologies that are well designed and well operated. These incinerators generate ash residues that, for the purposes of BDAT, are classified as nonwastewaters. Scrubber waters from air pollution control devices are often generated and are classified as wastewaters. Both of these residues must meet the BDAT treatment standards prior to placement in land disposal units.

Wastewaters are generated as residuals by many of the incineration technologies that are designated as applicable to the nonwastewater forms of K101 and K102. EPA has determined that the applicable technology for these wastewaters is a wastewater treatment system that includes a chemical precipitation step to precipitate dissolved metals as solids followed by a filtration step to remove these solids. The residues of this wastewater treatment system include the treated wastewater and the solids that are classified, for the purposes of BDAT, as nonwastewaters. Further application of a stabilization process to these solids may be necessary in order to conform with the BDAT treatment standards for nonwastewaters.

EPA has identified stabilization as an applicable technology for treatment of inorganic nonwastewater forms of K101 and K102. These include precipitated residues from the treatment of wastewaters, as well as ash residues from incineration. Stabilization is designed to chemically bind metal constituents of the waste into the microstructure of a cementitious matrix. The purpose of stabilization is to immobilize the metal constituents and thereby reduce their leaching potential. A variety of agents, including Portland cements, cement kiln dust, hydrated limes, quick lime, fly ash and other pozzolanic materials, have been demonstrated to act as binding agents for various types of wastes containing metals. Stabilization processes generate hardened solid residues that, for the purposes of BDAT, are classified as nonwastewaters. The Agency believes that these processes do not generate wastewater residuals.

EPA has not identified any facility currently performing incineration and metals (ash) stabilization of K101 or K102 on a commercial scale. However, EPA believes this technology is demonstrated for K101 and K102 in that it is being used to treat wastes similar to them in regard to parameters affecting treatment selection. EPA has confirmed this judgment by using a test facility to incinerate this waste.

3. *Data Base.* For waste code K101, the Agency has treatment data from one full-scale facility. The Agency has four data points of untreated K101 waste and three data points representing residual concentrations found in the ash from rotary kiln incineration. The Agency has

four scrubber water data points that represent destruction of organic compounds in the afterburner of the rotary kiln incinerator.

For waste code K102, the Agency has treatment data from one full-scale facility. The Agency has four data sets of K102 waste treated by rotary kiln incineration. The Agency has six scrubber water data points that represent destruction of organic compounds in the afterburner of the rotary kiln incinerator.

4. *Identification of BDAT.* EPA has determined that the performance achieved by incineration followed by metal stabilization of ash residues represents treatment by BDAT for both K101 and K102. Incineration followed by metal stabilization is judged to be available to treat these wastes because: (1) These technologies are commercially available and (2) they provide substantial reduction in the levels of organic constituents and substantial reduction in the mobility of metal constituents present in these wastes.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K101 and K102 are listed in the tables at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

Treatment standards for all organic constituents are based on analyses of total constituent concentration. Treatment standards for metal constituents are based on analyses of leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for all total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for all analyses of leachate are mg/l (or parts per million on a weight by volume basis).

Standards for organic constituents are based on concentrations found in scrubber waters from thermal destruction units. Thermal destruction in a well designed and well operated unit results in levels that are at or near the detection limit. Standards for metal constituents are based on the transfer of metals precipitation/removal data for treatment of wastewaters that contain metals at similar concentrations. These levels are believed to represent performance of the best demonstrated available technologies for these constituents in this waste type.

(i) *Nonwastewaters.* For wastes identified as K101 and K102 nonwastewaters, EPA is proposing to regulate two specific organic constituents that are not included on the BDAT List but have been selected as indicators of effective incineration of these wastes. A standard for ortho-nitroaniline is proposed for K101 and a standard for ortho-nitrophenol is proposed for K102.

EPA is also proposing to regulate nine metal constituents including antimony, arsenic, barium, cadmium, total chromium, copper, lead, nickel, and zinc as indicators of effective stabilization of these wastes (based on stabilization of the ash from incineration). At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for antimony, arsenic and barium. Therefore, the Agency is proposing to reserve standards for antimony, arsenic and barium until evaluation can be completed. The standards for the other metals are transferred from the treatment of wastes judged to have similar chemical and physical characteristics to K101 and K102 incinerator ashes.

(ii) *Wastewaters.* For wastes identified as K101 and K102 wastewaters, EPA is proposing to regulate two different organic constituents as indicators of effective incineration of these wastes. A standard for ortho-nitroaniline is proposed for K101 and a standard for ortho-nitrophenol is proposed for K102.

For wastes identified as K101 or K102 wastewaters, EPA is proposing to regulate five metal constituents from the BDAT List as indicators of effective treatment of these wastes. These include antimony, arsenic, cadmium, lead, and mercury. At the time of this proposal, the Agency has not completed its evaluation of waste characterization and treatment data for antimony. Therefore, the Agency is proposing to reserve a standard for antimony until evaluation can be completed.

BDAT TREATMENT STANDARDS FOR K101

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-Nitroaniline	14.0	[1]
Antimony	[1]	[2]
Arsenic	[1]	[2]
Barium	[1]	[2]
Cadmium	[1]	0.066
Chromium (Total)	[1]	3.8
Copper	[1]	0.71
Lead	[1]	0.53
Nickel	[1]	0.31
Zinc	[1]	0.086

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K101

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho-Nitroaniline	0.266	[1]
Antimony	[2]	[1]
Arsenic	2.036	[1]
Cadmium	0.238	[1]
Lead	0.110	[1]
Mercury	0.027	[1]

[1] Not applicable
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K102

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Ortho-Nitrophenol	13.3	[1]
Antimony	[1]	[2]
Arsenic	[1]	[2]
Barium	[1]	[2]
Cadmium	[1]	0.066
Chromium (Total)	[1]	3.8
Copper	[1]	0.71
Lead	[1]	0.53
Nickel	[1]	0.31
Zinc	[1]	0.086

[1] Not applicable.
[2] Reserved.

BDAT TREATMENT STANDARDS FOR K102

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Ortho Nitrophenol	0.028	[1]
Antimony	[2]	[1]
Arsenic	2.036	[1]

BDAT TREATMENT STANDARDS FOR K102—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cadmium	0.238	(1)
Lead	0.110	(1)
Mercury	0.027	(1)

[1] Not applicable.
[2] Reserved.

j. K106—Wastewater treatment sludges from the mercury cell process in chlorine production.

1. *Industry Affected and Waste Description.* The listed waste K106 is generated by facilities in the inorganic chemicals industry (specifically chlorine manufacturing by the mercury cell process). The Agency estimates that there are 20 facilities that have specific production processes that could potentially generate K106 waste. While these facilities are distributed in just about all regions of the United States, a large proportion of them are located in the Southeast.

Chlorine is produced by the electrolytic decomposition of a saturated sodium chloride brine solution. One type of electrolytic cell uses mercury as an electrode. At such facilities, process wastewaters will contain soluble and elemental mercury. Treatment of this wastewater stream is performed using chemical precipitation of the mercury (primarily as sulfide) followed by sedimentation or filtration of the precipitates. These residuals are the listed waste K106.

Untreated K106 wastes consist primarily of water (60%), mercury sulfide (3%), other metal sulfides (2%), and diatomaceous earth or other filter aid (35%). K106 wastes are sludges and, for the purposes of BDAT, are classified as nonwastewaters. Treatment of K106 results in the generation of solid residuals (nonwastewaters) and wastewaters.

2. *Applicable/Demonstrated Treatment Technologies.* The Agency has identified thermal recovery (retorting) as an applicable technology for nonwastewater K106. Retorting is a metal recovery process, whereby heat is added to volatilize the mercury from the waste. Elemental mercury is subsequently condensed as a reuseable material. The residual waste from retorting contains significantly lower concentrations of mercury. Retorting has been demonstrated on K106 at one facility. Retorting is also demonstrated on ores consisting primarily of mercury sulfides that the Agency believes have chemical and physical characteristics similar to K106 nonwastewaters. Thus, while EPA estimates that there are no facilities currently retorting K106, EPA has identified at least one facility that performs retorting of mercury ores that are comparable to the listed waste. Therefore, the Agency considers that retorting is a demonstrated technology for K106 nonwastewaters.

The Agency considered stabilization as an applicable technology and performed testing on nonwastewater K106. Analyses indicated that no significant reduction in leachability of mercury from the waste was achieved by the stabilization process. Therefore, the Agency concludes that stabilization is not a demonstrated technology for this waste.

The Agency has identified sulfide precipitation followed by filtration as an applicable technology for K106 wastewaters. EPA believes that K106 wastewaters have similar waste characteristics as wastewater generated from the treatment of K071 (brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used). Sulfide precipitation (followed by filtration) of mercury containing wastewaters is demonstrated at nineteen or more facilities. Therefore, the Agency believes that sulfide precipitation is both applicable and demonstrated for wastewaters generated from treatment of K106 nonwastewaters.

3. *Data Base.* The Agency has nine untreated and treated data points from EPA testing of one facility on treatment of K106 nonwastewaters by stabilization. Data collected during these tests show that these technologies were properly operated. These data indicated that no significant reduction in leachability was achieved. Therefore, the Agency concluded that stabilization should not be considered a demonstrated treatment technology for K106.

The Agency has five untreated and treated data points from a literature source on the treatment of K106 combined with K071 nonwastewaters using dewatering followed by retorting. Since the source reports that K106 comprised only 0.5% of the feed to the retort furnace, the Agency believes the waste mixture does not sufficiently represent the majority of K106 wastes. Therefore, EPA did not consider these in the development of the BDAT treatment standards.

The Agency has seven treated data points from the treatment of K106 by retorting. However, the K106 treated was not generated by the conventional method of sulfide precipitation, but consisted of elemental mercury that was concentrated in the residual from membrane filtration of wastewater from the mercury cell process. EPA did not consider these data to be representative of K106 nonwastewaters because nineteen of the twenty facilities generating K106 currently generate a mercury sulfide sludge or residual. Therefore, these data were not considered in the development of the BDAT treatment standards.

As noted previously, the Agency also has data from the retorting of mercury sulfide ores. EPA believes that the similarities in chemical and physical composition of these ores and K106 nonwastewaters are sufficient to allow the transfer of the retorting performance data. These data were used for the development of the BDAT treatment standards for K106 nonwastewaters.

EPA does not have data on treatment of K106 wastewaters generated as part of the retorting operation. EPA believes that these wastewaters are similar in chemical and physical composition to wastewaters generated in treatment of K071 by acid leaching. Therefore, EPA has transferred these performance levels to K106 wastewaters. The data base for K071 wastewaters consists of three untreated and treated data points using sulfide precipitation followed by filtration. All of these data represent a well designed and well operated system and were used in the development of the BDAT standards for K106 wastewaters.

4. *Identification of BDAT.* EPA is proposing to set BDAT standards for K106 nonwastewaters based on the performance achieveable by the retorting of mercury sulfide ores. The Agency has determined that this technology is both demonstrated and available. EPA is proposing to set BDAT standards for K106 wastewaters based on sulfide precipitation followed by filtration. The Agency has determined that sulfide precipitation is demonstrated and available for wastewaters generated from treatment of K106 nonwastewaters (the sulfide residues must meet the standards for nonwastewaters). These technologies are judged to be available to treat these wastes because: (1) They are commercially available or can be purchased and (2) they provide a substantial reduction in the concentrations of hazardous constituents that have to be placed on the land.

The question of identifying BDAT for K106 also requires some discussion of several other EPA regulations relating specifically to burning hazardous wastes for materials recovery in industrial furnaces, and relating more generally to the issue of when secondary materials are RCRA solid wastes under such circumstances. The most significant issue presented is whether EPA may permissibly establish a BDAT treatment standard for the residual which results from retorting of this waste.

The initial question is whether wastewater treatment sludge from the mercury cell process is a RCRA solid and hazardous waste when it is sent to an industrial furnace for retorting. Under the Agency's existing regulations, this activity is classified as the type of recycling known as "reclamation" because it involves recovery of metals contained in the wastewater treatment sludge (see 40 CFR 261.1(c)(4)). Because the material is a listed sludge, it is therefore defined as a solid waste under 40 CFR 261.2(c)(3).

The Agency believes that this is an appropriate classification because a strong element of waste treatment would characterize this recycling activity (as noted, retorting of K106 is not currently practiced). Storage practices preceding reclamation of this waste also can involve direct placement on the land (for instance, in open waste piles), another indication that the wastewater treatment sludge is a waste. For a more detailed discussion see 50 FR 641 (January 4, 1985) which presents the decision factors to determine whether sludges and byproducts should be designated as solid wastes when they are to be reclaimed. EPA has recently proposed to codify these factors, with some modifications, in its regulations (53 FR 519 and 529, January 8, 1988).

The recent opinion of the District of Columbia Circuit Court of Appeals in *American Mining Congress v. EPA* (824 F. 2d 1177) does not change this analysis. The court stated that when a generator has a secondary material of no further use to him, which he discards by giving to another person for recycling, the material is a "discarded material" within the meaning of RCRA section 1004 (27). An example used in the opinion is used oil given by the original generator to a second person for recycling (824 F. 2d at n. 14). The wastewater treatment sludge is similarly discarded by the generator when it is no longer useful to the original generator, is given to another entity for recycling, and is not recycled in the original process or even in another chlorine and caustic soda process. Thus, it is not the type of in-process, undiscarded material used in on-going, continuous processes found in the *American Mining Congress* case to be an undiscarded material (see generally, 53 FR 519, 520–521, and 522–523, January 8, 1988).

It should be noted that even if the K106 waste was not deemed to be a waste when it is reclaimed in processes unrelated to chlorine production, EPA still could establish BDAT standards for K106 that is being disposed, or otherwise ensure that the waste is recycled by retorting rather than by being land disposed. For example, the Agency could simply prohibit land disposal of the waste and indicate that retorting is BDAT. The Agency also could let the statutory prohibition for the waste take effect, which (as a practical matter) would have the same result.

Since the Agency can require recycling as a BDAT standard, it must consider whether it has authority to set treatment standards for the residuals that result from retorting. The fact that K106 is a solid and hazardous waste when it is sent for retorting does not end the inquiry. The Agency has discussed in a number of preambles the question of whether a waste destined for material recovery in an industrial furnace continues to be a waste when it is actually fed into the furnace. The issue arises because industrial furnaces are normally used as essential components of industrial processes, and when they are actually burning secondary materials for material recovery can be involved in the very act of production, an activity normally beyond the Agency's RCRA authority (see 50 FR 630, January 4, 1985; 50 FR 49167, November 24, 1985; and 52 FR 16889–990, May 6, 1987). Accordingly, the Agency has stated that, even when secondary materials sent to be reclaimed in these devices are wastes before they are reclaimed, they cease to be wastes when they are actually placed in the industrial furnace for materials recovery. To retain authority over industrial furnaces where waste treatment is a driving element of the reclamation activity, the Agency has further stated that the secondary material being reclaimed in the industrial furnace must be "indigenous" to that furnace for it to cease being a waste. The Agency has proposed to define "indigenous" to be any material generated by the same type of furnace in which it will be reclaimed (see the proposal in 52 FR 17034, May 6, 1987). The Agency suggested other possible alternatives in the May 6 proposal, including classifying wastes that contained insignificant concentrations of Appendix VIII constituents in the waste which are not normally found in the feed material to be indigenous.

The K106 sludges would not be considered indigenous, under the May 6 proposal, to the retort furnaces used as the basis for the proposed treatment standard. However, if an alternative such as classifying wastes that contained insignificant concentrations of other Appendix VIII constituents to be indigenous were finalized, the waste may not be considered indigenous. The Agency solicits comments on the similarities of the concentrations of other Appendix VIII constituents (other than mercury) that are present in both K106 and the mercury ores that are retorted in mining operations.

If such a determination of indigenous is made for K106, it would cease to be a solid waste when it is retorted. This would mean that the residuals produced by the furnace during the retorting of the sludge would no longer automatically be deemed to be a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.2(c), because it would no longer derive from treatment of a listed hazardous waste (the K106 waste would no longer be a hazardous waste at the moment of burning). Thus, the residual would be a hazardous waste only if it exhibited a characteristic of a hazardous waste. Depending upon the type of device doing the retorting, and the feed materials to that device, the residual might also presently be excluded from regulation as a waste from the mining, beneficiation, or processing of an ore or mineral (see 52 FR 17012, May 6, 1987). Under these circumstances, the Agency probably could not set treatment standards for the residual which does not exhibit a characteristic of hazardous waste, since the land disposal prohibitions apply only to "hazardous wastes". In addition, any prohibition for residuals exhibiting a characteristic of hazardous waste would take effect on May 8, 1990, as a third third waste.

Thus, although the Agency has proposed treatment standards based on total and leachable mercury concentrations in the residual, EPA solicits comment on the issues with the view that EPA could establish either "total recycle" or "no land disposal" as the treatment standard for K106 should it determine not to set treatment standards for the residual.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents and BDAT treatment standards for wastes identified as K106 are listed in the tables at the end of this section. EPA is

proposing that mercury is the only constituent that needs to be regulated for wastes identified as K106. EPA's rationale for selecting mercury is presented in the BDAT Background Document for this waste code. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden.

The treatment standards are based on analyses of total constituent concentration and leachate from the TCLP for all wastes identified as nonwastewaters and analyses of total constituent concentration for all wastes identified as wastewaters. The units of measure for total constituent analyses are mg/kg (or parts per million on a weight by weight basis) for the nonwastewaters and mg/l (or parts per million on a weight by volume basis) for wastewaters. The units of measure for analyses of leachate are mg/l (or parts per million on a weight by volume basis).

BDAT TREATMENT STANDARDS FOR K106

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Mercury	630	0.028

BDAT TREATMENT STANDARDS FOR K106

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Mercury	0.030	(1)

[1] Not applicable.

k. Revision of BDAT Treatment Standard for Methylene Chloride in Wastewaters from the Pharmaceutical Industry Listed as F001, F002, F003, F004 and /or F005.

On November 7, 1986, EPA promulgated treatment standards for regulated constituents in F001–F005 spent solvent wastewaters and nonwastewaters. Since that time, EPA has collected additional data on steam stripping of methylene chloride in wastewaters at similar concentrations as those wastewaters from the pharmaceutical industry. Where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date provided that rulemaking procedures are followed. RCRA section 3004(m)(1) specifically states that treatment standards are to be revised as appropriate. Therefore, in light of the new data collected, EPA is today reproposing the treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry. The treatment standards for all other hazardous constituents in F001–F005 wastewaters, and all hazardous constituents in F001–F005 nonwastewaters are not being reproposed and therefore remain as promulgated on November 7, 1986 (51 FR 40572). The Agency also is not reproposing the standard for methylene chloride in F001–F005 wastewaters other than those from the pharmaceutical manufacturing industry.

EPA established two separate waste treatability groups for wastewaters: Methylene chloride in F001–F005 wastewaters from the pharmaceuticals manufacturing industry and all other F001–F005 wastewaters containing methylene chloride. A BDAT treatment standard of 12.7 mg/1 was promulgated for methylene chloride in wastewaters in the pharmaceuticals manufacturing industry treatability group, based on the performance data for steam stripping. A BDAT treatment standard of 0.20 mg/1 was promulgated for all other F001–F005 wastewaters containing methylene chloride, based on performance data for biological treatment.

BDAT for methylene chloride in wastewaters from the pharmaceutical industry has been confirmed to be steam stripping. Data was obtained from the treatment of wastewaters with influent concentrations of methylene chloride that are similar to the influent concentrations in wastewaters from the pharmaceutical industry. The Agency has determined that the wastewaters that were tested, are in the same treatability group as the wastewaters from the pharmaceutical industry and is transferring the data and standards to the pharmaceutical industry.

The Agency is aware of at least two facilities that use steam stripping to treat methylene chloride in wastewater. EPA has determined that steam stripping is demonstrated to treat F001–F005. Steam stripping is judged to be available to treat these wastewaters because: (1) Steam stripping is commercially available or can be purchased and (2) steam stripping provides a substantial reduction in the concentration of methylene chloride in F001–F005 wastewaters from the pharmaceutical industry.

The revised BDAT treatment standard proposed for methylene chloride in wastewaters identified as F001, F002, F003, F004 and/or F005 from the pharmaceuticals industry is listed in the table at the end of this section. (Note that the proposed treatment standard is reflected in the regulations by amending § 268.41 by removing methylene chloride (from the pharmaceutical industry) and its corresponding concentration, and adding the revised treatment standard in § 268.43.) Facilities must comply with this treatment standard prior to placement of these wastes in land disposal units. Those wastes that as generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment standards is forbidden. The treatment standard is based on analysis of total constituent concentration and is expressed in mg/l (or parts per million on a weight by volume basis).

The data and analyses used to develop this standard have been placed in the docket for today's proposed rule and are available as an addendum to the background document for the final rule for F001–F005 solvent wastes.

BDAT TREATMENT STANDARDS FOR F001, F002, F003, F004, AND F005

[Wastewaters; pharmaceuticals industry subcategory]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Methylene chloride	0.44	(1)

[1] Not applicable.

l. K021—Aqueous spent antimony catalyst waste from fluoromethanes production.

K025—Distillation bottoms from the production of nitrobenzene by the nitration of benzene.

K060 Ammonia still lime sludge from coking operations.

Based on available information, the Agency believes that these wastes are no longer generated, and therefore, are not currently being land disposed. EPA solicits comment to the contrary. The Agency is prohibiting land disposal of these wastes. This approach ensures that these wastes will not be land disposed in the future.

The proposed treatment standard for these wastes is "No Land Disposal," allowing for the possibility that these

wastes may be generated at a CERCLA site or during a corrective action at a RCRA facility and may require a variance from the treatment standard.

BDAT TREATMENT STANDARDS FOR K021, K025, AND K060

[Nonwastewaters and Wastewaters]

No Land Disposal.

m. K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K047—Pink/red water from TNT operations.

EPA has determined that a proposed standard of "No Land Disposal" is appropriate for K044, K045, and K047 wastes. This determination is based on the fact that open burning and open detonation of reactive wastes is not considered land disposal. So long as no reactive constituents remain after detonation, there would be no land disposal of a hazardous waste (40 CFR 261.3(a)(2)(iii)).

EPA's listing of K044, K045, and K047 was based solely on the potential of these wastes to explode. The Agency does not have any data to suggest that any hazardous residuals are present following open burning or open detonation. However, EPA solicits comments providing data that show the presence of BDAT List constituents in treatable concentrations in residuals from managing these wastes in this manner.

In the absence of such data, EPA concludes that the current practices of open burning and open detonation provide complete destruction of the hazardous components of K044, K045, and K047 and subsequent land disposal of residuals is unnecessary. Therefore, EPA is proposing "No Land Disposal" as the requirement for these wastes. This standard is consistent with EPA's general approach in that the standard provides a significant reduction in the hazard presented by these wastes and is based on demonstrated and available technology.

EPA recognizes alternative technologies, such as incineration in specially designed units, is being investigated for wastes similar to K044, K045, and K047. By establishing a treatment standard of "No Land Disposal" rather than allowing the statutory bans to take effect, a petition for a variance from the standard can be submitted to the Agency for evaluation.

BDAT TREATMENT STANDARDS FOR K044, K045, AND K047

[Nonwastewaters and Wastewaters]

[No Land Disposal]

n. Wastes for Which EPA is Proposing No Treatment Standards (Including all Chemical Specific P and U Wastes).

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.

K031—By-product salts generated in the production of MSMA (monosodium methanearsenate) and cacodylic acid.

K035—Wastewater treatment sludges generated in the production of creosote.

K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K085—Distillation or fractionation column bottoms from the production of chlorobenzenes.

All remaining "First Third" wastes originally listed under § 261.33 (e) and (f) (i.e., those beginning with a "P" or "U").

The Agency has not completed its evaluation of BDAT for these wastes and is not proposing treatment standards at this time. Therefore, the Agency will not promulgate standards for these wastes by their statutory deadline of August 8, 1988. RCRA section 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions.

Wastes identified as K011, K013, and/or K014 are wastes generated from the production of acrylonitrile. Information supplied by industry trade associations indicate that many of the facilities are combining K011 and K013 and removing filterable solid materials prior to disposal of the filtrate in underground injection wells. The filtered K011 and K013 residues are often combined with K014 and incinerated in a hazardous waste incinerator. The Agency anticipates that many facilities will submit petitions for evaluation of "no migration" from these underground injection units into which filtrates of K011 and K013 are being injected. At this time, EPA has not completed its investigation of the incineration of the filtered residuals nor has it evaluated a "no migration" petition specific to these waste codes. EPA anticipates that it will establish treatment standards based on analysis of the performance of incineration or based on an extrapolation of data for wastes with similar physical and chemical characteristics. This investigation of K011, K013, and K014 will not be completed in time for proposal and promulgation by the statutory deadline of August 8, 1988. Therefore, until EPA promulgates treatment standards (and until May 8, 1990), the "soft hammer" provisions would apply to these wastes if they are placed in land disposal units.

Finally, EPA notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California List wastes. The liquid cyanide wastes, for example, could exceed the statutory prohibition levels for cyanide. Several of the organic hazardous wastes undoubtably exceed the statutory levels for wastes containing halogenated organics (HOC wastes). To the extent that these wastes are prohibited under the California List rule (52 FR 25773, July 8, 1987) or statutory provisions (RCRA section 3004(d)(2)) and also fall under the soft hammer, the California List prohibitions and treatment standards (if any) apply. Thus, for example, any prohibited HOC wastes that also are First Third "soft hammer" wastes would have to be incinerated before land disposal.

o. Burning in Industrial Boilers and Industrial Furnaces as BDAT for HOC's.

EPA has also decided to repropose for additional comment a notice that appeared in the May 6, 1987, proposed rule on boilers and industrial furnaces burning hazardous wastes. 52 FR 17021.

This proposal would have allowed burning in industrial boilers and furnaces to be considered BDAT for California List HOCs. Although most of the comments supported this approach, EPA is soliciting further comment. We note that this rule might become effective a short time before final permitting and interim status standards for emissions from these devices become effective (current schedules call for the boiler and industrial furnace rules to be promulgated early in 1989). EPA is tentatively prepared to accept this possibility because these devices are likely to be operated efficiently so as to achieve substantial destruction of the HOCs in the waste. This is because industrial boilers and industrial furnaces have a commercial purpose which requires relatively efficient burning (see § 260.10 definitions of "boiler" and "industrial furnace" which require, for boilers, energy recovery efficiency of 60 percent and 75 percent export and utilization of recovered energy, and, for industrial furnaces, that the device be an integral part of a manufacturing process). In addition, non-industrial boilers, some of which might be expected to destroy HOCs less efficiently, are essentially prohibited from burning hazardous waste at all. Section 266.31(b).

The rule as proposed would amend § 268.42(a)(2) to say that boilers and industrial furnaces burning in accordance with applicable regulatory standards could burn HOCs. When Part 266 standards exist for these devices, the devices thus must meet these standards. Until then, they would have to meet other applicable Federal, state, and local standards.

11. Requirement that Hazardous Waste Derived Products Used in a Manner Constituting Disposal Meet BDAT in Order to Remain Exempt from Regulation

Under the Agency's rules, hazardous secondary materials being used in a manner constituting disposal are defined as solid and hazardous wastes. 40 CFR 261.2(c)(1). Examples are use of hazardous waste as dust suppressants, road base material, or fertilizers. Products produced from hazardous secondary materials, which are placed on or applied to the land, are likewise defined as solid and hazardous wastes (assuming the waste-derived product remains hazardous, per the definitions in § 261.3). 40 CFR 261.2(c)(1)(B). If the hazardous waste component has "undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means", then such waste-derived products used in a manner constituting disposal are not presently subject to federal regulation. 40 CFR 266.20(b). Commercial waste-derived fertilizers are likewise presently exempt from Federal Subtitle C regulation. The question we are addressing here—and also addressed in a more specific content for waste-derived fertilizers produced from waste K061 in the April 8, 1988 proposed rule—is whether waste-derived products whose placement on the land is presently exempt from Federal regulation should be allowed to be placed on the land if they don't meet the BDAT treatment standards for each prohibited hazardous waste that they contain.

The Agency is proposing to qualify the exemption from regulation for hazardous waste-derived products that are used in a manner constituting disposal (§ 266.20(b)) to provide that such waste-derived products must meet any (and all) applicable treatment standard(s) in Subpart D of Part 268 for the waste. The Agency believes that this approach is warranted for the following reasons.

First, this type of use constituting disposal consists of placing wastes directly on the land, a form of land disposal under section 3004(k). Under the land disposal prohibition program, untreated hazardous wastes are not to be placed directly on the land (i.e., land disposed) except in "no migration" units.

Second, the Agency (with few exceptions) has not evaluated whether the placement of hazardous waste-derived products on the land is safe. The Agency has merely deferred regulation while it studies the problem to determine an appropriate regulatory regime. See 50 FR 646–647 (January 4, 1985). Thus, continuation of the current exemption from regulation in § 266.20(b) appears to directly thwart the policy, and indeed the express command, of the land disposal prohibition statutory provisions. There is not even a countervailing environmental objective at stake since the Agency has no data demonstrating the safety of most of these practices. Indeed, the existing exemption in § 266.20(b) may create an incentive to avoid treatment (or to avoid BDAT-level treatment) and to utilize this form of disposal instead. It consequently appears to the Agency that all hazardous waste-derived products, in order to be exempt from regulation when they are placed on the land, should have to meet any applicable treatment standard for the waste established in Subpart D of Part 268. At that point, even though hazardous wastes were being placed on the land, they at least would be meeting the treatment standard required for all other wastes of the same type.

The Agency consequently solicits comment on whether the existing exemption in § 266.20(b) should be conditioned by requiring that any such waste-derived product meet applicable treatment standards. EPA notes further that if the Agency adopts this proposal, it would not necessarily be finding that further regulation of this type of use constituting disposal is unnecessary, or finding that use constituting disposal of waste-derived products that meet the treatment standard is necessarily safe. Disposal of hazardous waste would still be occurring in unregulated units. Rather, this type of placement on the land would at least be meeting the minimum statutory requirements in section 3004 (d), (e), (g) and (m).

In order to implement this type of requirement, the Agency would need to have some type of tracking scheme in place, and some means for persons producing waste-derived products to demonstrate that they are meeting the applicable treatment standard. Of course, hazardous wastes utilized to produce waste-derived products that are used in a manner constituting disposal are already subject to regulation until the waste-derived product is produced, and so are subject to § 268.7 tracking controls (as well as the other applicable Subtitle C requirements) until that point. The issues on which we are soliciting comment are how should the producer document that the waste-derived product meets BDAT—for instance, is there any reason not to follow the testing procedures in § 268.7(b)—and whether any further tracking to the ultimate user (as occurs normally under § 268.7(b) (1) and (2)) is needed.

Finally, the Agency reiterates that there does not appear to be any question that waste-derived products that are placed on the land are "solid wastes" under RCRA. Nothing in *American Mining Congress* v. *EPA*, 824 F. 1177 (D.C. Cir. 1987) is to the contrary. The hazardous wastes in the waste-derived product are being gotten rid of by disposing of them, and so are being discarded. See generally, 53 FR 521–522 (January 8, 1988), and underlying record materials.

The following examples show how the Agency envisions the proposal would operate.

1. A generator generates a listed wastewater treatment sludge which is prohibited from land disposal and for which the Agency has established treatment standards. The sludge is

combined with virgin materials in a way that causes the hazardous waste to undergo a chemical reaction so as not to be separable from the product matrix by physical means. The waste-derived product is then sold to the public as road base material.

Assuming that the activity is not sham recycling (i.e., that the listed hazardous waste and its hazardous constituents really contribute legitimately to the waste's use as road base material), then the waste-derived product would have to meet the BDAT standard for the listed hazardous waste or it could not legally be placed on the land. The generator of the product also would have to document that the waste-derived product meets the treatment standard.

2. An aggregate kiln burns a variety of prohibited hazardous wastes generated by other generators along with virgin materials to generate waste-derived aggregate, which is sold to the general public for direct placement on the land.

Assuming that the activity is not sham recycling (i.e., that the prohibited hazardous wastes and their hazardous constituents do contribute legitimately to producing aggregate), then the aggregate would have to meet the treatment standard for *each* prohibited hazardous waste that it contains. The kiln operator would also have to document that each batch meets these standards.

12. Corrections to the April 8, 1988 Proposal (53 FR 11742)

Although there were several typographical and editorial errors in the April 8, 1988 proposal, this preamble section addresses only the most pertinent.

First, on page 11770 of the April 8th proposal, the Agency discusses the availability of the 2-year nationwide variance for solvent wastes which contain less than one percent total F001–F005 solvent constituents. Although the Agency did not propose to change its approach from the existing regulation in § 268.30(a)(3), EPA stated that it was proposing regulatory language and soliciting comment on this approach. The Agency, however, inadvertently neglected to include the proposed regulatory language. Today's proposed regulatory language corrects this oversight by proposing the existing regulatory language, as discussed in the April 8th preamble.

Second, an error was made in identifying a hazardous constituent for K103 and K104 wastes in both the preamble and in the regulatory language. On pages 11758 and 11790 of the April 8 proposal, the treatment standard tables for nonwastewater and wastewater K103 and K104 list 2,3-dinitrophenol. The actual constituent, however, is 2,4-dinitrophenol, as stated in the background document for these wastes. Also, regarding the regulatory text for K103 and K104 nonwastewaters on page 11790, an error was made in stating the total composition levels for aniline, nitrobenzene, and phenol. The correct level, 5.44 mg/kg, is correctly stated in the preamble discussion on page 11758. Although the BDAT background document supports these corrections, anyone confused by this may submit further comment addressing the point.

Third, on pages 11763 and 11791 of the April 8 proposal, the concentration level for toluene in K015 waste is stated incorrectly. The tables in the preamble and regulatory language for K015 list the total composition level for toluene as 1.00 mg/l. The actual value, as stated in and supported by the background documents is 0.148 mg/l. Even though the treatment standard is stated correctly in the background document, anyone confused by the April 8 preamble may submit comment on the toluene treatment standard up until the date for comment on this proposed rule.

Fourth, on page 11789 of the April 8 proposal, an error was made in the headings for the treatment standard tables for K016 and K018 wastes (the "wastewater" tables are incorrectly labeled as second "nonwastewater" tables). These tables are correctly labeled in the preamble discussion on page 11756. Also, on page 11762 the second and third tables in the first column are incorrectly labeled K050 wastes. These tables actually present the treatment standards for K051 wastes, as is correctly stated in the regulatory language. The Agency will accept further comment on this issue from anyone confused by these corrections.

Fifth, the tables for K019 wastewater and nonwastewater, and K020 nonwastewater on page 11756 incorrectly state the hazardous constituent tetrachloroethene as tetrachloroethane. The constituent is, however, correctly stated in the regulatory language.

Sixth, in the preamble for K016 wastewater on page 11756 and in the regulatory text for K030 wastewater on page 11790, the total composition treatment standard for hexachloroethane is incorrect. The correct treatment standard is 0.033 mg/l, as supported by the background document. EPA will accept comment on these corrections from anyone confused by the change throughout the comment period on this proposed rule.

Finally, EPA neglected to include a hazardous constituent in the preamble table for K019 nonwastewaters on page 11756. This constituent, chlorobenzene (with a total composition treatment standard of 5.66 mg/kg), is correctly included in the regulatory text and is supported by the background document.

B. Determination and Measurement of Applicable Treatment Standards

1. Relationship to Restrictions on California List Wastes

Certain First Third wastes having proposed treatment standards and prohibition effective dates are also California list wastes. The California list covers a broad group of corrosive wastes and specific metal-, cyanide-, and halogenated organic-containing wastes, for which EPA has promulgated treatment standards and/or effective dates in the July 8, 1987 rule (52 FR 25760). Once the standards and dates proposed today are finalized, they supersede the applicable California list waste treatment standards and effective dates. Under 40 CFR 268.32(h) this interpretation, pursuant to which a waste-specific determination supplants a California list waste determination, has been applied to solvent- and dioxin-containing wastes which have treatment standards and effective dates and are California list wastes.

The April 8, 1988, rule (53 FR 11742) proposed a reading different from that stated above for First Third wastes which have waste-specific treatment standards and are also California list wastes, but for which, due to a significant shortage of alternative capacity, the Agency grants a national variance from the effective date. EPA solicited comment on an approach where, for these wastes, the applicable California list waste treatment standards and effective dates would remain in effect, superseding the waste-specific determinations for the duration of the variance. This rule also proposed that First Third wastes for which the Agency has not set treatment standards and effective dates by August 8, 1988 (wastes covered by the "soft hammer" requirements), are subject to any applicable California list waste treatment standards and effective dates. Comments addressing these proposed interpretations are also requested here.

C. Proposed Approach To Comparative Risk Assessment

Within the regulatory framework established for implementing the land disposal restrictions, EPA included certain criteria in the determination of

"available" treatment technologies. One criterion required that treatment technologies not present greater total risks than land disposal waste management practices. See 51 FR 40592–40593 (November 7, 1986). Although the Agency conducted comparative risk assessments in the development of regulations prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), the analyses did not affect the determinations that treatment was available.

Upon further consideration of the existing comparative risk analysis, the Agency has decided not to utilize comparative risk assessment in this rulemaking because it is problematic. In cases where the land disposal practice could be found to be less risky than any of the treatment alternatives, the analysis could lead to anomalous results. For example, in situations where the comparative risk analysis indicated that land disposal was the least risky alternative available, there would be no specified treatment technology for the wastes. At the same time, land disposal would be prohibited by statute. Thus, the generator could not treat or land dispose the wastes, even though treatment could be conducted pursuant to other regulatory standards that assure protection of human health and the environment.

A second anomaly is that unless EPA actually specifies a treatment method as the treatment standard—normally an undesirable option (see 51 FR 44725, December 11, 1986)—the regulated community may still use treatment technologies identified as riskier than land disposal to comply with the treatment standards. In this respect, the comparative risk assessments would not deter the use of treatment found to present greater total risk.

In light of these considerations, EPA has not used the existing comparative risk assessment approach in this proposal and is reconsidering its application as a decision tool in future rulemakings in the determination of "available" treatment technologies. In the future the Agency may conduct risk analyses to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative practices. In the April 8, 1988 proposal the Agency solicited comment on this new approach.

D. Determination of Alternative Capacity and Effective Dates for First Third Wastes

1. Capacity Data Base and Methodology

EPA has developed a new data base for capacity analyses. This data base is comprised of information from responses to the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (the TSDR Survey).

EPA conducted the TSDR Survey during 1987 and early 1988. One major objective of the survey was to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. The TSDR Survey was sent to all RCRA permitted or RCRA interim status facilities that have or plan to have treatment, disposal or recycling capabilities. The TSDR Survey was also sent to a statistical sample of facilities that have only storage. This new data base is the primary source of data for evaluation of capacity for this rule, with supplemental data used as needed. (See the *Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions, Part II.*, referred to hereafter as the "Capacity Background Document," for a complete description of the TSDR Survey data set and other supplemental data.)

The general approach for capacity analyses for this rule is similar to that used for the past land disposal restrictions rules, but the new data set provides for more comprehensive analyses. Major changes in the capacity methodology include an analysis of volumes being treated in surface impoundments that meet the minimum technology requirements, an analysis of planned closure of surface impoundments through replacement with tanks, and an analysis of the sequences of management processes that minimizes the possibility of double counting. (See the Capacity Background Document for a detailed description of the capacity data set and methodology.)

2. Capacity Analysis of First Third Wastes, Solvent Wastes, California List Wastes, and Soil and Debris

The following discussion presents EPA's capacity analyses for the First Third wastes for which EPA is proposing treatment standards. These analyses were performed using the new TSDR Survey data. EPA is also presenting updated capacity analyses for the wastes addressed in the Proposed First Third Rule on April 8, 1988 (53 FR 11742). The Agency explained in this recent notice that the new TSDR Survey data would be used to reassess available treatment capacity for those wastes as soon as it was available (see 53 FR 11742).

Section III.E briefly covers new capacity analyses of waste volumes requiring alternative capacity pursuant to the Solvents Rule (51 FR 40572) and the California List Rule (52 FR 25760). Section III.F presents our analysis of soil and debris wastes. These waste volumes are not included in the analyses of the First Third wastes. However, it is important to note that the discussion of capacity available for treating First Third wastes does reflect only the amount of available capacity remaining after accounting for the treatment of wastes restricted from land disposal under the Solvents Rule and HOCs under the California List Rule.

a. *Total Quantity of Land Disposed First Third Wastes.* EPA has estimated the total quantities of all of the scheduled First Third wastes that are land disposed annually based on the results of the TSDR Survey. These waste quantities, and the methods by which the wastes are stored, treated, and disposed, are presented in the table below. Underground injection, one method of land disposal, is not included, but will be addressed in a separate rulemaking. Other methods of land disposal that are affected by today's proposal (e.g., utilization of salt dome and salt bed formations and underground mines and caves) are not addressed in the capacity analyses because of insufficient data.

TABLE 1.— TOTAL VOLUME OF LAND DISPOSED FIRST THIRD WASTES

[Million gallons/year]

Storage:	
Waste piles	48
Surface impoundments	6
Treatment:	
Waste piles	29
Surface impoundments	612
Disposal:	
Landfills	303
Land treatment	77
Surface impoundments	78
Total	1,153

About 78 million gallons of First Third wastes are disposed of in surface impoundments annually. Ultimately, all of this waste will require alternative treatment capacity. Approximately 6 million gallons of First Third wastes are stored in surface impoundments annually. Since storage means a temporary containment of waste, EPA has assumed that stored wastes are eventually treated, recycled or permanently disposed of in other units. To avoid double counting (i.e., counting

them once when they are stored and then again when they are finally disposed of) of such wastes, the volumes of wastes reported as being stored in surface impoundments were not included in the estimates of volumes requiring alternative treatment capacity. However, the Agency recognizes that these wastes will eventually require alternative storage capacity because of the restrictions on placement of wastes into surface impoundments.

In addition to the wastes stored and disposed in surface impoundments, about 612 million gallons of First Third wastes are treated annually in surface impoundments that do not meet the minimum technology standards or are residuals that have been removed from those surface impoundments that do meet the minimum technology standards. Additionally, about 48 million gallons were stored in waste piles, 29 million gallons were treated in waste piles, and 380 million gallons were disposed of by landfill and land treatment.

The Agency has also estimated the quantities of land disposed First Third wastes for which treatment standards are being proposed today and for which standards were proposed on April 8, 1988.

WASTE CODES—STANDARDS BEING PROPOSED TODAY

F006	K001	K021	K022	K025 [1]	
K044	K045	K046	K047	K060	K083
K086	K087	K099	K101	K102	K106

[1] K025—originally a Second Third waste (51 FR 19300, May 28, 1986), but treatment standards are being proposed today.

WASTE CODES—STANDARDS PROPOSED APRIL 8, 1988

K004	K008	K015	K016	K018	K019 [1]
K020	K024	K030	K036	K037	K048
K049	K050	K051	K052	K061	K062
K069	K071	K073	K100 [1]	K103	K104

[1] K019—originally a Second Third waste. K100—originally a Third waste. Treatment standards were proposed on April 8, 1988.

Waste quantities for these codes and the method by which they are disposed are presented in the table below.

TABLE 2.— VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE BEING PROPOSED

[Million gallons per year]

Storage:	
Waste piles	40
Surface impoundments	4
Treatment:	
Waste piles	27
Surface impoundments	321
Disposal:	
Landfills	286
Land treatment	77
Surface impoundments	78
Total	833

In addition to the quantities presented above, the Agency also has estimated the amount of land disposed First Third wastes for which treatment standards are not being proposed before August 8, 1988. This group of wastes is subject to the "soft hammer" provisions and includes all of the First Third P and U wastes as well as the following F and K wastes:

F007	F008	F009	F019	K011	K013
K014	K017	K031	K035	K084	K085

Waste quantities for these codes and the method by which they are land disposed are presented in the table below.

TABLE 3.—VOLUME OF LAND DISPOSED FIRST THIRD WASTES FOR WHICH STANDARDS ARE NOT BEING PROPOSED

[Million gallons per year]

Storage:	
Waste piles	8
Surface impoundments	2
Treatment:	
Waste piles	2
Surface impoundments	291
Disposal:	
Landfills	17
Land treatment	<1
Surface impoundments	<1
Total	320

b. *Required Alternative Capacity.* In order to complete our capacity analyses, EPA had to assess the requirements for alternative treatment capacity that would result from the promulgation of today's proposed rule. EPA first characterized the volumes of First Third wastes for which treatment standards are being proposed, since these wastes will require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency then determined which treatment technologies are applicable to the waste volumes and placed the wastes into treatability groups (groups of wastes for which proposed treatment standards are based on the same technology). Finally, EPA determined the volumes of alternative treatment capacity that would be required when owners/operators comply with the land disposal restrictions being proposed today.

Based on this analysis, the Agency estimates that today's proposed rule could potentially affect about 833 million gallons of First Third wastes that are land disposed annually. Of this total, about 789 million gallons will require alternative treatment capacity (the remainder is stored). As explained elsewhere in this preamble, EPA is proposing treatment standards that are expressed as concentration limits and is identifying the technology basis of the standards (the Best Demonstrated Available Technology or BDAT). EPA is not requiring that the specified treatment technologies be used to comply with the standards, but these

technologies, as described below (Section III.D.3), were generally used as the basis for determining available capacity.

The volumes of First Third wastes that require alternative treatment/recycling capacity are presented in Table 4. This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator.

TABLE 4.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES BEING PROPOSED TODAY

[Million gallons/year]

Waste code	Required capacity
F006	126.9
K001	2.4
K021	[1] 0.0
K022	0.1
K025	0.0
K044	0.0
K045	0.0
K046	1.6
K047	0.0
K060	0.0
K083	0.1
K086	0.2
K087	1.4
K099	0.0
K101/102	0.1
K106	0.4

[1] See section III.D.3 for a discussion of wastes not requiring alternative treatment capacity.

TABLE 5.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES PROPOSED APRIL 8, 1988

[Million gallons/year]

Waste code	Required capacity
K004	0.0
K008	0.0
K015	0.0
K016	0.3
K018	0.0
K019	0.1
K020	<0.1
K024	0.2
K030	<0.1
K036	0.0
K037	<0.1
K048	37.1
K049	31.7
K050	11.5
K051	78.0
K052	12.3
K061	82.8
K062	40.3
K069	0.0
K071	3.9
K073	0.0
K100	0.0
K103	0.1
K104	<0.1

See Section III D.3 for a discussion of wastes not requiring alternative treatment capacity.

3. Capacity Currently Available and Effective Dates

The table below also presents the volumes of First Third wastes that require alternative treatment capacity, but, in this case, the volumes are given according to the technology description of the type of alternative treatment required. This table also presents the amount of capacity that is available in each case.

It is important to note that the volumes given for each treatability group represent figures derived by summing volumes reported as land disposed in the TSDR Survey for each waste code. Some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology designated as BDAT (e.g., a waste in the form of a sludge cannot undergo liquid injection incineration, even though this may have been identified as BDAT for a particular waste code). These wastes must be treated through several steps, called a treatment train (in the example given, the sludge would require de-watering and possibly other types of treatment before the residuals could undergo incineration). EPA has assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal and, therefore, EPA has assigned the total volumes reported to appropriate technologies. See the Capacity Background Document for a complete description of the alternative treatment technologies and treatment trains that were included in the analysis.

TABLE 6.—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR FIRST THIRD WASTES

[Million gallons per year]

Technology	Available	Required
Incineration:		
Liquids	246	<1
Solid/sludge	7	[1] 157 (5)
Stabilization	427	145
Mercury retorting	0	<1
High temperature metals recovery	34	83
Wastewater treatment:		
Cyanide oxidation, chemical precipitation, settling/filtration	164	<1
Chromium reduction, chemical precipitation, settling/filtration	195	41
Carbon adsorption, chromium reduction, chemical precipitation, settling/filtration	12	1
Sludge treatment:		
Acid leaching, chemical oxidation, sludge dewatering	0	4

[1] Numbers in parentheses denote the volume of waste that still requires alternative capacity when K048–K052 wastes are not included in the analyses (as explained, a capacity variance is being proposed for K048–K052).

Liquid Incineration. EPA estimates that about one million gallons per year of First Third wastes would require liquid incineration treatment as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K015, K083 and K086 are based on liquid incineration. Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is ample capacity available to treat these wastes (approximately 246 million gallons). Thus, EPA does not propose to grant a capacity variance for K015, K083, or K086 wastes.

Solid/Sludge Incineration Capacity. EPA estimates that about 157 million gallons per year of First Third wastes would require solid/sludge incineration capacity as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K001, K016, K019, K020, K022, K024, K030, K037, K048–K052, K087, K101 and K102 are based on solid/sludge incineration.

Using the new TSDR Survey data, the Agency has evaluated commercial capacity and has determined that there is only about 7 million gallons of solid/sludge incineration capacity available. Therefore, EPA proposes to grant a two-year national capacity variance from the effective date for the wastes K048–K052. The total volume for these wastes dominates the analysis. If they are granted a variance, all of the remaining

wastes in this treatability group may be treated.

As explained previously, contaminated soil and debris wastes are not included in this section of the preamble, but are discussed in section III.F. However, note that this discussion of incineration capacity demonstrates that there is insufficient commercially available treatment capacity for certain contaminated soils that would require solids incineration to comply with the land disposal restriction standards.

Stabilization. EPA estimates that about 145 million gallons per year of First Third wastes would require stabilization capacity as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes F006 and K046 are based on stabilization.

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is more than enough capacity available to treat these wastes (approximately 427 million gallons). Therefore, the Agency does not propose to grant a capacity variance to wastes for which treatment standards are based on stabilization.

Mercury Retorting and High Temperature Metals Recovery. EPA estimates that less than one million gallons of First Third wastes would require mercury retorting and about 83 million gallons would require high temperature metals recovery capacity per year as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the wastes K061 and K106 are based on high temperature metals recovery and mercury retorting, respectively.

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is not enough capacity available to treat K061 or K106. Therefore, EPA proposes to grant a 2-year national capacity variance from the ban effective date for these wastes.

Wastewater Treatment. EPA estimates that less than 43 million gallons per year of First Third waste would require various types of wastewater treatment as a result of the treatment standards proposed today and on April 8, 1988. (See Table 6 for descriptions of the various types of wastewater treatment.) Treatment standards for the waste K062 are based on wastewater treatment (chromium reduction, chemical precipitation and filtration).

Using the new TSDR survey data, the Agency has evaluated commercial capacity and has determined that there is adequate capacity available for wastewater treatment. Therefore, the Agency does not propose to grant a capacity variance for K062.

Sludge Treatment. EPA estimates that about four million gallons per year of First Third wastes would require sludge treatment as a result of the treatment standards proposed today and on April 8, 1988. Treatment standards for the waste K071 are based on sludge treatment (acid leaching, chemical oxidation, and sulfide precipitation and filtration).

After analyzing the new TSDR Survey data, the Agency has determined that there is not enough treatment capacity commercially available to treat K071. Therefore, EPA proposes to grant a 2-year national capacity variance from the ban effective date to K071.

Wastes for Which Treatment Standards Are Based on Solvent Recovery or Solvent Extraction. Proposed treatment standards for the wastes K103 and K104 are based on solvent recovery. BDAT for K103 is solvent extraction, followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration. BDAT for K104 is solvent extraction followed by liquid incineration and followed by steam stripping, followed by carbon adsorption, followed by carbon regeneration.

Using the new TSDR Survey data, EPA has determined that the only volumes of these wastes that require alternative commercial capacity are those not amenable to solvent recovery or solvent extraction because of their physical forms. Therefore, the Agency has assumed that the K103 and K104 wastes requiring alternative treatment will undergo incineration, followed by stabilization of the ash. Again, the Agency believes that this treatment can achieve the standard and the volumes of K103 and K104 requiring alternative treatment have been included in the incineration and stabilization totals presented in Table 6.

Wastes Not Requiring Alternative Capacity. After reviewing the new TSDR Survey, EPA has determined that many First Third wastes do not require alternative capacity, even though treatment standards are being proposed. These wastes are: K021, K025, K044, K045, K047, K060, K099, K004, K008, K015, K018, K036, K069, K073, and K100. Each of these is discussed below.

Proposed treatment standards for K044, K045 and K047 wastes are based on open detonation, for which there is no capacity constraint provided the residuals are not hazardous. The Agency believes that when open detonation is properly conducted, no reactive residues remain and the residuals exhibit no other characteristic. Therefore, no K044, K045, or K047 would require alternative commercial capacity and no further analysis is necessary.

Proposed treatment standards for the First Third waste K099 are based on chlorine oxidation. The Agency has determined that this waste is only being generated at one facility, and that the generator is able to treat the waste on-site. Therefore, no volumes were reported as requiring alternative commercial capacity and no further analysis is necessary.

Proposed treatment standards for the First Third waste K015 are based on liquid incineration and standards for waste K018 are based on solid/sludge incineration. However, after analyzing the new TSDR Survey data EPA has determined that neither of these wastes requires alternative treatment capacity. There are several possible explanations for this. First, it is possible that all of these wastes now being generated are being treated on-site, and do not require commercial capacity. Second, it is possible that these wastes are simply not being land disposed or are being land disposed by a method either not covered in the TSDR Survey or not included in the proposed rule (e.g., the wastes may be land disposed in an underground mine or may be deep-well injected). Finally, the waste may not have required alternative capacity in 1986, the reporting date covered by the TSDR Survey.

Proposed treatment standards for the First Third waste K069 are based on total recycle; this waste cannot be land disposed. Available information shows that all K069 wastes currently being generated are now being recycled and that no land disposal is occurring. Thus, this waste does not require alternative capacity.

The Agency has determined that several First Third wastes are no longer being generated. The treatment standards for these wastes are "no land disposal." These wastes are: K021, K025, K060, K004, K008, K036, K073, and K100. Since none of these wastes were reported as being land disposed in the TSDR Survey, no further capacity analysis was required.

Finally, EPA notes that these new TSDR data have implications for soft hammer certifications. EPA will be very skeptical about and will probably invalidate any soft hammer certification for a waste amenable to treatment by a treatment method for which ample capacity is now known to exist. Examples are any waste amenable to liquid injection incineration or to stabilization.

E. Alternative Capacity and Effective Dates for Solvent Wastes and California List Wastes

Using the new capacity data, EPA has reevaluated waste volumes requiring alternative capacity because of the Solvents Rule (51 FR 40572) and the California List HOC rule (52 FR 25760). As described above, the new analysis indicated significant changes in waste management practices and capacity, including significant increases in incineration capacity. Consequently, some national capacity variances are no longer necessary. Specifically, capacity variances are no longer needed for: (1) Solvents (F001–F005) generated by small quantity generators, CERCLA response action and RCRA corrective action sites addressed in § 268.30(a) (1) and (2) (except solvent contaminated soils) and for (2) California List HOCs (except HOC soils). The BDAT treatment for these wastes is incineration, and the new capacity data indicate significant increases in incineration capacity, assuring adequate capacity for these wastes (See Table 6).

F. National Variance From the Effective Date for Contaminated Soils

1. Legal Authority

Under RCRA sections 3004 (d)(3) and (e)(3), Congress provided that the land disposal restriction provisions for disposal of certain "contaminated soil" and "debris" from CERCLA 104 and 106 response actions and from RCRA corrective actions would not apply until 48 months from the enactment of HSWA. These provisions apply specifically to soil and debris contaminated with spent solvents, certain dioxin-containing wastes, and California list restricted hazardous wastes. November 8, 1988, therefore, is the applicable effective date established under RCRA 3004 subsections (d)(3) and (e)(3) for CERCLA and RCRA corrective action contaminated soil and debris. Congress provided no such alternative statutory effective date for CERCLA and RCRA soil and debris contaminated with First Third (or Second Third) wastes. Thus, the statutory effective date for these wastes is the same as for any other hazardous waste which is included in the first one-third of the schedule—August 8, 1988.

EPA has considered carefully the argument that the statutory effective date for solvent, dioxin, and HOC contaminated soils and debris from CERCLA response action and RCRA corrective actions cannot be extended because the national effective date for the underlying hazardous waste already has been extended for the maximum two years. EPA does not find this argument persuasive. First, sections 3004 (d)(3) and (e)(3) appear to establish a November 8, 1988 effective date for a particular category of wastes, namely contaminated soil and debris from CERCLA response actions and RCRA corrective actions. Section 3004(h)(2) then gives the Agency the authority to extend effective dates that otherwise would apply under subsection (d) or (e) for up to two years. The scheme, in fact, is similar to that for solvent, dioxin and California list wastes land disposed by underground injection, which are prohibited from land disposal on August 8, 1988 (RCRA section 3004(f)), which effective date likewise may be extended due to a lack of protective alternative capacity for up to two years.

Second, it is logical that Congress would have intended a later effective date for these wastes. An extra measure of environmental protection and accountability is afforded for these wastes due to the CERCLA and RCRA corrective action processes. These processes provide a documented connection with a regulatory process. Such a connection is not present for normal disposal of restricted wastes, and thus makes less pressing the need for an immediate prohibition effective date. Most important, however, is Congress' evident acknowledgment that it would take extra time to develop treatment capacity for soils and debris at the cleanup sites contaminated with these wastes. Foreseeing this potential shortfall, Congress placed these wastes on an alternative schedule approximately the same as the one for the first group of wastes prohibited under section 3004(g). Restricted hazardous wastes are normally prohibited from land disposal as soon as the statutory deadline passes. (RCRA section 3004(h)(1)). If, however, there is a lack of adequate alternative protective treatment, recovery, or disposal capacity to treat the wastes, the Agency may set an alternative effective date based on the earliest date on which such adequate capacity becomes available, not to exceed two years. (RCRA section 3004(h)(2)).

2. Summary of the Proposed Agency Action

In today's action, the Agency is proposing to grant a national capacity variance for certain contaminated soils that require solids incineration capacity. This variance applies to the following specific categories of soils contaminated with the following wastes: (a) Soils contaminated with spent solvent (F001–F005) and dioxin-containing (F020–23 and F026–28) wastes (restricted under section 3004(e)) from a response action taken under CERCLA section 104 or 106 or a RCRA corrective action; (b) soils contaminated with California list HOC wastes (under 3004(d)) from a response action taken under CERCLA section 104 or 106 or RCRA corrective actions; and (c) soils contaminated with certain First Third wastes for which the proposed treatment standards are based on incineration. (This final capacity variance does not apply exclusively to soils from CERCLA response and RCRA corrective actions. This is because there is no statutory distinction as to effective date between CERCLA/RCRA 3004(g) soils and all other soils as there is for 3004 (d) and (e) soils.) The applicable First Third wastes include K015, K016, K018, K019, K020, K024, K030, K037, and K048–K052 wastes addressed in the April 8, 1988 proposed rule (53 FR 11742), and K001, K083, K087, K101 and K102 wastes addressed in this proposal. Today's action proposes a 2-year national capacity variance from the applicable statutory effective date for these wastes. As such, the soils contaminated with the specified First Third wastes would receive a variance that extends the effective date for the land disposal restrictions to August 8, 1990. On the other hand, CERCLA and RCRA soils contaminated with spent solvent, certain listed dioxin-containing wastes and California list HOC wastes would be covered by the capacity variance until November 8, 1990—two years from the end of the statutory effective date applicable to these wastes. The following chart summarizes the Agency's proposal:

SUMMARY OF CURRENT AND PROPOSED EFFECTIVE DATES

Restricted hazardous waste	Current prohibition effective date	Proposed prohibition effective date
I. Solvent and dioxin-containing soil and debris:		
a. Soil from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste.....	11-8-88	11-8-90
b. Debris from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste.....	11-8-88	No change.[1]

SUMMARY OF CURRENT AND PROPOSED EFFECTIVE DATES—Continued

Restricted hazardous waste	Current prohibition effective date	Proposed prohibition effective date
c. Soil NOT from CERCLA or RCRA corrective actions contaminated with section 3004(e) solvent or dioxin hazardous waste	11-8-88	No change.
II. Soil and debris contaminated with California list HOC containing hazardous wastes:		
a. Soil from CERCLA or RCRA corrective actions	7-8-89	11-8-90
b. Debris from CERCLA or RCRA corrective actions	7-8-89	No change.[1]
c. Soil NOT from CERCLA or RCRA corrective actions	7-8-89	No change.[1]
III. Soil and debris contaminated with First Third wastes:		
a. Soil from CERCLA or RCRA corrective actions for which BDAT is based on incineration	8-8-88	8-8-90
b. Debris from CERCLA or RCRA corrective actions	8-8-88	No change.[1]
c. Soil NOT from CERCLA or RCRA corrective actions for which BDAT is based on incineration	8-8-88	8-8-90

[1] However, see section F.4. of todays preamble.

With respect to soils contaminated with spent solvent and dioxin-containing wastes, only those that result from a response action taken under section 104 or 106 of CERCLA or a corrective action required under RCRA would be included under this capacity variance. For all other soils contaminated with these wastes, an application for a case-by-case extension may be submitted if adequate alternative capacity cannot reasonably be made available by the applicable effective date. (See section 3004(h)(3).) Similarly, the proposed variance does not apply to California list HOC contaminated soils except those resulting from a CERCLA 104 or 106 response action or RCRA corrective action. Note that even though today's action proposes to rescind parts of the July 8, 1987 variances granted for HOCs, the existing capacity variance remains in place until July 8, 1989 for California list HOC contaminated soils. Furthermore, the proposed variance does not apply to soils contaminated with First Third waste for which treatment standards have not been established (i.e., those wastes subject to the "soft hammer" provisions). As a general matter, EPA is not proposing capacity variances for *any* soft hammer wastes. This is because the soft hammer itself provides a mechanism for ascertaining availability of treatment capacity (for wastes whose intended disposition is a landfill or impoundment), by placing the burden of investigating and certifying on the person managing the prohibited waste.

3. The Facts Justifying a National Capacity Variance for These Soils

Soils require rotary kiln incineration to meet BDAT standards. As mentioned in the section on capacity determinations (specifically III.D.4.), the evaluation of commercial rotary kiln incineration capacity required for solids incineration, shows that there is only about 2 million gallons of available commercial capacity (i.e., available after the effective dates for the non-soil solvents wastes, the non-soil California list HOC wastes and non-soil First Third wastes).

The amount of soil estimated to require solids incineration is shown below (These amounts represent the quantity of soils handled by commercial treatment facilities in 1986. Note, that the amount of soils requiring solids incineration that are generated by CERCLA response or RCRA corrective actions is not currently known.):

- Solvent—12 million gal/yr.
- Dioxin—(none reported in 1986)
- California List HOC's (other than First Third wastes for which treatment standards have been proposed)—4 million gal/yr.
- First Third (for which treatment standards have been proposed)—10 million gal/yr.

Thus, all of the solids incineration capacity would be utilized as a result of other actions taken today, and there will be a lack of capacity for soils incineration.

EPA acknowledges that in proposing a national capacity variance for contaminated soils, it is making a policy choice. That is, instead of proposing to rescind the variance for other HOC and solvent wastes requiring solids incineration, and not proposing a variance for certain First Third wastes requiring this type of treatment, EPA instead could try and carve out some segment of CERCLA and RCRA corrective action soils for immediate prohibition (leaving in place, or proposing a variance for these other waste). EPA is not pursuing this course for several reasons. First, it would be hard, if not impossible, to carve out a discrete segment of contaminated clean up soils to fit the available treatment capacity. More importantly, the precise amount of CERCLA and RCRA corrective action soils to be generated over the next 24 months is not certain (due to the unpredictable pace of clean up actions), whereas the amount of the other surface disposal wastes discussed above that require solids incineration capacity is much better quantified. By rescinding, or not proposing, variances for the wastes whose volume is better quantified, EPA is far more certain that the existing treatment capacity will actually be utilized. That is, EPA will not be reserving scarce solids incineration capacity for contaminated soils that might never be generated. EPA thus is structuring these proposed variances to make certain that scarce solids incineration capacity will actually be utilized.

This is not to say that EPA will invariably allocate treatment capacity to prohibited wastes whose generation rate is qualified. For example, if the Agency were required to allocate between corrective action/response wastes and wastes presently disposed of in underground injection wells or surface units other than impoundments and landfills, the Agency might choose to allocate the capacity to the corrective action/response wastes, given that they are customarily generated at sites actually posing a risk. EPA plans to discuss this point further in regulations dealing with First Third wastes that are injected into underground wells.

4. Request for Comment on Variance for Contaminated Debris

EPA is not proposing to grant a capacity variance for contaminated debris. Debris encompasses so many different types of materials—many of them highly out of-the-ordinary—that generic determinations as to type of treatment needed, and amount generated, are difficult.

EPA, however, solicits comment on whether a variance for contaminated debris should be granted. Such a variance would apply to all debris from CERCLA response actions and RCRA corrective actions which is contaminated with solvents, certain dioxins or HOCs above 1,000 ppm. It would also apply to debris contaminated with first third wastes whose treatment standard is based on incineration. Although it is difficult to pinpoint exactly how much debris will be generated, much of it will be solids (see 51 FR 40577, November 7, 1986)

defining "debris" to include "wood, stumps, clothing, equipment, building materials, storage containers, and liners"). The treatment standard for these solids will be based on incineration, and as noted above, EPA has allotted available solids incineration capacity for wastes other than soils and debris. Put another way, if there is not enough solids incineration capacity to accommodate contaminated soils, there also is not enough solids incineration capacity to accommodate both contaminated soils plus contaminated debris. In addition, Congress linked contaminated soils and debris when it established a different effective date for these wastes in sections 3004 (d)(3) and (e)(3). EPA thus solicits comment on extending the scope of the variance to include contaminated debris.

5. No Proposed Variance for Other Contaminated Soils

EPA is not proposing a national capacity variance for any of the following hazardous wastes: (a) Soils contaminated with solvents or dioxins which do not result from CERCLA response actions or RCRA corrective actions; and (b) soils contaminated with wastes whose treatment standard is not based on incineration. (See chart: Summary of Current and Proposed Effective Dates). With respect to soils that are not generated in the course of CERCLA or RCRA clean up activities, the applicable statutory effective date of November 8, 1986 has already passed and cannot be extended further (any person who manages such wastes may, however, submit an application for a case-by-case extension to the effective date). With respect to contaminated soils not requiring incineration to achieve the treatment standard, there is ample treatment capacity (for example, stabilization) so that a capacity variance is not warranted.

6. Definition of "Soil"

For the purpose of determining whether a contaminated material is subject to this national variance, some definition of the term "soil" is needed. Soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids, sludges or debris. The Agency is soliciting comment with respect to appropriate methods for determining whether such mixtures should be considered a soil waste. Soils ordinarily do not include any wastes withdrawn from hazardous waste management units, however, such as impoundment dredgings. EPA has calculated that treatment capacity exists for these wastes, and in addition, they are sludges, not soils. In addition, contaminated soils would ordinarily have to result from some type of cleanup activity not associated with a hazardous waste management unit currently subject to regulations under Parts 264 and 265.

The Agency also notes that the proposed variance obviously would not apply to materials produced as a result of the deliberate addition of soil or dirt to a restricted hazardous waste. Such a practice is forbidden by the provisions of the dilution prohibition (40 CFR 268.3).

7. Notes on Drafting of the Regulatory Language

To implement these changes in the various capacity variances, EPA is proposing to amend regulatory language in §§ 268.30–268.33. With respect to the solvent wastes covered in § 268.30, the Agency is proposing to add a new § 268.30(a)(4) dealing with contaminated soil and debris from CERCLA response and RCRA corrective actions. This provision would replace existing § 268.1(c)(3). New § 268.30(a)(5)–(7) would then indicate that certain residues from treating solvent wastes also would have prohibition effective dates other then November 7, 1986. (Incidentally, we note that the final changes in new § 268.30(a)(5) refers by cross-reference to treatment residues that have less than 1 percent solvent (treatment residues in the (a)(3) treatability group) but not to contaminated soils; this is because the contaminated soils in proposed § 268.30(a)(4) would never be generated as residues from treating another restricted solvent waste).

New § 268.30(b) would then group all the solvent wastes having a November 8, 1988 prohibition effective date (the <1% wastes in § 268.30(a)(3), the treatment residues in proposed § 268.30(a)(5), and CERCLA response and RCRA corrective action debris, and residues from treating the debris). New § 268.30(c) would group the wastes having an earlier effective date: i.e., Small Quantity Generator, CERCLA response and RCRA corrective action non-soil and debris wastes and residues from their treatment. New § 268.30(d) would set forth the 1990 effective date for CERCLA response and RCRA corrective action wastes. We also have added language indicating that if these wastes are to be disposed in landfills or impoundments until the prohibition effective date then the landfill or impoundment unit must meet the section 3004(o) minimum technology requirements. (See 53 FR 11769 (April 8, 1988)).

The Agency is proposing to make similar changes in §§ 268.31, 268.32, and 268.33 (this last provision still is proposed form) to reflect the proposed, revised effective dates. The language in § 268.33(c) would indicate that the 1990 effective date would apply to all soils contaminated with First Third wastes where the treatment standard for the waste is based on incineration. Appendix II of Part 268 will list the technology basis for treatment standards, and so provide a ready means of ascertaining which standards are based on incineration.

IV. Modifications to the Land Disposal Restrictions Framework and to Proposed Soft Hammer Provisions

A. Applicability (40 CFR 268.1)

The Agency is proposing to add a new § 268.1(d) to clarify that the Part 268 standards do not apply invariably to prohibited wastes generated from CERCLA response actions. Rather, such wastes could be subject to one or more of the waivers from otherwise applicable standards, which waivers are contained in CERCLA section 121(d)(4)(A)–(F). The same is true, of course, of all other RCRA provisions, but EPA believes it particularly important to mention this with respect to Part 268 because there are regulatory provisions that deal explicitly with prohibited wastes from CERCLA response actions (see e.g. proposed §§ 268.30(a)(4) and 268.30(c)).

B. Recordkeeping (40 CFR 268.7)

The November 7, 1986, rule (51 FR 40572) established a tracking system for wastes subject to the land disposal restrictions requiring treatment facilities to have records of the notices received from generators or other treatment facilities, and disposal facilities to have copies of the notifications and certifications provided by generators or treatment, storage and disposal facilities as codified in 40 CFR 268.7. The April 8, 1988, notice (53 FR 11742) proposed to modify the tracking system by having storage facilities maintain files of the notices and certifications sent by generators and treatment facilities. This proposal also developed a similar tracking system for wastes subject to the "soft hammer" provisions which would require generators and treatment, storage, and disposal facilities to keep records of the notices and 40 CFR 268.8 demonstrations and certifications.

Today's notice proposes to further modify the tracking system to include in

40 CFR 268.7 (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) provisions stating that generators and storers must retain copies of the notifications and certifications forwarded to treatment, storage, and disposal facilities and received from storage facilities. The Agency believes that these changes will enhance the enforceability of the land disposal restrictions regulations and will make generator and storage recordkeeping requirements consistent with the recordkeeping requirements of treatment and disposal facilities.

Today EPA is also proposing an additional amendment to 40 CFR 268.7(a)(3) specifying that generators of wastes which are the subject of case-by-case extensions or national variances, or disposers of wastes with "no migration" exemptions must notify treatment and storage facilities receiving the wastes, a change that supplements, and is consistent with, the existing requirement to notify disposal facilities. In addition, the Agency is proposing that generators must retain records of this notification.

EPA is also proposing to add 40 CFR 268.7(a)(5) to require generators to retain records of data from testing the waste, treatment residual, or extract of the waste or treatment residual developed using the TCLP. The Agency believes that this addition to the regulations will establish consistency with the existing provisions requiring that data supporting decisions to restrict wastes based on knowledge of the wastes must be maintained in the generator's files. Furthermore, this action appears to enhance the enforceability of the regulations. EPA is requesting comment on the proposed recordkeeping changes explained in this section of the preamble.

EPA is also proposing to modify § 268.7(a) to provide for a limitation on the time period that records are required to be retained by generators. Although the current regulations require owners and operators of facilities to maintain § 268.7 records for a finite period of time, *i.e.*, until closure of the facility (see §§ 264.73(b) and 265.73(b)), the regulations currently provide that generators must maintain, for an *indefinite* period of time, all supporting data used to determine that a waste is restricted based solely on the generator's knowledge. *See* existing § 268.7(a)(4) (proposed to be redesignated as § 268.7(a)(5) in today's notice). In light of the indefinite time period stated in this existing requirement and today's proposal to require generators to maintain additional information (*i.e.*, copies of the § 268.7 notices, certifications, and all waste analysis data), the Agency believes that a finite time period may be a more appropriate burden on generators, while preserving the Agency's enforcement ability. Therefore, EPA is today proposing a 5-year limitation on the retention requirement for all records generators produce to comply with § 268.7 of the land disposal restrictions.

Similar to the generator manifest retention requirements in § 262.40, EPA is proposing that the 5-year time period would begin on the date that the restricted waste is sent to on-site or off-site treatment, storage, or disposal. Also similar to the § 262.40 manifest provision, the 5-year retention requirement would be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

Unlike the generator manifest requirements in § 262.42, which provide that generators must submit an Exception Report to EPA if they have not received a signed copy of the manifest from the designated owner or operator within 45 days from when the waste is accepted by the initial transporter, EPA is not proposing to create an exception reporting requirement for § 268.7 generator records. The Agency believes that an additional exception reporting requirement would be an undue burden on generators. Instead, EPA believes that requiring generators to retain for a 5-year period the § 268.7 records they produce is a more reasonable requirement, and that this would be adequate to support the Agency's enforcement program. The Agency recognizes that the proposed 5-year limit is unlike § 262.40, which requires generators to maintain a copy of the manifest for a 3-year period (subject to the automatic extension mentioned above). EPA believes that a 5-year limit is an appropriate compromise to imposing an additional exception reporting requirement, particularly in light of the additional concerns Congress has expressed regarding the proper management of wastes that are prohibited from land disposal. However, the Agency also solicits comment on the need for a 5-year limit versus the usual 3-year limit.

EPA also recognizes that the proposed 5-year retention requirement may, as a practical matter, result in a *de facto* change in the manifest retention requirement from three years to five years because many generators are putting the § 268.7 notices and certifications directly onto their manifests. The Agency does not intend to discourage the practice of putting this § 268.7 documentation on the manifest to the extent that such practices comply with State requirements. However, EPA is requesting comment on the generator record retention requirement proposed in today's notice, including comment on whether a finite period should be specified and, if so, whether five years or some other time period is appropriate.

C. National Variance for Spent Solvent Waste Residues (40 CFR 268.30)

EPA is also proposing to make a minor correction to 40 CFR 268.30(b) which will cross-reference rule language in the July 8, 1987, regulations (52 FR 25760). Under this rule the Agency added 40 CFR 268.30(a)(4) stating that residues from treating the wastes described in section 40 CFR 268.30(a) (1), (2), and (3) are eligible for a two-year variance from the effective date of the restrictions. EPA omitted, inadvertently, to cross-reference paragraph (a)(4) in 40 CFR 268.30(b). We are proposing to correct the omission in this rule. EPA is not soliciting further comment on 40 CFR 268.30(a)(4) or any other provision in 40 CFR 268.30(a) which does not address the rescission of the variance for solvent-containing wastes (with the exception of § 268.30(a)(3) on which EPA has solicited comment; see 53 FR 11770).

EPA is proposing the following minor changes to the provisions implementing the section 3004(g)(6) soft hammer, which EPA proposed on April 8, 1988.

D. Section 268.8(a)(3)

EPA is proposing a small change in the language of proposed § 268.8(a)(3), proposed at 53 FR 11788. The language should refer to landfills and surface impoundments rather than all land disposal facilities, since the soft hammer, which proposed § 268.8(a)(3) implements, restricts disposal only to landfills and surface impoundments.

E. Section 268.8(b)(2)

We are proposing language identical to that proposed on April 8, except that we would delete the final clause which would allow the Regional Administrator to require a given method of treatment upon invalidating a certification. The soft hammer does not appear to allow EPA to affirmatively specify a type of treatment.

F. Section 268.8(c)

We are also proposing a change in proposed § 268.8(c) to indicate more clearly that prohibited soft hammer

wastes can be disposed of in impoundments or landfills until the occurrence of the first of three events: (1) The certification is invalidated; (2) EPA establishes a treatment standard; or (3) the hard hammer falls.

G. Section 268.33(g)

We are proposing modified language to clarify a generator's testing obligations when a treatment standard specifies concentration levels in the total waste versus the waste extract, and also proposing to delete the final three words ("in this section") since this reference was overly restrictive (omitting reference to no migration variances or treatability variances, to maintain only two of the omissions).

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

The amendments being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer section 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in 50 FR 28728, *et seq.*, July 15, 1985.

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation of today's proposal and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is proposing to grant and rescind two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be

authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action will be the establishment of new waste treatability groups. All wastes meeting the criteria of these new waste treatability groups will also be subject to the variances, and thus, granting such variances has national impacts. Therefore, this aspect of the program is not delegated to the States.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. However, the Agency is planning to propose an interpretation of the "no migration" language in the **Federal Register** for public comment. Because of the controversy surrounding the interpretation of the statutory language, and the potential for changes in policy, EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the **Federal Register**.

States are free to impose their own disposal restrictions if such actions are more stringent or broader in scope than the actions of Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such restrictions, the broader and more stringent State restrictions govern.

VI. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted First Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of First Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

Management of some First Third wastes could be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

Although there may be economic incentives to manage restricted First Third wastes by ocean dumping and ocean-based incineration, both technologies require permits, which could be issued only if technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence) were met. MPRSA requires that nine specific factors, including the availability and impacts of land-based disposal alternatives, be considered before permits can be issued for ocean disposal.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to First Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other sources of air emissions, such as tanks and waste transfer and handling.

VII. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule. These estimates are required for "major" regulations as defined by Executive Order 12291. The Agency is also required under the Regulatory Flexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's supplementary proposed rule is not a major rule. (However, in combination with the previous proposal (April 8, 1988; 53 FR 11742), the rule is a major rule.) This section of the preamble discusses the results of the analyses of the proposed rule as detailed in the draft Regulatory Impact Analysis (RIA) for the proposed rule. The draft RIA is available in the public docket.

The analyses presented in this section and in the draft RIA do not fully reflect the current status of the proposed rule. Certain wastes were included in the RIA, but due to the additional time required to set treatment standards for the wastes, were not part of the proposed rule. In addition, treatmen:

standards were set in the proposed rule for certain wastes which did not appear in the database used for the RIA and which were therefore not analyzed. These discrepancies will be addressed in the RIA for the First Third final rule.

2. Executive Order No. 12291

Executive Order 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has prepared an RIA and has concluded that the supplementary proposed rule is not a major rule. The annual cost to the economy of the supplementary proposed rule would be approximately $36 million. (However, in combination with the previous proposal (April 8, 1988, 53 FR 11742), the rule would be a major rule with an annual cost of $717–732 million.)

3. Basic Approach

EPA is proposing to set treatment standards for a subset of the First Third F and K wastes. The effects of the proposed rule were estimated by comparison of post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline is defined to be continued land disposal of wastes in units meeting minimum technological requirements.

4. Methodology

a. *Determination of Affected Population and Waste Management Practices.* The first step in determining the populations of affected wastes and facilities was to characterize waste streams based on available characterization reports and professional judgement. (See Section C for references.) This characterization data was matched with information on waste quantities and management practices from the 1981 RIA Mail Survey and the 1984 Small Quantity Generator Survey to determine the waste streams and facilities potentially affected by the proposed rule. Waste quantities and numbers of facilities from each survey were scaled up, by means of weighting factors, to represent the national population of wastes and facilities.

Next, it was necessary to adjust the affected waste and facility populations by considering the cost of compliance with regulations which have taken effect since the 1981 RIA Mail Survey was conducted. In particular, EPA adjusted reported waste management practices to reflect compliance with the provisions of 40 CFR Part 264, which apply to permitted treatment, storage, and disposal facilities. In making this adjustment, the Agency assumed that facilities would elect the least costly methods of compliance.

This adjustment defines not only baseline management practices and costs associated with them, but also the number of facilities and wastes streams in the affected population. For example, for some facilities, the costs of land disposing certain wastes may have been driven so high by the minimum technological requirements that other management modes became less expensive. EPA assumes that these facilities no longer land dispose these wastes and that these wastes are no longer part of the population of wastes that may be affected by any restrictions on land disposal.

Finally, it was necessary to consider the overlap between First Third wastes and California list, solvent, and dioxin wastes. A number of First Third wastes are California list wastes, and a few First Third mixed wastes contain solvents and dioxins. To isolate the impacts of this proposed rule, it was necessary to "net out" the costs, economic impacts, and benefits stemming from treatment standards established under other rules; in some cases this resulted in waste streams and facilities being dropped from the affected population for this rule.

The population of wastes which would be affected by the proposed rule may include some wastes from CERCLA responses or RCRA corrective actions. However, there are insufficient data at present to estimate these quantities. Underground injected wastes were excluded from this analysis; these wastes will be dealt with in the RIA for a separate rule.

The population of affected facilities may include:

- Commercial hazardous waste treatment, storage, and disposal facilities (commercial TSDFs), which charge a fee for hazardous waste disposal;
- Non-commercial TSDFs, which provide disposal services for wastes generated on-site or off-site by their parent firms;
- Generators, which send their waste off-site to commercial TSDFs for disposal; and
- Small quantity generators (SQGs), which send their waste off-site to commercial TSDFs.

b. *Cost Methodology.* Once waste quantity, type and method of treatment were known for the population of affected facilities, EPA developed estimates of costs of compliance for individual facilities, based on cost estimates for surveyed facilities representing the affected population. EPA estimated baseline and compliance waste management costs using engineering judgment. Wastes amendable to similar types of treatment were grouped to identify economies of scale available through co-treatment and disposal.

Facilities face several possible options if they may no longer land dispose of their wastes. EPA applied the same rationale in predicting facility choice among these options as it did in establishing the affected population: Facilities were assumed to elect the least costly method of complying with the requirements of this rule. Costs of compliance were derived by predicting the minimum-cost method of compliance with land disposal restrictions for each facility and calculating the increment between that and baseline disposal costs. As in the analysis of baseline costs, economies of scale in waste management were considered. Shipping costs for wastes sent off-site for management were also considered.

EPA developed facility-specific compliance costs in two components, which were weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance (O & M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost which is an initial facility outlay incurred for construction and depreciable assets. Capital costs were restated as annual values by using a capital recovery factor based on a nominal interest rate of nine percent. These annualized capital costs were then added to yearly O & M costs to derive an annual compliance cost.

c. *Economic Impact Methodology*—(1) *Non-Commercial TSDFs and SQGs.* EPA assessed economic impacts on non-commercial TSDFs and SQGs in several steps. First, the Agency employed a

general screening analysis to compare facility-specific incremental costs to financial information for firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. (See Section C for references.) This comparison was based on two ratios, which were used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. This ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a coverage ratio relating cash from operations to costs of compliance. This ratio represents the number of times that facility gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse effect. The coverage ratio is the more stringent of the two ratios, but exceeding the critical level in either one suggests that facility is likely to be significantly affected. These ratios bound possible effects on individual firms.

Once facilities experiencing adverse economic effects were identified using the two screening ratios, a more detailed financial analysis was performed to verify the results and to focus more closely on affected facilities. For this subset of facilities, the coverage ratio was adjusted by allowing a portion of costs to be passed through. Economic effects on individual facilities were examined assuming that product price increases of five percent were possible. Those facilities for which the coverage ratio was less than two were considered likely to close.

(2) *Commercial TSDFs.* For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which might be used as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal and solid wastes. Consequently, the analysis of economic effects on commercial facilities was qualitative. This analysis included an examination of the quantity of waste each facility received from the waste group restricted by today's rule. EPA also examined the ability of each facility to provide the additional treatment required once these restrictions were promulgated, and thus to retain or expand that portion of its business generated by restricted wastes.

(3) *Generators.* EPA's analysis of the economic effects of this rule on generators disposing of large quantities of affected wastes off-site assumed that commercial facilities could entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the RIA Mail Survey, EPA did not develop plant-specific waste characterizations, treatment methods, and compliance costs for generators, as it did for TSDFs. The analysis of the economic effects of today's proposed rule on this group used RIA Mail Survey data to develop model plants generating average waste quantities. This allowed EPA to assess possible effects on generating plants.

d. *Benefits Methodology.* The benefits of today's proposed rule were evaluated by considering the reduction in human health risk that would result from using alternative treatment for First Third wastes rather than employing baseline management practices. Due to time and budget constraints, the benefits from human health risk reduction were analyzed qualitatively. Estimates of risk reduction from previous RIAs were used for certain wastes in this RIA where there was correspondence between the wastes in terms of waste codes, physical forms, baseline and alternative management practices, and quantities.

Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease-causing agents. The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the waste stream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and the fate and transport of chemical constituents in environmental media.

EPA estimated human health risk in previous RIAs in four steps. The first step was to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air, surface water, and ground water) into which they might be released by a certain waste management technology. These estimates depend on the steady-state (i.e., continuous) release rates calculated for each technology, and on environmental fate and transport characteristics for constituents.

The next step was to estimate the total human intake, or dose, of each of the chemicals through inhalation of air and ingestion of ground water, surface water, and contaminated fish. A 65 kilogram person was assumed to be continuously exposed to contaminated media over a 70-year lifetime.

The Agency next calculated the risk to an individual from the dose derived in the previous step. EPA estimated the relationship of dose to effect (using a "dose-response" curve developed based on toxicity data) and weighted the effect according to severity.

Finally, EPA estimated the population risk by multiplying the average individual risk by the number of people in a given environment. The whole process described above was repeated 2,000 times, using different population sizes and environmental settings drawn from representative distributions, to generate a population risk distribution for each waste-technology combination. The mean of the distribution for the baseline disposal technology was compared with the mean of the distribution for an alternative treatment technology to derive the net benefit of the land disposal restrictions for that waste stream. Risks were not discounted.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for First Third wastes are likely to be understated.

5. Results

a. *Population of Affected Facilities.* Most of the affected facilities were generators. Of 138 affected facilities, 95 were generators, 23 were non-commercial TSDFs, and 20 were commercial TSDFs. No SQGs were affected.

b. *Costs.* The annualized incremental cost of the supplemental proposed rule is approximately $36 million, making the rule a minor rule. (However, in combination with the previous proposal (April 8, 1988; 53 FR 11742), the rule would be a major rule with an annual cost of $717–732 million.) Most of the cost of the rule is associated with the treatment of K086 and K087 wastes.

Most of the waste affected by the proposed rule was land disposed in the baseline (as opposed to being stored or treated in surface impoundments or treated under California list land disposal restrictions); the post-regulatory practice for most of the waste was incineration. All of the waste stored in surface impoundments in the baseline dropped out of the analysis because storage in tanks was found to be less expensive than retrofitting surface

impoundments to meet Part 264 requirements. Nearly all of the waste treated in surface impoundments dropped out of the analysis, since treatment was less costly than compliance with Part 264 requirements. The small quantity of dredged material from these impoundments requiring treatment caused these costs to be low.

c. *Economic Impacts.* Twenty-six facilities would be significantly impacted by the proposed rule. Of these, 21 are generators and 5 are non-commercial TSDFs. Commercial TSDFs were assumed to pass all compliance costs through to generators; therefore, the number of significantly affected commercial facilities was not calculated.

The significantly impacted non-commercial TSDFs are from the Chemicals and Allied Products industry and the Primary metals industry (SICs 28 and 33, respectively). Significantly impacted generators are from the Primary Metals industry (SIC 33), Fabricated Metals industry (SIC 34), and Transportation Equipment industry (SIC 34). Commercial TSDFs fall primarily into the Electric, Gas, and Sanitary Services sector (SIC 49); those facilities specializing in land disposal services could be adversely affected.

d. *Benefits.* Quantitative estimates of human health risk reduction, derived from previous RIAs, were available for four of the 19 waste streams included in the cost analysis. These four waste streams represent approximately 25 percent of the total waste volume included in the cost analysis. The total benefits for these four waste streams are a reduction of 20 cases of adverse health effects over 70 years, or an annual reduction of 0.29 cases. All of these benefits are due to one K087 waste stream.

Benefits for another six waste streams were assessed qualitatively and found to be low or zero. Data for assessing the benefits of the remaining nine waste streams were not available.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for a proposed rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of the proposed rule on small entities, here defined as concerns employing fewer than 50 persons. Because of data limitations, this small business analysis excluded generators of large quantities of First Third wastes. The small business population therefore included only two groups: All non-commercial TSDFs employing fewer than 50 persons and all SQGs which were also small businesses.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA has examined the proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. Only small businesses were identified as being affected by the proposed rule, and fewer than 20 percent of the small businesses were significantly affected based on the EPA guidelines. EPA has therefore concluded that today's proposed rule will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal RFA in support of the rule. More detailed information on small business impacts is available in the RIA for this rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1447) and a copy may be obtained from Rick Westlund, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2745. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981" (the RIA Mail Survey) (April 1984). EPA's "National Small Quantity Hazardous Waste Generator Survey" (February 1985) was the major source of data on small quantity generators.

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR Part 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR Part 261," Vols. I and II (August 1985);
- RCRA background and listing documents for 40 CFR Part 261;
- RCRA Section 3007 industry studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984); and
- Source assessment documents for various industries. Financial information for the economic impact analysis was obtained from the 1982 Census of Manufacturers and 1984 Annual Survey of Manufacturers. Producer price indices were used to restate 1984 dollars in 1987 terms.

E. Rescission of National Variance for Certain Solvent and California List Wastes

EPA is proposing to rescind parts of the variances granted under the November 7, 1986 and July 8, 1987 rules. Specifically, variances would be rescinded for small quantity generator (SQG) solvent wastes; non-wastewater HOCs with concentrations greater than 1,000 mg/l; and solid HOCs with concentrations greater than 1,000 mg/kg (except HOC soils). Rescission of these variances would have two impacts. First, affected waste generators would have to comply with waste treatment standards at an earlier date. In the case of SQG solvents, rescission of the variance would cause post-regulatory costs to be incurred in August 1988 rather than in November 1988. In the case of California list HOCs, rescission of the variance would cause post-regulatory costs to be incurred in August 1988 rather than in July 1989. The movement of the post-regulatory costs forward in time would result in only minor increases in overall post-regulatory costs (approximately five percent of pre-rescission post-regulatory costs for the wastes affected). (Refer to the background materials on the rescission of land disposal restriction variances for a discussion of the

methodology and results of the rescission analysis.)

The second impact of the rescission would be to prohibit wastes from land disposal at an earlier date. This would result in short-term benefits to human health and the environment to the extent that alternative treatment is less risky than land disposal.

VIII. Implementation of the Land Disposal Restrictions Program

The generator or owner/operator of a treatment, storage, and disposal facility must follow the waste management procedures specified in 40 CFR Part 268 which are applicable to the restricted hazardous wastes subject to the provisions in today's proposal. These wastes are listed in Subpart C of Part 268. The corresponding treatment standards and effective dates are found in Part 268 Subpart D. After the applicable effective date, a generator of a waste must determine, at the point of initial generation, if the waste meets the treatment standard. This determination can be made based on knowledge or analysis of the hazardous constituents in the waste, treatment residual, or extract of the waste or treatment residual. Data supporting a determination based on knowledge must be kept in the generator's files.

A waste which meets the treatment standard or is the subject of a national variance, case-by-case extension, or "no migration" exemption can be land disposed. The generator must satisfy the notification and certification requirements of 40 CFR 268.7(a) (2) and (3). The land disposal facility is required by 40 CFR 268.7(c) to keep a record of the notice and certification and verify that the treatment standard was met by testing according to the frequency specified in the facility's waste analysis plan.

A waste which does not meet the treatment standard can be land disposed after adequate treatment. The generator must notify the treatment facility in accordance with 40 CFR 268.7(a)(1). The treatment facility must maintain a record of the notification and test the treated wastes according to the frequency specified in the facility's waste analysis plan. For treated wastes which meet the standard the treatment facility must provide the notice and certification required under 40 CFR 268.7(b) (1) and (2) to the land disposal facility. For treated wastes which do not meet the standard the treatment facility must comply with the notice requirements of 40 CFR 268.7(a)(1) if the waste will be managed at a different treatment facility.

In the April 8, 1988, rule (53 FR 11742) EPA solicited comment on modifications to 40 CFR 268.7 which would enable the Agency to track, from generator to treatment and/or disposal facility, the management of restricted hazardous wastes subject to the "soft hammer" provisions. For today's proposal these are wastes listed in 40 CFR 268.10 which do not have treatment standards proposed in this notice or the April 8, 1988 notice. Comments pertaining to the proposed demonstration, certification, and notification requirements for these wastes should be addressed to the April 8, 1988 notice.

Although EPA has stated in earlier rules (*see* 51 FR 40572, November 7, 1986; 52 FR 21010, June 4, 1987; 52 FR 25760, July 8, 1987) that restricted wastes are subject to certain Part 268 requirements (e.g., the § 268.7 recordkeeping requirements and the § 268.3 dilution prohibitions) even if such wastes are subject to an exemption, extension, or variance making them eligible for land disposal, the Agency has become aware of some confusion in the regulated community regarding this point. The confusion seems to have been created through the interchanging use, by both the regulated community and, in some instances, by EPA, of the terms "restricted" and "prohibited." To eliminate this confusion, EPA is clarifying the distinction between "restricted" and "prohibited" wastes in today's notice.

"Restricted" wastes are those categories of hazardous wastes that are prohibited from land disposal either by regulation or statute (regardless of whether subcategories of such wastes are subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance, any of which makes them currently eligible for land disposal). In other words, a hazardous waste is "restricted" no later than the date of the deadline established in, or pursuant to, RCRA section 3004. Therefore, the F001–F005 solvent wastes and the F020–F023 and F026–F028 dioxin-containing wastes were "restricted" as of November 8, 1986, despite the fact that several subcategories of these wastes obtained 2-year national capacity variances allowing them to be land disposed until November 8, 1988. Similarly, California List wastes were "restricted" as of July 8, 1987, despite the fact that several subcategories of such wastes obtained 2-year national capacity variances allowing continued land disposal until July 8, 1989. Wastes contained in the schedule of thirds (51 FR 19300, May 28, 1986) are considered "restricted" no later than the dates specified in the schedule promulgated at 40 CFR 268.10, 268.11, and 268.12.

Generators must determine whether their wastes are "restricted" at the point of initial generation, *i.e.*, when the waste is first considered a hazardous wastes subject to RCRA regulation. To determine whether a hazardous waste is "restricted," generators need only determine whether the waste belongs to a category of wastes that has been prohibited from land disposal by regulation or by the automatic "hammer" provisions of RCRA. "Prohibited" wastes are a subset of "restricted" wastes, *i.e.*, they are those "restricted" wastes that are currently ineligible for land disposal. Therefore, a hazardous waste that is not "restricted" cannot be "prohibited" under RCRA section 3004. However, once a waste is considered "restricted," at least some of the Part 268 requirements apply.

The first Part 268 requirement applicable to "restricted" wastes is that generators must determine whether their waste currently is eligible for land disposal pursuant to the requirements of § 268.7. If the wastes currently is not eligible for land disposal (*i.e.*, the prohibition effective date has passed, the waste does not meet all applicable treatment standards or prohibition levels, and no § 268.5 extensions, § 268.6 "no migration" exemptions, or national capacity variances apply), then the waste currently is "prohibited" from land disposal as well as "restricted." If, however, the waste currently is eligible for land disposal (*i.e.*, the prohibition effective date has passed but the waste meets the applicable treatment standards or prohibition levels or is subject to a § 268.5 extension, § 268.6 "no migration" exemption, or national capacity variance) then the waste is considered "restricted" but not currently "prohibited." All wastes that are "restricted" must comply with the § 268.3 dilution prohibition (assuming the wastes are land disposed or otherwise managed after the prohibition effective date), the § 268.7 waste analysis and recordkeeping requirements, and all other applicable Part 268 requirements.

IX. References

Background Documents

(1) U.S. EPA, "Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions Proposed rule First-Third Waste Volume, Characteristics, and Required and Available Treatment Capacity—Part II." U.S. EPA, OSW, Washington, DC 1987.

(2) U.S. EPA, "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities." U.S. EPA, OSW, Washington, DC, 1987.
(3) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K046", Volume 11, U.S. EPA, OSW, Washington, DC, May 1988.
(4) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K101, K102," Volume 12, U.S. EPA, OSW, Washington, DC, May 1988.
(5) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F006", Volume 13, U.S. EPA, OSW Washington, DC, May 1988.
(6) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K087" Volume 14, U.S. EPA, OSW, Washington, DC, May 1988.
(7) U.S. EPA "Best Demonstrated Available Technology (BDAT) Background Document for K086", Volume 15, U.S. EPA, OSW Washington, DC, May 1988.
(8) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K001", Volume 16, U.S. EPA, OSW, Washington, DC, May 1988.
(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K106", Volume 17, U.S. EPA, OSW, Washington, DC, May 1988.
(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K022", Volume 18, U.S. EPA, OSW, Washington, DC, May 1988.
(11) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for F002", Volume 19, U.S. EPA, OSW, Washington, DC
(12) U.S. EPA, "Best Demonstrated Available Technology (BDAT) Background Document for K099", Volume 20, U.S. EPA, OSW, Washington, DC, May 1988.

Regulatory Impact Analysis

(13) U.S. EPA, "Regulatory Impact Analysis of Proposed Restrictions on Land Disposal of First-Third Wastes." U.S. EPA, OSW, Washington, DC 1987.

X. List of Subjects in 40 CFR Part 264, 265, 266, and 268

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Date: May 9, 1988.

Lee Thomas,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Subchapter I of the CFR is proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

I. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart E—Manifest System, Recordkeeping, and Reporting

2. In § 264.73 paragraphs (b) (11) and (12) are revised and paragraphs (b) (15) and (16) are added to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(11) For an off-site treatment facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

(12) For an on-site treatment facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

* * * * *

(15) For an off-site storage facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8; and

(16) For an on-site storage facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In Part 265:

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.73 paragraphs (b) (9) and (10) are revised and paragraphs (b) (13) and (14) are added to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(9) For an off-site treatment facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8;

* * * * *

(13) For an off-site storage facility, a copy of the notice, certification, and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 and § 268.8; and

(14) For an on-site storage facility, the information contained in the notice (except the manifest number), certification, and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under § 268.7 and § 268.8.

PART 266 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

III. In Part 266:

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. In § 266.20 paragraph (b) is revised to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in Subpart D (or prohibition levels in Subpart C where no treatment standards have been established) of Part 268 for each recyclable material (i.e. hazardous waste constituent) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided that such fertilizers meet the applicable treatment standards in Subpart D (or prohibition levels in Subpart C where no treatment standards have been established) of Part 268 for each

recyclable material (i.e. hazardous waste constituent) that they contain.

PART 268—LAND DISPOSAL RESTRICTIONS

IV. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.1 paragraph (c)(3) is removed, paragraphs (c)(4), (c)(5), and proposed paragraph (c)(6) are redesignated and revised as paragraphs (c)(3), (c)(4), and (c)(5), and paragraph (d) is added to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(3) Where the waste is generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram acute hazardous waste per month, as defined in § 261.5 of this chapter;

(4) Where a farmer is disposing of waste pesticides in accordance with § 262.70;

(5) Prior to May 8, 1990, in a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of § 268.8, with respect to wastes that are not subject to Subpart D treatment standards and not subject to the prohibitions in § 268.32 or RCRA section 3004(d).

(d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

3. Section 268.7 is amended by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(3), and (a)(4), and by adding paragraph (a)(5) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d), with each shipment of waste the generator must notify the treatment facility or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d). The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment or storage. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

* * * * *

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibition levels set forth in § 268.32 or in RCRA section 3004(d). The generator must retain a copy of the notice and certification for at least five years from the date that the waste was last sent to off-site disposal or storage. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

* * * * *

(3) If a generator's waste is subject to a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide variance under Subpart C, with each shipment of waste, he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available; and

(v) The date the waste is subject to the prohibitions.

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(e) of this part and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(e). The generator must retain a copy of the notice for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in § 268.33(e);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data where available.

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. If a generator determines whether the waste is restricted based on testing his waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

* * * * *

4. Proposed § 268.8 is revised to read as follows:

§ 268.8 Landfill and surface impoundment disposal restrictions.

(a) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under § 268.33(e) of this part may be disposed in a landfill or surface impoundment which is in compliance with the requirements of § 268.5(h)(2) provided that the requirements of this section are met.

(1) Prior to such disposal, the person seeking to dispose such wastes (i.e., the generator or owner or operator) has made a good faith effort to locate and contract with treatment and recovery facilities currently available.

(2) Such generator or owner or operator submits to the Regional Administrator a demonstration and certification that the requirements of paragraph (a)(1) of this section have been met. The demonstration must include a list of facilities and facility

officials contacted, addresses, telephone numbers, contact dates, and an explanation of why no treatment is practically available. The following certification is required:

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) With the initial shipment of waste, such generator or owner or operator must submit a copy of the demonstration and the certification required in paragraph (a)(2) of this section to the landfill or surface impoundment disposal facility. For each subsequent waste shipment to the same disposal facility, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such generator or owner or operator must retain copies of the demonstration (if applicable) and certification required for each waste shipment on-site. The generator must retain a copy of the demonstration and certification for at least five years from the date that the waste was last sent to off-site treatment, storage, or disposal. The retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) After receiving the demonstration and certification, the Regional Administrator may request any additional information which he deems necessary to evaluate the certification.

(1) Any person who has submitted a certification under this section must immediately notify the Regional Administrator when he has knowledge of any change in the conditions which formed the basis of his certification.

(2) If, after review of the certification, the Regional Administrator determines that treatment (or further treatment) that yields reductions in toxicity is practically and currently available, or that some other method of treatment yields greater reductions in toxicity of the waste or residual or greater reductions in the likelihood of migration of hazardous constituents from the waste or residual, the Regional Administrator may invalidate the certification.

(c) Once the certification is made, wastes may be disposed of in a landfill or surface impoundment (unless the Regional Administrator invalidates the certification) until treatment standards are set forth in Subpart D of this part or until May 8, 1990, whichever is earlier.

Subpart C—Prohibitions on Land Disposal

5. Section 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) Effective November 8, 1986, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The initial generator's solvent waste is a solvent-water mixture, solvent-containing sludge or solid, or solvent-contaminated soil (non CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41 of this part.

(4) The solvent waste is contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA); or

(5) The solvent waste is a residue from treating a waste described in paragraph (a)(3) of this section; or the solvent waste is a residue from treating a waste not described in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section provided such residue belongs to a different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (a)(3) of this section; or

(6) The solvent waste is a residue from treating a waste described in paragraphs (a)(1) and (a)(2) of this section; or

(7) The solvent waste is a residue from treating a waste described in paragraph (a)(4 of this section.

(b) Effective November 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a)(3) and (a)(5) of this section are prohibited from land disposal. Between August 8, 1988, and November 8, 1988, wastes included in paragraphs (a)(3) and (a)(5) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(c) Effective August 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a)(1), (a)(2), and (a)(6) of this section are prohibited from land disposal.

(d) Effective November 8, 1990, the F001–F005 solvent wastes which are contaminated soil resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) Effective November 8, 1988, the F001–F005 solvent wastes which are contaminated debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA) and the residues from treating these wastes are prohibited from land disposal.

(f) The requirements of paragraphs (a), (b), (c), (d), and (e) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

6. Section 268.31 is revised to read as follows:

§ 268.31 Waste specific prohibitions—Dioxin-containing wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40

CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the following condition applies:

(1) The F020–F023 and F026–F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under subtitle C of the Resource Conservation and Recovery Act (RCRA).

(b) Effective November 8, 1990, the F020–F023 and F026–F028 dioxin-containing wastes listed in paragraph (a)(1) of this section are prohibited from land disposal.

(c) Between August 8, 1988, and November 8, 1988, wastes included in paragraph (a) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter. Between November 8, 1988, and November 8, 1990, wastes included in paragraph (a)(1) of this section maybe disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) and all other applicable requirements of Parts 264 and 265 of this chapter.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the standards of Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

7. In § 268.32 paragraph (e)(2) is removed, paragraphs (a)(3), (d), (e)(1), (f), (g) introductory text, and (h) are revised to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

(a) * * *

(3) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg and not listed in paragraphs (d) and (e) of this section.

* * * * *

(d) The requirements of paragraph (a) of this section do not apply until November 8, 1988, where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA) unless the following condition applies:

(1) The hazardous waste contains halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg and is contaminated soil resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Effective November 8, 1990, these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, the wastes may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) * * *

(1) Hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and which are contaminated soil not resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action required under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

(f) Between August 8, 1988, and July 8, 1989, wastes included in paragraph (e)(1) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(g) The requirements of paragraphs (a), (d), and (e) of this section do not apply if:

* * * * *

(h) The prohibitions and effective dates specified in paragraphs (a)(3), (d), (d)(1), and (e)(1) of this section do not apply where the waste is subject to a Part 268 Subpart C prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, see e.g., § 268.30(a)).

* * * * *

8. Proposed § 268.33 is revised to read as follows:

§ 268.33 Waste specific prohibitions—First Third Wastes

(a) Effective August 8, 1988, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. F006, K001, K004, K008, K015, K016, K018, K019, K020, K021, K022, K024, K025, K030, K036, K037, K044, K045, K046, K047, K060, K062, K069, K073, K083, K086, K087, K099, K100, K101, K102, K103, and K104 are prohibited from land disposal.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K048, K049, K050, K051, K052, K061, K071, and K106 are prohibited from land disposal.

(c) Effective August 8, 1990, the wastes specified in 40 CFR 268.10 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil are prohibited from land disposal.

(d) Between August 8, 1988, and August 8, 1990, for wastes described in paragraphs (b) and (c) of this section, disposal in a landfill or surface impoundment is allowed only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between August 8, 1988, and May 8, 1990, the wastes specified in § 268.10 for which treatment standards under Subpart D of this part are not applicable or which do not exceed the prohibition levels in § 268.32 or in RCRA section 3004(d) can be disposed of in a landfill or surface impoundment provided the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in § 268.10 exceeds the applicable treatment standards specified in § 268.41 and § 268.43, the initial generator must test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

9. In § 268.41(a), in the F001–F005 spent solvents table, Methylene chloride (from the pharmaceutical industry) and its corresponding concentrations is removed, and the following subtables are added to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *

F006 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Selenium	(1)
Silver	0.26
Zinc	0.086
Cyanide	(1)

[1] Reserved.

K001 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Copper	0.71
Lead	0.53
Zinc	0.086

K022 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	3.8
Nickel	0.31

K046 nonwastewaters	Concentration (in mg/l)
Lead	0.176

K086 nonwastewaters (solvent washes) (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	0.094
Lead	0.37

K087 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Lead	0.53
Zinc	0.086

K101 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Zinc	0.086

[1] Reserved.

K102 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Antimony	(1)
Arsenic	(1)
Barium	(1)
Cadmium	0.066
Chromium (total)	3.8
Copper	0.71
Lead	0.53
Nickel	0.31
Zinc	0.086

[1] Reserved.

K106 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Mercury	0.028

* * * * *

10. In § 268.42 paragraph (a)(2) is revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of Part 264 Subpart O or Part 265 Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards. These treatment standards do not apply where the waste is subject to a Part 268 Subpart C treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a)).

* * * * *

11. In § 268.43 the following subtables are added to the table in proposed paragraph (a) to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

* * * * *

F001, F002, F003, F004 and F005 wastewaters (Pharmaceutical Industry)	Concentration (in mg/l)
Methylene Chloride	0.44

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide	Reserved.

K001 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Naphthalene	7.98
Pentachlorophenol	36.75
Phenanthrene	7.98
Pyrene	7.28
Toluene	0.143
Xylenes	0.162

K001 wastewaters	Concentration (in mg/l)
Naphthalene	0.148
Pentachlorophenol	0.875
Phenanthrene	0.148
Pyrene	0.140
Toluene	0.143
Xylenes	0.161
Copper	0.42
Lead	0.037
Zinc	1.0

K022 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetophenone	19.0
Phenol	12.0
Toluene	0.034
Sum of Diphenylamine and Diphenylnitrosamine.	13.0
Sulfide	Reserved.

K086 nonwastewaters (Solvent Washes) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetone	0.37
n-Butyl alcohol	0.37
Ethyl acetate	0.37
Ethyl benzene	0.031
Methanol	0.37
Methyl isobutyl ketone	0.37
Methyl ethyl ketone	0.37
Methylene chloride	0.037
Toluene	0.031
1,1,1-Trichloroethane	0.044
Trichloroethylene	0.031
Xylenes	0.015
bis(2-ethylhexyl)phthalate	0.49
Cyclohexanone	0.49
1,2-Dichlorobenzene	0.49
Naphthalene	0.49

K086 nonwastewaters (Solvent Washes) (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Nitrobenzene	0.49

K086 wastewaters (Solvent Washes)	Concentration (in mg/l)
Acetone	0.015
n-Butyl alcohol	0.031
Ethyl acetate	0.031
Ethyl benzene	0.015
Methanol	0.031
Methyl isobutyl ketone	0.031
Methyl ethyl ketone	0.031
Methylene chloride	0.031
Toluene	0.029
1,1,1-Trichloroethane	0.031
Trichloroethylene	0.029
Xylenes	0.015
bis(2-ethylhexyl)phthalate	0.044
Cyclohexanone	0.022
1,2-Dichlorobenzene	0.044
Naphthalene	0.044
Nitrobenzene	0.044
Chromium (total)	0.32
Lead	0.037

K087 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acenaphthalene	3.4
Benzene	0.071
Chrysene	3.4
Fluoranthene	3.4
Indeno (1,2,3-cd) pyrene	3.4
Naphthalene	3.4
Phenanthrene	3.4
Toluene	0.65
Xylenes	0.070

K087 wastewaters	Concentration (in mg/l)
Acenaphthalene	0.028
Benzene	0.014
Chrysene	0.028
Fluoranthene	0.028
Indeno (1,2,3-cd) pyrene	0.028
Naphthalene	0.028
Phenanthrene	0.028
Toluene	0.008
Xylenes	0.014
Lead	0.037
Zinc	1.0

K099 nonwastewaters	Concentration (in mg/kg)
2,4-Dichlorophenoxyacetic acid	0.15
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzofurans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzofurans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzofurans	0.001

K099 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenoxyacetic acid	0.15
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzofurans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzofurans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzofurans	0.001

K101 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitroaniline	14.0

K101 wastewaters	Concentration (in mg/l)
Ortho-Nitroaniline	0.266
Antimony	Reserved.
Arsenic	2.036
Cadmium	0.238
Lead	0.110
Mercury	0.027

K102 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Ortho-Nitrophenol	13.3

K102 wastewaters	Concentration (in mg/l)
Ortho-Nitrophenol	0.028
Antimony	Reserved.
Arsenic	2.036
Cadmium	0.238
Lead	0.110
Mercury	0.027

K106 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Mercury	630

K106 wastewaters	Concentration (in mg/l)
Mercury	0.030

No Land Disposal for:	F006 wastewaters.
	K022 wastewaters
	K046 wastewaters
	K083
	K021
	K025
	K060
	K044
	K045
	K046 explosive nonwastewaters.
	K047

* * * * *

[FR Doc. 88–10874 Filed 5–16–88; 8:45 am]

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federal register

Tuesday
May 17, 1988

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Definitions of Plan Assets; Participant Contributions; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation defining when certain monies which a participant pays to, or has withheld by, an employer for contribution to a plan are "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). This regulation will provide guidance to employers that sponsor contributory plans, as well as fiduciaries, participants, and beneficiaries of plans.

EFFECTIVE DATE: The final regulation will take effect August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Judith Bleich Kahn, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 523–7901 or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC (202) 523–9596. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In 1979, the Department of Labor (the Department) published a proposed regulation defining the term "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code) [1] and dealing with the requirement of section 403 of ERISA that plan assets must be held in trust (44 FR 50363, August 28, 1979) (the 1979 Proposal). That proposal provided, in part, that the assets of a plan include any property that constitutes employee contributions to the plan. In the preamble to that proposal, the Department indicated that in the case of payroll deductions, an employee contribution is made at the time payment by check or cash is made or is required to be made to an employee in an amount less than that to which he would otherwise have been entitled, the lesser amount being justified on the ground that a contribution is being made to a plan.[2]

The portion of the 1979 Proposal that dealt with the trust requirement of ERISA also contained a proposed exemption from that requirement under which sponsoring employers of welfare plans would have been permitted to retain employee contributions for up to 90 days, provided they satisfied certain conditions with respect to such contributions.

A portion of the 1979 Proposal was reproposed in 1980 (45 FR 38084, June 6, 1980).

In 1982, the Department issued a final regulation dealing with a portion of the plan assets proposal as well as a regulation dealing with the trust requirement (47 FR 21241, May 18, 1982). In the preamble to that regulation, the Department noted that it intended to deal at another time with the issues raised by the comments on the proposed exemption from the trust requirement together with the part of the plan assets proposal regarding employee contributions.

On January 8, 1985, the Department withdrew most of the provisions of the 1979 Proposal and published a new proposal dealing with the definition of "plan assets" (50 FR 961). However, the Department did not withdraw the portion of the 1979 proposal dealing with employee contributions, and, in the preamble accompanying the new proposal, the Department noted that it intended to address these issues separately. Thus, this document contains the final rule relating to participant contributions based on the record develped with respect to the 1979 Proposal.

As noted above, the 1979 Proposal contained a proposed exemption from the trust requirement for certain employee contributions to certain welfare benefit plans. Several comments were received on this aspect of the proposal; these commentators generally argued that participant contributions to such plans represented reimbursement for costs already incurred by the employer and that such amounts should thus not be characterized as plan assets. In particular, one employer commented that it paid approximately 85% of benefits under its welfare plan from its own assets and that only 15% of the amounts paid out in benefits were attributable to participant contributions. In this regard, the Department would consider the appropriateness of an exemption from the trust requirement for certain welfare plans which could show that employee contributions consistently constituted reimbursement to the employer for moneys expended in premium payments or benefits.

Discussion of the Final Regulation

(1) General Rule for Participant Contributions

In response to the proposed regulation, the Department received numerous comments objecting to the requirement that employee contributions be paid into trust at the time such amounts are deducted from the employees' pay. Some of the commentators represented that large companies with several payrolls and payroll locations could not accomplish the necessary accounting and fund transfer operations to place employee contributions in trust immediately without substantial costs and disruption to existing payroll systems. Other commentators argued that the proposed rule would impose increased costs and administrative burdens, especially on small employers; in this regard, one commentator stressed that the regulations should not operate so as to discourage contributory plans, as that may be the only kind of plan an employer can afford to sponsor.

Comments from the banking and insurance industries addressed situations where a plan is funded by insurance contracts with premiums payable monthly or quarterly, and where a plan is maintained in connection with a trust agreement which can only accept monthly or quarterly contributions. These commentators argued that the funding vehicle could not accept contributions more frequently without significant costs. In addition, the commentators indicated that the maintenance of an interim trust would create administrative expenses without concomitant benefits to participants.[3]

Finally, several commentators noted that the proposed 90 day trust exemption for certain welfare plans contrasted sharply with the rule for other types of plans, for which the exemption would not be available.

After consideration of the comments, the Department has decided to modify the rule relating to participant

[1] The Secretary of Labor has authority to issue regulations relating to section 4975 of the Internal Revenue Code pursuant to section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[2] 44 FR at 50365, n.12.

[3] Persons commenting on the proposed exemption from the trust requirement raised similar objections to the condition in that exemption which would have required that employee contributions be held in a segregated account.

contributions. Under the final regulation, the assets of a plan shall include amounts paid by a participant (or beneficiary) or withheld by an employer from a participant's wages for contribution to a plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in any event within 90 days from the date on which such amounts are received by the employer or would otherwise have been payable to the employee in cash. Under this revised general rule, participant contributions to both pension plans and welfare plans are treated alike.[4]

The revised general rule relating to participant contributions is intended to reflect a balancing of the costs of promptly transmitting such contributions to the plan relative to the protections provided to participants by such transfers. In formulating the final regulation, the Department has attempted to remain consistent with one of the key purposes of the trust requirement of section 403(a) of ERISA—the segregation of plan assets so as to prevent commingling of such assets with an employer's own property.

The regulation is not intended, however, to allow employers to use participant contributions for their own purposes. The Department is concerned that participant contributions be paid promptly into the plan so as to begin earning interest or other investment return and to be available for the payment of benefits. Employers should examine their current payroll procedures to ascertain whether they are indeed transmitting participant contribution amounts at the earliest reasonable time. In this regard, employers who fail to transmit promptly such amounts, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions. *Pension Benefit Guaranty Corporation* v. *Solmsen*, 671 F. Supp. 938 (E.D.N.Y. 1987).[5]

The final rule allows a maximum of 90 days for employers to pay to the plan amounts representing participant contributions. The 90 day period is to begin on the date on which the contribution amount is received by the employer or the date on which such amounts would have otherwise been payable to the employee in cash. While the majority of commentators requested the Department adopt a final rule allowing for quarterly payments of participant contributions to a plan, many employers represented that they currently remitted such contributions on a biweekly or a monthly basis. The Department wishes to stress that the outside limit of 90 days is not intended to supersede the preceding portion of the rule, that is, that participant contributions become plan assets "as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets." What is a reasonable time for segregation from the employer's general assets depends on the facts and circumstances of a particular case.[6]

It will not be reasonable if, absent changed circumstances, an employer which has been making biweekly remittances of such contributions hereafter changes its practices to hold such amounts in its own account for an additional period of time, up to the 90 day limit. It will also not be reasonable for an employer which has been, and is able to continue, making monthly remittances to delay such remittances for an additional 60 days in order to take advantage of the 90 day maximum. Similarly, an employer which has been making remittances of participant contributions to the plan at or within 90 days, but which is reasonably able to remit such amounts at an earlier time, must change its practices to comply with the rule promulgated today.

(2) Relationship to 18 U.S.C. 664

The Department of Justice, in its comments on the proposed regulation, stated that under 18 U.S.C. 664, the embezzlement, conversion, abstraction, or stealing of "any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or any fund connected therewith," is a criminal offense, and that under such language, criminal prosecution may go forward in situations in which the participant contribution is not a plan asset for purposes of Title I of ERISA. Though this regulation defines when participant contributions become "plan assets," it does so only for the purposes of Title I of ERISA and the related prohibited transaction excise tax provisions of the Code. The regulation explicitly states that it may not be relied upon to bar criminal prosecutions pursuant to 18 U.S.C. 664.

However, it should be noted that under this regulation in circumstances in which the employer clearly converts participant contributions to his own use, such amounts will be considered "segregated," and thus will be "plan assets."

(3) Dues-Financed Plans

Several commentators expressed concern that the term "participant contributions" might be interpreted to include amounts paid as union dues when a portion of such dues may be used to pay benefits under a dues-financed welfare or pension plan. If such payments are considered to be participant contributions, one commentator argued, the sponsoring employee organization would be required to incur needless additional expenses. This commentator noted that under section 501(a) of the Labor Management Reporting and Disclosure Act of 1959, officers, agents, shop stewards and other representatives of labor organizations sponsoring plans are declared trustees with respect to such amounts and that criminal penalties are provided for the breach of duty by any such trustee.

The Department does not intend for the regulation relating to participant

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[4] One employer sponsoring a contributory plan commented that retired persons participated in its welfare benefit plan and requested clarification as to the treatment of amounts received from such persons. Section 3(7) of ERISA defines the term "participant" to mean "any employee or former employee of an employer * * * who is or may become eligible to receive a benefit of any type from an employee benefit plan." In addition, the continuation coverage provisions of Part 6 of title I of ERISA require that group health plans provide certain employees, former employees (including retirees), and family members the opportunity to continue health care coverage under the plan at group rates in certain instances where coverage would otherwise be terminated. See sections 601 through 608 of ERISA. Thus, the statute clearly contemplates that former employees, retirees and certain beneficiaries may be covered by a plan, in addition to active employees. Accordingly, while the final regulation refers to "participant contributions", the regulation also applies to payments made by former employees, retirees, and family member-beneficiaries covered under the plan.

[5] The obligation of a plan fiduciary to collect participant contributions from an employer is similar to the obligation of a fiduciary to collect contributions payable by an employer on its own behalf. In this respect, the Department has indicated that if a multiple employer plan does not establish and implement collection procedures which are reasonable, diligent and systematic, it may be found to be engaging in prohibited transactions under ERISA for failing to collect delinquent contributions. *See* ERISA section 406(a)(1)(B) and Prohibited Transaction Exemption 76-1, 41 FR 12740, 12741, March 26, 1976. *Cf., Central States Pension Fund* v. *Central Transport, Inc.*, 472 U.S. 559, 574 (1985), where the Court interpreted section 406(a)(1)(B) of ERISA as creating a requirement that the plan trustee assure the full and prompt collection of all contributions owed to the plan.

[6] The Department is of the opinion that there will be circumstances where the date of receipt of a participant contribution paid to the employer will be the earliest date on which such a contribution could reasonably be segregated from the employer's general assets and, therefore, in such circumstances, such an amount will be immediately subject to the trust requirement.

contributions to include amounts paid to an employee organization as union dues. Union dues are generally considered to be income to the union and, like other assets of the union, may be subject to the claims of the union's general creditors or used for the organization's general purposes. The Department has concluded that amounts paid as union dues should not be characterized as participant contributions merely because a portion of such dues might be used to provide benefits under a welfare or pension plan sponsored by the employee organization.[7]

(4) Effective Date

The Department is establishing an effective date for this final rule of 90 days from the date of its publication in the **Federal Register** in order to allow employers to adjust their accounting procedures and payroll systems to comply with the new rule. During this 90 day period, as noted above, all affected employers should examine their current payroll practices to determine whether they are in compliance with today's rule, that is, whether they are transmitting participant contribution amounts to the plan at the earliest date such contributions can reasonably be segregated from the employer's assets, not to exceed 90 days from the date of payment to or withholding by the employer.

(5) Designation

This final rule is being published at 29 CFR 2510.3–102.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. The regulation would describe when contributions made by a participant of a plan subject to ERISA or to the related prohibited transaction excise tax provisions of the Internal Revenue Code must be transmitted to the plan by an employer withholding the contributions.

Executive Order 12291

The Department has determined that the regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or 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.

Paperwork Reduction Act

The regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(11).

Statutory Authority

The final regulation is being adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

Final Rule

The Department is amending Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority citation for Part 2510 is revised to read as set forth below:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86, 1–87, and Labor Management Services Administration Order No. 2–6.

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), and 3 CFR 1978 Comp. 332.

2. By adding, in the appropriate place, the following § 2510.3–102:

§ 2510.3–102. Definition of "plan assets"—participant contributions.

(a) *Participant contributions.* For purposes of Subtitle A and Parts 1 and 4 of Subtitle B of Title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, not to exceed 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(b) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer W is a large national corporation that has several payroll centers. Since each payroll center has a different pay period and each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions, the company has adopted a procedure under which each payroll center promptly forwards figures representing its total payroll deductions for each plan for such month to a centralized location where amounts from all centers are promptly totaled and a single check representing the aggregate participant contributions for the month is issued promptly to the plan by the employer. W has reasonably concluded that this procedure permits segregation of participant contributions at the earliest practicable time. Under paragraph (a), the assets of the plan include the participant contributions as of the date on which the employer issues the check to the plan.

(2) Employer X is a small company with a small number of employees at a single payroll location. X maintains a contributory profit-sharing plan in which all of its employees participate. X's practice is to commingle accumulated participant contributions with its general assets and to issue a single check to the trust that is maintained under the plan in the amount of such accumulated contributions once each quarter. In view of the relatively small number of employees and the fact that they are paid from a single location, X could reasonably be expected to transmit participant contributions to a trust within 10 days of the close of each pay period. The assets of the plan include the participant contributions attributable to any pay period as of the date 10 days from the close of such period.

(c) *Effective date.* This section is effective August 15, 1988.

Signed at Washington, DC, this 11th day of May 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–10935 Filed 5–16–88; 8:45 am]

BILLING CODE 4510–29–M

[7] In some circumstances a union may so specifically "earmark" a portion of such dues as a source of benefits under a plan that those monies should be considered plan assets. This issue is beyond the scope of the regulation being published here.

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Tuesday
May 17, 1988

Part VI

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Regulation Relating to the Definition of Adequate Consideration; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation Relating to the Definition of Adequate Consideration

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of a proposed regulation under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act of 1986 (FERSA). The proposal clarifies the definition of the term "adequate consideration" provided in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA for assets other than securities for which there is a generally recognized market. Section 3(18)(B) and section 8477(a)(2)(B) provide that the term "adequate consideration" for such assets means the fair market value of the asset as determined in good faith by the trustee or named fiduciary (or, in the case of FERSA, a fiduciary) pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor. Because valuation questions of this nature arise in a variety of contexts, the Department is proposing this regulation in order to provide the certainty necessary for plan fiduciaries to fulfill their statutory duties. If adopted, the regulation would affect plans investing in assets other than securities for which there is a generally recognized market.

DATES: Written comments on the proposed regulation must be received by July 18, 1988. If adopted, the regulation will be effective for transactions taking place after the date 30 days following publication of the regulation in final form.

ADDRESS: Written comments on the proposed regulation (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20216, Attention: Adequate Consideration Proposal. All written comments will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9596 (not a toll-free number) or Mark A. Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–7901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Notice is hereby given of a proposed regulation under section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA. Section 3(18) of the Act provides the definition for the term "adequate consideration," and states:

> The term "adequate consideration" when used in part 4 of subtitle B means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

The term "adequate consideration" appears four times in part 4 of subtitle B of Title I of the Act, and each time represents a central requirement for a statutory exemption from the prohibited transaction restrictions of the Act. Under section 408(b)(5), a plan may purchase insurance contracts from certain parties in interest if, among other conditions, the plan pays no more than adequate consideration. Section 408(b)(7) provides that the prohibited transaction provisions of section 406 shall not apply to the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary of Labor, only if the plan receives no less than adequate consideration pursuant to such conversion. Section 408(e) of the Act provides that the prohibitions in sections 406 and 407(a) of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities, or the acquisition, sale or lease by a plan of qualifying employer real property if, among other conditions, the acquisition, sale or lease is for adequate consideration. Section 414(c)(5) of the Act states that sections 406 and 407(a) of the Act shall not apply to the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of the property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

Public utilization of these statutory exemptions requires a determination of "adequate consideration" in accordance with the definition contained in section 3(18) of the Act. Guidance is especially important in this area because many of the transactions covered by these statutory exemptions involve plan dealings with the plan sponsor. A fiduciary's determination of the adequacy of consideration paid under such circumstances represents a major safeguard for plans against the potential for abuse inherent in such transactions.

The Federal Employees' Retirement System Act of 1986 (FERSA) established the Federal Retirement Thrift Investment Board whose members act as fiduciaries with regard to the assets of the Thrift Savings Fund. In general, FERSA contains fiduciary obligation and prohibited transaction provisions similar to ERISA. However, unlike ERISA, FERSA prohibits party in interest transactions similar to those described in section 406(a) of ERISA only in those circumstances where adequate consideration is not exchanged between the Fund and the party in interest. Specifically, section 8477(c)(1) of FERSA provides that, except in exchange for adequate consideration, a fiduciary shall not permit the Thrift Savings Fund to engage in: transfers of its assets to, acquisition of property from or sales of property to, or transfers or exchanges of services with any person the fiduciary knows or should know to be a party in interest. Section 8477(a)(2) provides the FERSA definition for the term "adequate consideration" which is virtually identical to that contained in section 3(18) of ERISA. Thus, the proposal would apply to both section 3(18) of ERISA and section 8477(a)(2) of FERSA.

When the asset being valued is a security for which there is a generally recognized market, the plan fiduciary must determine "adequate consideration" by reference to the provisions of section 3(18)(A) of the Act (or with regard to FERSA, section 8477(a)(2)(A)). Section 3(18)(A) and section 8477(a)(2)(A) provide detailed reference points for the valuation of

securities within its coverage, and in effect provides that adequate consideration for such securities is the prevailing market price. It is not the Department's intention to analyze the requirements of section 3(18)(A) or 8477(a)(2)(A) in this proposal. Fiduciaries must, however, determine whether a security is subject to the specific provisions of section 3(18)(A) (or section 8477(a)(2)(A) of FERSA) or the more general requirements of section 3(18)(B) (or section 8477(a)(2)(B)) as interpreted in this proposal. The question of whether a security is one for which there is a generally recognized market requires a factual determination in light of the character of the security and the nature and extent of market activity with regard to the security. Generally, the Department will examine whether a security is being actively traded so as to provide the benchmarks Congress intended. Isolated trading activity, or trades between related parties, generally will not be sufficient to show the existence of a generally recognized market for the purposes of section 3(18)(A) or section 8477(a)(2)(A).

In the case of all assets other than securities for which there is a generally recognized market, fiduciaries must determine adequate consideration pursuant to section 3(18)(B) of the Act (or, in the case of FERSA, section 8477(a)(2)(B)). Because it is designed to deal with all but a narrow class of assets, section 3(18)(B) and section 8477(a)(2)(B) are by their nature more general than section 3(18)(A) or section 8477(a)(2)(A). Although the Department has indicated that it will not issue advisory opinions stating whether certain stated consideration is "adequate consideration" for the purposes of section 3(18), ERISA Procedure 76–1, § 5.02(a) (41 FR 36281, 36282, August 27, 1976), the Department recognizes that plan fiduciaries have a need for guidance in valuing assets, and that standards to guide fiduciaries in this area may be particularly elusive with respect to assets other than securities for which there is a generally recognized market. *See*, for example, *Donovan v. Cunningham*, 716 F.2d 1455 (5th Cir. 1983) (court encourages the Department to adopt regulations under section 3(18)(B)). The Department has therefore determined to propose a regulation only under section 3(18)(B) and section 8477(a)(2)(B). This proposal is described more fully below.

It should be noted that it is not the Department's intention by this proposed regulation to relieve fiduciaries of the responsibility for making the required determinations of "adequate consideration" where applicable under the Act or FERSA. Nothing in the proposal should be construed as justifying a fiduciary's failure to take into account all relevant facts and circumstances in determining adequate consideration. Rather, the proposal is designed to provide a framework within which fiduciaries can fulfill their statutory duties. Further, fiduciaries should be aware that, even where a determination of adequate consideration comports with the requirements of section 3(18)(B) (or section 8477(a)(2)(B) of FERSA) and any regulation adopted thereunder, the investment of plan assets made pursuant to such determination will still be subject to the fiduciary requirements of Part 4 of Subtitle B of Title I of the Act, including the provisions of sections 403 and 404 of the Act, or the fiduciary responsibility provisions of FERSA.

B. Description of the Proposal

Proposed regulation 29 CFR 2510.3–18(b) is divided into four major parts. Proposed § 2510.3–18(b)(1) states the general rule and delineates the scope of the regulation. Proposed § 2510.3–18(b)(2) addresses the concept of fair market value as it relates to a determination of "adequate consideration" under section 3(18)(B) of the Act. Proposed § 2510.3–18(b)(3) deals with the requirement in section 3(18)(B) that valuing fiduciary act in good faith, and specifically discusses the use of an independent appraisal in connection with the determination of good faith. Proposed § 2510.3–18(b)(4) sets forth the content requirements for written valuations used as the basis for a determination of fair market value, with a special rule for the valuation of securities other than securities for which there is a generally recognized market. Each subsection is discussed in detail below.

1. General Rule and Scope.

Proposed § 2510.3–18(b)(1)(i) essentially follows the language of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA and states that, in the case of a plan asset other than a security for which there is a generally recognized market, the term "adequate consideration" means the fair market value of the asset as determined in good faith by the trustee or named fiduciary (or, in the case of FERSA, a fiduciary) pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor. Proposed § 2510.3–18(b)(1)(ii) delineates the scope of this regulation by establishing two criteria, both of which must be met for a valid determination of adequate consideration. First, the value assigned to an asset must reflect its fair market value as determined pursuant to proposed § 2510.3–18(b)(2). Second, the value assigned to an asset must be the product of a determination made by the fiduciary in good faith as defined in proposed § 2510.3–18(b)(3). The Department will consider that a fiduciary has determined adequate consideration in accordance with section 3(18)(B) of the Act or section 8477(a)(2)(B) of FERSA only if both of these requirements are satisfied.

The Department has proposed this two part test for several reasons. First, Congress incorporated the concept of fair market value into the definition of adequate consideration. As explained more fully below, fair market value is an often used concept having an established meaning in the field of asset valuation. By reference to this term, it would appear that Congress did not intend to allow parties to a transaction to set an arbitrary value for the assets involved. Therefore, a valuation determination which fails to reflect the market forces embodied in the concept of fair market value would also fail to meet the requirements of section 3(18)(B) of the Act or section 8477(a)(2)(B) of FERSA.

Second, it would appear that Congress intended to allow a fiduciary a limited degree of latitude so long as that fiduciary acted in good faith. However, a fiduciary would clearly fail to fulfill the fiduciary duties delineated in Part 4 of Subtitle B of Title I of the Act if that fiduciary acted solely on the basis of naive or uninformed good intentions. *See Donovan v. Cunningham, supra*, 716 F.2d at 1467 ("[A] pure heart and an empty head are not enough.") The Department has therefore proposed standards for a determination of a fiduciary's good faith which must be satisfied in order to meet the requirements of section 3(18)(B) or section 8477(a)(2)(B) of FERSA.

Third, even if a fiduciary were to meet the good faith standards contained in this proposed regulation, there may be circumstances in which good faith alone fails to insure an equitable result. For example, errors in calculation or honest failure to consider certain information could produce valuation figures outside of the range of acceptable valuations of a given asset. Because the determination of adequate consideration is a central requirement of the statutory exemptions discussed above, the Department believes it must assure that such exemptions are made available only for those transactions possessing all the external safeguards envisioned by

Congress. To achieve this end, the Department's proposed regulation links the fair market value and good faith requirements to assure that the resulting valuation reflects market considerations and is the product of a valuation process conducted in good faith.

2. Fair Market Value

The first part of the Department's proposed two part test under section 3(18)(B) and section 8477(a)(2)(B) requires that a determination of adequate consideration reflect the asset's fair market value. The term "fair market value" is defined in proposed § 2510.3–18(b)(2)(i) as the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well-informed about the asset and the market for that asset. This proposed definition essentially reflects the well-established meaning of this term in the area of asset valuation. *See,* for example, 26 CFR 20.2031–1 (estate tax regulations); Rev. Rul. 59–60, 1959–1 Cum. Bull. 237; *United States v. Cartwright,* 411 U.S. 546, 551 (1973); *Estate of Bright v. United States,* 658 F.2d 999, 1005 (5th Cir. 1981). It should specifically be noted that comparable valuations reflecting transactions resulting from other than free and equal negotiations (*e.g.,* a distress sale) will fail to establish fair market value. *See Hooker Industries, Inc. v. Commissioner,* 3 EBC 1849, 1854–55 (T.C. June 24, 1982). Similarly, the extent to which the Department will view a valuation as reflecting fair market value will be affected by an assessment of the level of expertise demonstrated by the parties making the valuation. *See Donovan v. Cunningham, supra,* 716 F.2d at 1468 (failure to apply sound business principles of evaluation, for whatever reason, may result in a valuation that does not reflect fair market value).[1]

The Department is aware that the fair market value of an asset will ordinarily be identified by a range of valuations rather than a specific, set figure. It is not the Department's intention that only one valuation figure will be acceptable as the fair market value of a specified asset. Rather, this proposal would require that the valuation assigned to an asset must reflect a figure within an acceptable range of valuations for that asset.

In addition to this general formulation of the definition of fair market value, the Department is proposing two specific requirements for the determination of fair market value for the purposes of section 3(18)(B) and section 8477(a)(2)(B). First, proposed § 2510.3–18(b)(2)(ii) requires that fair market value must be determined as of the date of the transaction involving that asset. This requirement is designed to prevent situations such as arose in *Donovan v. Cunningham, supra.* In that case, the plan fiduciaries relied on a 1975 appraisal to set the value of employer securities purchased by an ESOP during 1976 and thereafter, and failed to take into account significant changes in the company's business condition in the interim. The court found that this reliance was unwarranted, and therefore the fiduciaries' valuation failed to reflect adequate consideration under section 3(18)(B). *Id.* at 1468–69.

Second, proposed § 2510.3–18(b)(2)(iii) states that the determination of fair market value must be reflected in written documentation of valuation [2] meeting the content requirements set forth in § 2510.3–18(b)(4). (The valuation content requirements are discussed below.) The Department has proposed this requirement in light of the role the adequate consideration requirement plays in a number of statutory exemptions from the prohibited transaction provisions of the Act. In determining whether a statutory exemption applies to a particular transaction, the burden of proof is upon the party seeking to make use of the statutory exemption to show that all the requirements of the provision are met. *Donovan v. Cunningham, supra,* 716 F.2d at 1467 n.27. In the Department's view, written documentation relating to the valuation is necessary for a determination of how, and on what basis, an asset was valued, and therefore whether that valuation reflected an asset's fair market value. In addition, the Department believes that it would be contrary to prudent business practices for a fiduciary to act in the absence of such written documentation of fair market value.

3. Good Faith

The second part of the Department's proposed two-part test under section 3(18)(B) and section 8477(a)(2)(B) requires that an assessment of adequate consideration be the product of a determination made in good faith by the plan trustee or named fiduciary (or under FERSA, a fiduciary). Proposed § 2510.3–18(b)(3)(i) states that as a general matter this good faith requirement establishes an objective standard of conduct, rather than mandating an inquiry into the intent or state of mind of the plan trustee or named fiduciary. In this regard, the proposal is consistent with the opinion in *Donovan v. Cunningham, supra,* where the court stated that the good faith requirement in section 3(18)(B):

> is not a search for subjective good faith * * * The statutory reference to good faith in Section 3(18) must be read in light of the overriding duties of Section 404.

716 F.2d at 1467. The inquiry into good faith under the proposal therefore focuses on the fiduciary's conduct in determining fair market value. An examination of all relevant facts and circumstances is necessary for a determination of whether a fiduciary has met this objective good faith standard.

Proposed § 2510.3–18(b)(3)(ii) focuses on two factors which must be present in order for the Department to be satisfied that the fiduciary has acted in good faith. First, this section would require a fiduciary to apply sound business principles of evaluation and to conduct a prudent investigation of the circumstances prevailing at the time of the valuation. This requirement reflects the *Cunningham* court's emphasis on the use of prudent business practices in valuing plan assets.

Second, this section states that either the fiduciary making the valuation must itself be independent of all the parties to the transaction (other than the plan), or the fiduciary must rely on the report of an appraiser who is independent of all the parties to the transaction (other than the plan). (The criteria for determining

[1] Whether in any particular transaction a plan fiduciary is in fact well-informed about the asset in question and the market for that asset, including any specific circumstances which may affect the value of the asset, will be determined on a facts and circumstances basis. If, however, the fiduciary negotiating on behalf of the plan has or should have specific knowledge concerning either the particular asset or the market for that asset, it is the view of the Department that the fiduciary must take into account that specific knowledge in negotiating the price of the asset in order to meet the fair market value standard of this regulation. For example, a sale of plan-owned real estate at a negotiated price consistent with valuations of comparable property will not be a sale for adequate consideration if the negotiating fiduciary does not take into account any special knowledge which he has or should have about the asset or its market, *e.g.,* that the property's value should reflect a premium due to a certain developer's specific land development plans.

[2] It should be noted that the written valuation required by this section of the proposal need not be a written report of an independent appraiser. Rather, it should be documentation sufficient to allow the Department to determine whether the content requirements of § 2510.3–18(b)(4) have been satisfied. The use of an independent appraiser may be relevant to a determination of good faith, as discussed with regard to proposed § 2510.3–18(b)(3), *infra,* but it is not required to satisfy the fair market value criterion in § 2510.3–18(b)(2)(i).

independence are discussed below.) As noted above, under ERISA, the determination of adequate consideration is a central safeguard in many statutory exemptions applicable to plan transactions with the plan sponsor. The close relationship between the plan and the plan sponsor in such situations raises a significant potential for conflicts of interest as the fiduciary values assets which are the subject of transactions between the plan and the plan sponsor. In light of this possibility, the Department believes that good faith may only be demonstrated when the valuation is made by persons independent of the parties to the transaction (other than the plan), *i.e.*, a valuation made by an independent fiduciary or by a fiduciary acting pursuant to the report of an independent appraiser.

The Department emphasizes that the two requirements of proposed § 2510.3–18(b)(3)(ii) are designed to work in concert. For example, a plan fiduciary charged with valuation may be independent of all the parties to a transaction and may, in light of the requirement of proposed § 2510.3–18(b)(3)(ii)(B), decide to undertake the valuation process itself. However, if the independent fiduciary has neither the experience, facilities nor expertise to make the type of valuation under consideration, the decision by that fiduciary to make the valuation would fail to meet the prudent investigation and sound business principles requirement of proposed § 2510.3–18(b)(3)(ii)(A).

Proposed § 2510.3–18(b)(3)(iii) defines the circumstances under which a fiduciary or an appraiser will be deemed to be independent for the purposes of subparagraph (3)(ii)(B), above. The proposal notes that the fiduciary or the appraiser must in fact be independent of all parties participating in the transaction other than the plan. The proposal also notes that a determination of independence must be made in light of all relevant facts and circumstances, and then delineates certain circumstances under which this independence will be lacking. These circumstances reflect the definitions of the terms "affiliate" and "control" in Departmental regulation 29 CFR 2510.3–21(e) (defining the circumstances under which an investment adviser is a fiduciary). It should be noted that, under these proposed provisions, an appraiser will be considered independent of all parties to a transaction (other than the plan) only if a plan fiduciary has chosen the appraiser and has the right to terminate that appointment, and the plan is thereby established as the appraiser's client.[3] Absent such circumstances, the appraiser may be unable to be completely neutral in the exercise of his function.[4]

4. Valuation Content—General

Proposed § 2510.3–18(b)(4)(i) sets the content requirements for the written documentation of valuation required for a determination of fair market value under proposed § 2510.3–18(b)(2)(iii). The proposal follows to a large extent the requirements of Rev. Proc. 66–49, 1966–2 C.B. 1257, which sets forth the format required by the IRS for the valuation of donated property. The Department believes that this format is a familiar one, and will therefore facilitate compliance. Several additions to the IRS requirements merit brief explanation.

First, proposed paragraph (b)(4)(i)(E) requires a statement of the purpose for which the valuation was made. A valuation undertaken, for example, for a yearly financial report may prove an inadequate basis for any sale of the asset in question. This requirement is intended to facilitate review of the valuation in the correct context.

Second, proposed paragraph (b)(4)(i)(F) requires a statement as to the relative weight accorded to relevant valuation methodologies. The Department's experience in this area indicates that there are a number of different methodologies used within the appraisal industry. By varying the treatment given and emphasis accorded relevant information, these methodologies directly affect the result of the appraiser's analysis. It is the Department's understanding that appraisers will often use different methodologies to cross-check their results. A statement of the method or methods used would allow for a more accurate assessment of the validity of the valuation.

Finally, proposed subparagraph (b)(4)(i)(G) requires a statement of the valuation's effective date. This reflects the requirement in proposed § 2510.3–18(b)(ii) that fair market value must be determined as of the date of the transaction in question.

5. Valuation Content—Special Rule

Proposed § 2510.3–18(b)(4)(ii) establishes additional content requirements for written documentation of valuation when the asset being appraised is a security other than a security for which there is a generally recognized market. In other words, the requirements of the proposed special rule supplement, rather than supplant, the requirements of paragraph (b)(4)(i). The proposed special rule establishes a nonexclusive list of factors to be considered when the asset being valued is a security not covered by section 3(18)(A) of the Act or section 8477(a)(2)(A) of FERSA. Such securities pose special valuation problems because they are not traded or are so thinly traded that it is difficult to assess the effect on such securities of the market forces usually considered in determining fair market value. The Internal Revenue Service has had occasion to address the valuation problems posed by one type of such securities—securities issued by closely held corporations. Rev. Rul. 59–60, 1959–1 Cum. Bull. 237, lists a variety of factors to be considered when valuing securities of closely held corporations for tax purposes.[5] The Department's experience indicates that Rev. Rul. 59–60 is familiar to plan fiduciaries, plan sponsors and the corporate community in general. The Department has, therefore, modeled this proposed special rule after Rev. Rul. 59–60 with certain additions and changes discussed below. It should be emphasized, however, that this is a non-exclusive list of factors to be considered. Certain of the factors listed may not be relevant to every valuation inquiry, although the fiduciary will bear the burden of demonstrating such irrelevance. Similarly, reliance on this list will not relieve fiduciaries from the duty to consider all relevant facts and circumstances when valuing such securities. The purpose of the proposed

[3] The independence of an appraiser will not be affected solely because the plan sponsor pays the appraiser's fee.

[4] With regard to this independence requirement the Department notes that new section 401(a)(28) of the Code (added by section 1175(a) of the Tax Reform Act of 1986) requires that, in the case of an employee stock ownership plan, employer securities which are not readily tradable on established securities markets must be valued by an independent appraiser. New section 401(a)(28)(C) states that the term "independent appraiser" means an appraiser meeting requirements similar to the requirements of regulations under section 170(a)(1) of the Code (relating to IRS verification of the value assigned for deduction purposes to assets donated to charitable organizations). The Department notes that the requirements of proposed regulation § 2510.3–18(b)(3)(iii) are not the same as the requirements of the regulations issued by the IRS under section 170(a)(1) of the Code. The IRS has not yet promulgated rules under Code section 401(a)(28).

[5] Rev. Rul. 59–60 was modified by Rev. Rul. 65–193 (1965–2 C.B. 370) regarding the valuation of tangible and intangible corporate assets. The provisions of Rev. Rul. 59–60, as modified, were extended to the valuation of corporate securities for income and other tax purposes by Rev. Rul. 68–609 (1968–2 C.B. 327). In addition, Rev. Rul. 77–287 (1977–2 C.B. 319), amplified, Rev. Rul. 59–60 by indicating the ways in which the factors listed in Rev. Rul. 59–60 should be applied when valuing restricted securities.

list is to guide fiduciaries in the course of their inquiry.

Several of the factors listed in proposed § 2510.3–18(b)(4)(ii) merit special comment and explanation. Proposed subparagraph (G) states that the fair market value of securities other than those for which there is a generally recognized market may be established by reference to the market price of similar securities of corporations engaged in the same or a similar line of business whose securities are actively traded in a free and open market, either on an exchange or over the counter. The Department intends that the degree of comparability must be assessed in order to approximate as closely as possible the market forces at work with regard to the corporation issuing the securities in question.

Proposed subparagraph (H) requires an assessment of the effect of the securities' marketability or lack thereof. Rev. Rul. 59–60 does not explicitly require such an assessment, but the Department believes that the marketability of these types of securities will directly affect their price. In this regard, the Department is aware that, especially in situations involving employee stock ownership plans (ESOPs),[6] the employer securities held by the ESOP will provide a "put" option whereby individual participants may upon retirement sell their shares back to the employer.[7] It has been argued that some kinds of "put" options may diminish the need to discount the value of the securities due to lack of marketability. The Department believes that the existence of the "put" option should be considered for valuation purposes only to the extent it is enforceable and the employer has and may reasonably be expected to continue to have, adequate resources to meet its obligations. Thus, the Department proposes to require that the plan fiduciary assess whether these "put" rights are actually enforceable, and whether the employer will be able to pay for the securities when and if the "put" is exercised.

Finally, proposed subparagraph (I) deals with the role of control premiums in valuing securities other than those for which there is a generally recognized market. The Department proposes that a plan purchasing control may pay a control premium, and a plan selling control should receive a control premium. Specifically, the Department proposes that a plan may pay such a premium only to the extent a third party would pay a control premium. In this regard, the Department's position is that the payment of a control premium is unwarranted unless the plan obtains both voting control and control in fact. The Department will therefore carefully scrutinize situations to ascertain whether the transaction involving payment of such a premium actually results in the passing of control to the plan. For example, it may be difficult to determine that a plan paying a control premium has received control in fact where it is reasonable to assume at the time of acquisition that distribution of shares to plan participants will cause the plan's control of the company to be dissipated within a short period of time subsequent to acquisition.[8] In the Department's view, however, a plan would not fail to receive control merely because individuals who were previously officers, directors or shareholders of the corporation continue as plan fiduciaries or corporate officials after the plan has acquired the securities. Nonetheless, the retention of management and the utilization of corporate officials as plan fiduciaries, when viewed in conjunction with other facts, may indicate that actual control has not passed to the plan within the meaning of paragraph (b)(4)(ii)(I) of the proposed regulation. Similarly, if the plan purchases employer securities in small increments pursuant to an understanding with the employer that the employer will eventually sell a controlling portion of shares to the plan, a control premium would be warranted only to the extent that the understanding with the employer was actually a binding agreement obligating the employer to pass control within a reasonable time. *See Donovan* v. *Cunningham, supra,* 716 F.2d at 1472–74 (mere intention to transfer control not sufficient).

6. Service Arrangements Subject to FERSA

Section 8477(c)(1)(C) of FERSA permits the exchange of services between the Thrift Savings Fund and a party in interest only in exchange for adequate consideration. In this context, the proposal defines the term "adequate consideration as "reasonable compensation", as that term is described in sections 408(b)(2) and 408(c)(2) of ERISA and the regulations promulgated thereunder. By so doing, the proposal would establish a consistent standard of exemptive relief for both ERISA and FERSA with regard to what otherwise would be prohibited service arrangements.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic effect on small plans. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that approximately 6,250 small plans may be affected by the regulation. The total additional cost to these plans, over and above the costs already being incurred under established valuation practices, are estimated not to exceed $875,000 per year, or $140 per plan for small plans choosing to engage in otherwise prohibited transactions that are exempted under the statute conditioned on a finding of adequate consideration.

Executive Order 12291

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs of prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed regulation contains several paperwork requirements. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). A control number has not yet been assigned.

[6] The definition of the term "adequate consideration" under ERISA is of particular importance to the establishment and maintenance of ESOPs because, pursuant to section 408(e) of the Act, an ESOP may acquire employer securities from a party in interest only under certain conditions, including that the plan pay no more than adequate consideration for the securities.

[7] Regulation 29 CFR 2550.408b–(j) requires such a put option in order for a loan from a party in interest to the ESOP to qualify for the statutory exemption in section 408(b)(3) of ERISA from the prohibited transactions provisions of ERISA.

[8] However, the Department notes that the mere pass-through of voting rights to participants would not in itself affect a determination that a plan has received control in fact, notwithstanding the existence of participant voting rights, if the plan fiduciaries having control over plan assets ordinarily may resell the shares to a third party and command a control premium, without the need to secure the approval of the plan participants.

Statutory Authority

This regulation is proposed under section 3(18) and 505 of the Act (29 U.S.C. 1003(18) and 1135); Secretary of Labor's Order No. 1–87; and sections 8477(a)(2)(B) and 8477(f) of FERSA.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Pension and Welfare Benefit Administration.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read as follows:

Authority: Sec. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86, 1–87, and Labor Management Services Administration Order No. 2–6.

Section 2510.3–18 is also issued under sec. 3(18) of the Act (29 U.S.C. 1003(18)) and secs. 8477(a)(2)(B) and (f) of FERSA (5 U.S.C. 8477)

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), and 3 CFR 1978 Comp. 332.

2. Section 2510.3–18 is added to read as follows:

§ 2510.3–18 Adequate Consideration

(a) [Reserved]

(b)(1)(i) *General.* (A) Section 3(18)(B) of the Employee Retirement Income Security Act of 1974 (the Act) provides that, in the case of a plan asset other than a security for which there is a generally recognized market, the term "adequate consideration" when used in Part 4 of Subtitle B of Title I of the Act means the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary of Labor.

(B) Section 8477(a)(2)(B) of the Federal Employees' Retirement System Act of 1986 (FERSA) provides that, in the case of an asset other than a security for which there is a generally recognized market, the term "adequate consideration" means the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(ii) *Scope.* The requirements of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA will not be met unless the value assigned to a plan asset both reflects the asset's fair market value as defined in paragraph (b)(2) of this section and results from a determination made by the plan trustee or named fiduciary (or, in the case of FERSA, a fiduciary) in good faith as described in paragraph (b)(3) of this section. Paragraph (b)(5) of this section contains a special rule for service contracts subject to FERSA.

(2) *Fair Market Value.* (i) Except as otherwise specified in this section, the term "fair market value" as used in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA means the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the asset and the market for such asset.

(ii) The fair market value of an asset for the purposes of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA must be determined as of the date of the transaction involving that asset.

(iii) The fair market value of an asset for the purposes of section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA must be reflected in written documentation of valuation meeting the requirements set forth in paragraph (b)(4), of this section.

(3) *Good Faith*—(i) *General Rule.* The requirement in section 3(18)(B) of the Act and section 8477(a)(2)(B) of FERSA that the fiduciary must determine fair market value in good faith establishes an objective, rather than a subjective, standard of conduct. Subject to the conditions in paragraphs (b)(3) (ii) and (iii) of this section, an assessment of whether the fiduciary has acted in good faith will be made in light of all relevant facts and circumstances.

(ii) In considering all relevant facts and circumstances, the Department will not view a fiduciary as having acted in good faith unless

(A) The fiduciary has arrived at a determination of fair market value by way of a prudent investigation of circumstances prevailing at the time of the valuation, and the application of sound business principles of evaluation; and

(B) The fiduciary making the valuation either,

(1) Is independent of all parties to the transaction (other than the plan), or

(2) Relies on the report of an appraiser who is independent of all parties to the transaction (other than the plan).

(iii) In order to satisfy the independence requirement of paragraph (b)(3)(ii)(B), of this section, a person must in fact be independent of all parties (other than the plan) participating in the transaction. For the purposes of this section, an assessment of independence will be made in light of all relevant facts and circumstances. However, a person will not be considered to be independent of all parties to the transaction if that person—

(1) Is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with any of the parties to the transaction (other than the plan);

(2) Is an officer, director, partner, employee, employer or relative (as defined in section 3(15) of the Act, and including siblings) of any such parties (other than the plan);

(3) Is a corporation or partnership of which any such party (other than the plan) is an officer, director or partner.

For the purposes of this subparagraph, the term "control," in connection with a person other than an individual, means the power to exercise a controlling influence over the management or policies of that person.

(4) *Valuation Content.* (i) In order to comply with the requirement in paragraph (b)(2)(iii), of this section, that the determination of fair market value be reflected in written documentation of valuation, such written documentation must contain, at a minimum, the following information:

(A) A summary of the qualifications to evaluate assets of the type being valued of the person or persons making the valuation;

(B) A statement of the asset's value, a statement of the methods used in determining that value, and the reasons for the valuation in light of those methods;

(C) A full description of the asset being valued;

(D) The factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the use or disposition of the property;

(E) The purpose for which the valuation was made;

(F) The relevance or significance accorded to the valuation methodologies taken into account;

(G) The effective date of the valuation; and

(H) In cases where a valuation report has been prepared, the signature of the person making the valuation and the date the report was signed.

(ii) *Special Rule.* When the asset being valued is a security other than a security covered by section 3(18)(A) of the Act or section 8477(a)(2)(A) of FERSA, the written valuation required by paragraph (b)(2)(iii) of this section, must contain the information required in paragraph (b)(4)(i) of this section, and must include, in addition to an assessment of all other relevant factors, an assessment of the factors listed below:

(A) The nature of the business and the history of the enterprise from its inception;

(B) The economic outlook in general, and the condition and outlook of the specific industry in particular;

(C) The book value of the securities and the financial condition of the business;

(D) The earning capacity of the company;

(E) The dividend-paying capacity of the company;

(F) Whether or not the enterprise has goodwill or other intangible value;

(G) The market price of securities of corporations engaged in the same or a similar line of business, which are actively traded in a free and open market, either on an exchange or over-the-counter;

(H) The marketability, or lack thereof, of the securities. Where the plan is the purchaser of securities that are subject to "put" rights and such rights are taken into account in reducing the discount for lack of marketability, such assessment shall include consideration of the extent to which such rights are enforceable, as well as the company's ability to meet its obligations with respect to the "put" rights (taking into account the company's financial strength and liquidity);

(I) Whether or not the seller would be able to obtain a control premium from an unrelated third party with regard to the block of securities being valued, provided that in cases where a control premium is taken into account:

(*1*) Actual control (both in form and in substance) is passed to the purchaser with the sale, or will be passed to the purchaser within a reasonable time pursuant to a binding agreement in effect at the time of the sale, and

(*2*) It is reasonable to assume that the purchaser's control will not be dissipated within a short period of time subsequent to acquisition.

(5) *Service Arrangements Subject to FERSA.* For purposes of determinations pursuant to section 8477(c)(1)(C) of FERSA (relating to the provision of services) the term "adequate consideration" under section 8477(a)(2)(B) of FERSA means "reasonable compensation" as defined in sections 408(b)(2) and 408(c)(2) of the Act and §§ 2550.408b–2(d) and 2550.408c–2 of this chapter.

(6) *Effective Date.* This section will be effective for transactions taking place after the date 30 days following publication of the final regulation in the **Federal Register.**

Signed in Washington, DC, this 11th day of May 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Improved Seat Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25040; Amdt. No. 25-64]
RIN 2120-AA88

Improved Seat Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment upgrades the standards for occupant protection during emergency landing conditions in transport category airplanes by revising the seat restraint requirements and by defining impact injury criteria. These changes are based on research testing and service experience and are intended to increase airplane occupant protection during emergency landing conditions.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Iven D. Connally, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2120.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 86-11, which was published in the **Federal Register** on July 17, 1986 (51 FR 25982). The notice proposed to upgrade the standards for occupant protection during emergency landing conditions in transport category airplanes by revising the crew and passenger seat restraint requirements and by defining impact injury criteria.

Transport category airplane seats are currently designed to meet the standards contained in § 25.785 (Seats, berths, safety belts, and harnesses), in § 25.561 (Emergency landing conditions), and in Technical Standards Order (TSO) C39b (Seats). Section 25.785(a) requires that each seat (including a crewmember seat as well as a passenger seat), berth, safety belt, harness, and adjacent part of the airplane be designed such that the occupant who experiences the inertial forces specified in § 25.561 will not suffer serious injury in an emergency landing. The inertial forces in § 25.561(b) are specified as ultimate forces experienced by the occupant and are treated as statically applied loads. The notice proposed to upgrade the static load factors defined in § 25.561 in the upward, downward, and sideward directions, and to add an aft direction requirement.

Notice 86-11 also proposed adoption of new dynamic test standards for seats. The proposed standards would require the demonstration of both occupant response and seat/restraint system structural performance. They would provide a more representative evaluation of the interaction of the occupant, the seat, and the restraint system and yield data for impact injury analyses. Two dynamic test conditions were selected based on impact scenarios developed from analyses of survivable ground impact data. One test condition combines vertical and longitudinal loads to simulate ground impact following a high-rate vertical descent. This test condition emphasizes occupant vertical loading and evaluates the means provided to reduce spinal injury under the loads typically resulting from an impact of this nature. The second test, with a predominantly longitudinal component, simulates horizontal impact with a ground-level obstruction. This test condition provides an assessment of the occupant restraint system and seat structural performance. The selection of these two dynamic test conditions is consistent with the results of the crash scenario studies. These dynamic test standards are considered appropriate for all transport category airplanes, regardless of size.

An important part of any test procedure is the pass or fail criteria. The proposed rule would establish such criteria by defining standards that directly relate selected parameters measured during a dynamic test to injury criteria based on human impact injury limits. The performance criteria would be used to evaluate the occupant/seat protection system potential for preventing or minimizing serious injuries from both primary and secondary impacts. Of major concern are secondary head impacts which can inflict debilitating injuries and result in concussion and unconsciousness. The measure of potential head injury proposed in the notice is the Head Injury Criteria (HIC) used in Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208). The HIC is applied when the results of the seat dynamic tests show that structure or other items of equipment are within the occupant's head strike envelope. The head acceleration time history is measured during the dynamic test and evaluated with the HIC when secondary impact can occur.

Spinal injuries also occur in airplane crashes. The Dynamic Response Index (DRI), which is based on a single, damped spring model of the spine and respective support mass, has traditionally been used to predict probability of spinal injury in the performance evaluation of airplane ejection seats. The DRI has been correlated with ejection seat testing and service experience to provide a level of confidence for the application; however, inherent differences in function, geometry, dynamic pulse exposure, and occupant restraint between transport category airplane seats and ejection seats make direct application of the DRI questionable as a performance criterion for transport category airplane seats. A series of dynamic tests of seats in various impact orientations was studied by the FAA Civil Aeromedical Institute (CAMI) to correlate the DRI, determined from measured accelerations at the seat pan, to pelvic loads measured in the spinal base of a modified Part 572 (49 CFR Part 572) anthropomorphic dummy. Additional testing with transport category airplane seats with a lap belt restraint system indicated that the pelvic load peaks while the anthropomorphic dummy is still seated in a predominantly upright position. These tests confirm that the spinal load injury criteria can be used in assessing the dynamic performance of transport category airplane seats. Pelvic loads can be used in assessing the probability of spinal injury, and they are straight forward, easily measured, and require no additional analysis or interpretation. A maximum pelvic load of 1500 pounds would assure a low probability of spinal injury.

Leg injuries also occur in airplane crashes. While leg injuries alone may not be fatal, passengers may be temporarily incapacitated to the extent rapid evacuation of the airplane is not possible. An injured passenger, in an effort to escape, may block the escape route for several other passengers. Femur loads should therefore be measured during the dynamic tests where leg injuries may result from contact with seats or other structure. A measured axial load of 2250 pounds along each femur should not be exceeded during these tests. This is the same as the maximum allowed by Federal Motor Vehicle Safety Standard No. 208. This procedure provides an easily measured quantity that would require no additional analysis or interpretation.

Crash investigations have shown that localized cabin floor deformation can occur in survivable crashes. This has been confirmed by the controlled impact demonstration and drop tests involving transport category airplanes. The inability of some seats to accommodate

such deformations, remain in place, and restrain the occupants can contribute significantly to the degree of injury during a crash. The simulated floor deformation used in the dynamic tests, while not intended to be a measure of floor strength or deformation capability, will demonstrate the tolerance of the seat and its attachments to deformations that could occur in an actual crash.

The static strength requirements of § 25.561(b)(3) would be increased to provide a level of safety for seats and fixed items of mass consistent with the new dynamic test standards and accepted industry practice. It is expected that increased static strength requirements would assure a more uniform level of safety in the cabin floor structure, seat tracks, fittings, fixed items of mass, and in the seats. The increased lateral static strength and the added rearward static strength requirements would also improve the conditions for rapid evacuation during an emergency landing by limiting the obstruction of aisle space.

As proposed, the new seat safety standards would apply to all transport category airplanes for which an application for type certificate is made on or after the effective date, regardless of whether the airplanes are used in air carrier service. The new standards would not apply to airplanes for which application for type certificate is made prior to the effective date, nor to derivatives of such airplanes for which an application for an amended type certificate is made.

Discussion of Comments

The public response to requests for comments on Notice 86–11 demonstrates the wide interest shown in this rule. Comments were received from both airplane and seat manufacturers, from airplane operators, from organizations representing flightcrews, and from U.S. and foreign government agencies. All but two commenters support the FAA's objectives of enhancing the protection of occupants during emergency landing conditions through the use of new dynamic seat test methods and occupant injury criteria; however, several commenters are concerned that these requirements should apply only to future transport category airplane certifications. Most of the commenters also support improvements in the static strength requirements for seats and items of mass.

Several commenters requested extension of the public comment period. They argued that more testing was needed to verify the proposed criteria. The FAA considers that sufficient test data were available to the public to generate meaningful comments on the notice within the allowed time. Newly designed seats have, in fact, been successfully tested using the proposed criteria.

Several commenters recommend static load factors less than those proposed in the notice. They are especially concerned with the side load factor of 4.5 when applied to all interior items. They believe the side load factor of 4.5 would be excessive and could cause significant weight penalties. They recommend a side load factor of 3.0 on the airframe and 4.0 on the seats. The proposed values were selected to take advantage of existing floor strength without requiring a significant structural weight increase. After further review of current airplane designs, both narrow body and wide body, the FAA agrees that a side load factor of 4.5 could add weight and cost to the structure without commensurate gains in safety. The higher load factors for seats, listed in TSO–C39b, are an attempt to represent the design ultimate load factor envelope for the typical airplane; i.e., the most critical location in the airplane for the most critical load condition (flight, ground, or emergency landing). The TSO values are usually higher than the airplane design load factors at the center of gravity and usually lower than these factors at the extreme forward and aft fuselage stations. The data indicate that the floor structure can withstand a side load factor of 3.0 without a significant weight penalty. This would provide a load factor capability of 4.0 on all attachments where the 1.33 factor applies (ref. § 25.785(i)(3)). The data and comments provided to the FAA indicate that load factors of 3.0 upward, 6.0 downward, 3.0 sideward, and 1.5 rearward are within the existing design ultimate strength envelope for most airplanes that would be affected by this rule and are adopted accordingly. One commenter requests clarification on where the 1.33 factor required by § 25.785 applies. The 1.33 factor applies only to the static design conditions of § 25.561.

One commenter states that the proposed increase in static side load factor from 1.5 to 4.5 would increase the ability of the seats to resist lateral deformation under crash conditions and would help maintain passable aisles for emergency evacuations. The FAA concurs that some increase in side load capability is needed. Although the current rule only requires a load factor of 1.5 for emergency landing conditions, most modern airplanes are capable of much higher loads. There is evidence to indicate that seats designed to a load factor of 3.0 have deformed in a sideward direction. The data indicate that seats could be designed to withstand a sideward load factor of 4.0 (i.e., 3.0 times the 1.33 factor) without an appreciable increase in structural weight and, as noted above, this load factor is adopted accordingly.

Comments were received concerning the implications of the proposed revisions to § 25.561(b)(3) on other sections of Part 25 which incorporate the provisions of § 25.561 by reference. For instance, fuel tanks in the center section of the horizontal tail must withstand the fuel pressures resulting from the conditions of § 25.561 if they are within the fuselage contour. The applicability of § 25.561 remains unchanged in this regard, and the newly adopted load factors are applicable to the other sections of Part 25 that incorporate § 25.561 by reference as well.

One commenter suggests that galleys be equipped with fail-safe locking systems to avoid recurrent failure of drawers, bins, ovens, etc. Detail design requirements of latches are not the subject of this proposal; however, Advisory Circular (AC) 25.785–1, Flight Attendant Seat Requirements, provides guidance for latches on galleys.

One commenter states that items and structure which are fixed in cabin location should be designed only for the expected loads at their respective locations. The commenter further states that since seats tend to be of common construction, irrespective of cabin location, and may be relocated easily in service, it is reasonable to design all passenger seats to a maximum load factor. The current rules require that all items and structure must be designed to withstand the loads at their respective locations for all points within the structural design envelope, as well as the loads developed during emergency landing conditions. In this regard, nothing has changed from present certification practice.

One commenter suggests that aft-facing seats might prove superior in terms of both cost and passenger protection. The FAA concurs that aft-facing seats could be designed to provide greater support for the upper torso during crash load conditions; however, there are no currently available data to demonstrate that requiring the use of aft-facing seats would be cost effective, considering the increased weight associated with such seats and the improved occupant protection provided by this rule. Although this amendment permits the use of aft-facing seats, it does not require their use.

According to one commenter, a literal reading of proposed § 25.562(a)(2) would make compliance with this paragraph impossible to achieve. Accordingly, the sentence has been revised to read, "The occupant is exposed to loads resulting from the conditions prescribed in this section."

Several commenters object to the requirement to consider seat tracks misaligned with each other by 10 degrees vertically and one rail rolled 10 degrees to account for floor warpage. They point out that a requirement for the supporting structure to sustain these deformations as per proposed § 25.562(d)(8), while carrying the dynamic loads, is a severe condition outside of the current floor structural capability. The FAA agrees that to require the floor to withstand these deformations without failure would be outside the floor structural capability. The 10-degree misalignment required for testing of seats is intended only to assure a degree of flexibility in the seat structure and floor attachments and is not meant to be a measure of floor structural capability. For this reason, only the forward test condition (§ 25.562(b)(2)) requires the 10-degree deformation for testing. Section 25.562 is therefore revised accordingly.

One commenter believes the proposed § 25.562(c) is unclear as to whether these deformations have to be imposed prior to the dynamic tests or whether it is acceptable to show that they have been achieved, or exceeded, during the course of the tests. This commenter also believes the rail misalignment conditions are not necessarily appropriate to all airplanes and that provision should be made for use of alternative definitions of seat support structure deformation. The reason for testing with deformations is to assure that the seats and attachments will carry the dynamic loads even though the tracks have been distorted. The 10 degrees of track and floor warpage are imposed prior to the dynamic tests. Any seat deformation caused by the test will be recorded for use in the assessment of blockage of emergency egress. Although the majority of transport airplanes use tracks to attach seats to the floor structure, the misalignment conditions specified for the dynamic tests also apply to other types of seat-to-floor attachment fittings. It is expected that acceptable limits on deformation will be included in proposed AC 25.562–1 (51 FR 25990; July 17, 1986), and seat manufacturers will supply measured deformations to the installer.

Several commenters interpret proposed § 25.562(c) to require that each seat model and its attachments be tested with unique airframe support structure. The rule does not require seats and their attachments to be tested with unique floor structure. Tests may be conducted on a rigid test fixture with representative seat tracks installed.

Several comments were received concerning the use of various analytical methods. One commenter recommends application of automobile dynamic impact analysis to aircraft. Another commenter suggests that a rational analysis be allowed as an alternative for dynamic seat tests or for adjusting the dynamic pulse to account for aircraft size. The FAA will consider the analytical method as a means of certification only when sufficient experience is available to demonstrate that the analytical methods can accurately predict the site and mechanism of failure of a seat/restraint system, and can accurately predict the injury criteria obtained in dynamic tests for a wide variety of seat designs. At the present time, rational analysis would be allowed only to demonstrate that seats are less critical than similar "worst case" seats which have successfully passed dynamic testing. There is no valid method to adjust the dynamic pulse for aircraft size, material, construction technique, operating environment, or other factors. The dynamic pulse was selected primarily to provide an effective test environment for seat and restraint system evaluation.

One seat manufacturer states that testing of each seat is impractical and suggests that § 25.562(b) be reworded to read, "Each seat type approved * * * must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests * * *." The FAA concurs with this recommendation, and § 25.562(b) has been revised accordingly. The FAA does not concur with the suggestion that static minimums should be verified by actual testing rather than by analytical methods. Structural static analysis may be used if the structure conforms to that for which experience has shown this method to be reliable.

Some commenters suggest that crew seats, including flight attendant seats attached to bulkheads and galleys, should be subjected to static tests only. The FAA does not concur. There is no justification for providing a lower level of safety for crewmembers. Also, there is no way to demonstrate injury protection parameters (injury criteria) with static tests. One commenter suggests use of submarining indicators on the pelvis of the dummy to permit objective assessment of belt retention. While this may be a good idea, it requires a dummy with a special pelvis, which is costly and not commonly available. Submarining action can also be detected by inspection of the dummy after the test and by careful review of the test films.

One commenter provided analysis to support the position that the pulse shape for both vertical and longitudinal tests should be a triangular dynamic pulse, peaking at 14g with a rise time of 0.08 seconds and a velocity change of 35 feet per second. Comments from related industries were submitted to support that position. The analysis is based on full-scale controlled crash data, and selects velocity change intervals which are claimed to represent the structural limit at which the fuselage breaks up. The FAA does not concur with the level of survivability selected by the commenter to establish his proposed pulse. While localized fuselage breakup did occur in these test airplanes, the fuselage maintained a protective shell and limited acceleration loads to a survivable level in all areas outside of the local fracture. Airplane accident experience confirms that observation and has demonstrated that localized fuselage breakup is not the limit on overall passenger survivability. Moreover, data submitted to the FAA indicate that many seats currently in service are capable of meeting the recommended 35 feet per second and 14g criteria. One commenter believes that seats designed to meet the standards proposed in the NPRM would be practical, feasible, and consistent with current floor strength levels if the seat is designed properly. Recent tests support this belief.

Two commenters contend that it is unnecessary to introduce dynamic testing. They believe that the mode of load application for static testing used by the British Civil Aviation Authority should be used, together with the addition of floor deformation per proposed § 25.562(c). The FAA disagrees. Although improved static test methods could be used to evaluate the structural integrity of the seat, these methods cannot evaluate the ability of the seats to protect passengers and crewmembers from injury. Also, one commenter suggests that dynamic testing may be too complicated (dummy, HIC, two rows, cabin interior), and that a simple drop test of a seat with accelerometers, no anthropomorphic dummy, and no expensive test equipment could be used. The FAA disagrees. No simple dynamic test has been developed which will provide human-like load distribution on a seat/

restraint system without using an anthropomorphic dummy. Several efforts have been made without using a dummy, but without success. Moreover, the simple test would not provide any measure of passenger injury protection.

One commenter supports the proposal, but would prefer 20g and similar dynamic tests for items of mass. Designing a seat to meet a 20g dynamic test condition without defining the velocity change and energy level associated with the dynamic pulse would not, in itself, assure a higher level of safety. Seats designed to meet the 16g and 44 feet per second criteria could also be shown to react 20g dynamic loads at an equivalent energy level. Strengthening the floor structure to carry the 20g dynamic load with a 44 feet per second change in velocity would add considerable weight to the structure and could not be shown cost effective. Static criteria are sufficient to evaluate the structural strength and retention characteristics of items of mass where occupant injury assessments are not required.

One commenter argues that specific load values of 2,250 pounds in each femur should be deleted and the rule stated in objective terms. Padding the lower rear edge of the seat is suggested as an alternative. The reason for specifying the 2,250-pound maximum allowable femur load value is to have an objective pass/fail performance criterion. It may be achieved through energy absorbing designs, including padding if appropriate, by clearance for the legs, or by whatever other designs are appropriate.

Several commenters state that more dynamic testing is needed to understand the relationships between seat pitch, bulkhead distance, strike zone from the 10-degree yaw, and the femur loads and HIC. A continuing dynamic test program at the CAMI test facility, which has had the participation of airframe and seat manufacturers, has given a better understanding of the various design parameters affecting the HIC and femur loads. Based on the results of these tests, the FAA believes these design requirements are realistic and achievable without paying an undue design penalty.

One commenter suggests that upper torso restraint for passengers to minimize secondary head impact should be considered, since a HIC less than 1000 would not ensure a conscious passenger. While a HIC of 1000 might not ensure a conscious passenger, it should prevent a fatal head injury in a serious crash. The rule does not prohibit installation of upper torso restraints; however, installation of upper torso restraint systems for passengers on transport airplanes could create significant design problems, such as structural weight penalties associated with the stronger seat back and floor structure, and shoulder straps could create entanglement problems during emergency egress. The new standards for seat performance provide a significant increase in passenger survivability during emergency landing conditions with only lap belt restraints.

Several comments were received regarding specific aspects of the test procedures and compliance criteria (pass/fail criteria, defining critical conditions, etc.). Guidance regarding test procedures, along with acceptable means of compliance, will be provided in the final release of AC 25.562–1.

Several commenters express concern that the cost analysis is inaccurate in that it underestimates the costs associated with the proposed rule. Others state that the costs are overestimated. A revised cost analysis has been prepared which reflects changes in the proposed rule and more accurate estimates of benefits and costs. The revised benefit and cost estimates improve the benefit to cost ratio from the original estimate prepared for the notice.

Several commenters are concerned about the applicability of the new seat requirements to future and current airplanes. Some believe that it should apply to the existing fleet as well as to future certification. Others express concern over possible changes to Part 121 which would make the new standards applicable to current airplanes. They are also concerned that if the Part 25 rule were adopted, they would have to use seats manufactured to meet the new standards, regardless of whether Part 121 was amended, because seats meeting current standards would no longer be produced. The FAA believes seats designed to the new performance standards could also be used in older airplanes without creating an undue economic burden. Seats meeting the new standards could be phased in during major interior modification or during refurbishment, if desired. However, the FAA will not, by virtue of this amendment, require an upgrade of the static strength standards on fixed items of mass, nor require the replacement of seats in airplanes manufactured under existing type certificates. The Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223, December 30, 1987) directs the Secretary of Transportation to initiate rulemaking to consider the retrofit on air carrier aircraft of seats that meet improved crashworthiness standards. The FAA expects to initiate such rulemaking shortly, and comments submitted in response to Notice 86–11 regarding the issue of retrofit will be considered.

The airplane manufacturers, through the Aerospace Industries Association (AIA), submitted a cost analysis covering three separate proposals. Their proposals were grouped I through III, based on cost effectiveness, and range from most expensive to least expensive.

The Group I analysis was based on the erroneous assumption that the rule changes would require that the seat dynamic testing be accomplished on representative aircraft floor structure, and that the aircraft floor structure would thus have to accommodate the floor deformation specified in the rule without failure. This analysis also assumed that all the requirements proposed in the NPRM would be adopted. The Group II analysis was based on the assumption that the seat dynamic testing would be accomplished on a test fixture, rather than on aircraft floor structure, but otherwise equivalent to the Group I assumptions. The Group III analysis was based on the assumption that the static side load factor of § 25.561(b)(3) was increased to 3.0g, an aft load factor of 1.5g was added, the seat static side load factor was 4.0g, and the dynamic test conditions for seat assembly tests were reduced. They estimate that the additional weight increase for seats designed under the Group I or Group II assumptions would be 0.6 pounds per seat, and 0.3 pounds per seat under the Group III assumptions. They estimate that there would be no airframe weight increase for the Group III assumptions. The rule, as adopted, closely corresponds to the Group III assumptions for the airframe; therefore, no significant airframe weight increase is anticipated. The rule corresponds to the Group II assumptions for seat dynamic testing, where analysis indicates a seat weight increase of 0.6 pounds per seat would be anticipated; however, seat manufacturers have indicated that seats complying with the standards proposed in the NPRM have been developed at a weight penalty of only 0.3 pounds per seat. In either case, the projected weight increase (0.9 to 1.8 pounds for a triple-seat assembly) is well within the variation of seat weight among seat models competing successfully in the current market.

Except as discussed above, the proposals in Notice 86–11 are adopted as proposed.

Regulatory Evaluation Summary

This regulatory evaluation will primarily address the passenger seat. Although the rule also prescribes standards for the flight attendant and flightcrew seats, these seats are expected to have costs and benefits that are similar to those of the passenger seat. In addition, they represent a relatively small economic impact compared to passenger seats. The airplane structure on new type designs is expected to require only minor modification. For this reason, only a negligible cost impact is anticipated.

The benefits and the costs of requiring improved seat performance are both directly proportional to the number of seats; that is, the total cost is equal to the number of seats times the cost per seat and the total benefits are equal to the number of seats times the benefit per seat. Therefore, one can calculate the relationship between benefits and costs by determining the benefits per seat and the cost per seat, and this will be the approach used in this evaluation.

Benefits

The final rule will improve the crashworthiness of transport category airplanes by revising the seat standards. Because of the improved standards, some lives are expected to be saved that otherwise may not have been.

It is difficult to determine, accurately, the potential reduction in casualty loss that may result from this rule because it involves estimating casualty loss that would occur from use of presently designed seats that would not occur from use of seats designed to the improved standards. In reviews of accidents, identification of fatalities or injuries caused by insufficient seat strength or seat attachment deficiencies is difficult because of incomplete knowledge of the crash dynamics, injury mechanisms, and survivor testimony relating to the crash. In addition, post-crash fires consume necessary data. Nevertheless, there are some data available which can offer insight into prospective benefits.

The FAA has reviewed many accidents to determine seat performance. In fact, in March 1983, the FAA published a study, "Crash Injury Protection in Survivable Air Transport Accidents—U.S. Civil Aircraft Experience From 1970 to 1978," relating to the issue of seat adequacy. As part of that study, a comprehensive data base was developed on passenger seat/restraint system performance in survivable transport category airplane accidents. The study drew the following conclusions:

Although injuries and fatalities seem to be decreasing in the more recent survivable crashes, seat performance continues to be a factor in these crashes. Failures range from seat pan collapse to complete breakaway of the seat assembly from the floor are reported. Floor or cabin deformation frequently is a cause of seat failure. Flailing injuries, due to either bending over the restraint system or secondary impact with the aircraft interior, appear to be common.

The National Aeronautics and Space Administration (NASA) and the FAA jointly sponsored parallel studies by Lockheed, McDonnell Douglas, and Boeing to identify areas of research and approaches that may result in improved occupant survivability and crashworthiness of transport category airplanes.

The Boeing study involved accidents involving international airlines as well as U.S. airlines. Boeing concluded that the aircraft strength and occupant injury tolerance appear to be in proper balance in 31 accidents in which seat performance was mentioned in NTSB reports. Douglas stated that it was premature to evaluate seat performance and recommended a test program. Lockheed stated that the results of the review of the seat performance indicate that the seats and restraint systems designed to current FAA criteria are providing a system that protects the occupant.

The FAA contracted with Simula, Inc., and RMS Technologies, Inc., to do a study of severe survivable accidents between 1970 and 1983. The study, among other things, identifies instances where an improved seat/restraint system might have been beneficial. The results of the study were published in a report titled *Crash Dynamics Program Transport Seat Performance and Cost Benefit Study*, October 1986. The Regulatory Evaluation for the NPRM was based on the 1983 FAA study since that was the latest study available at the time. The accident data base for this Regulatory Evaluation will be based on the Simula/RMS Technologies study. This later study reviewed the previous studies, included additional accident data for the period 1979 through 1983, and more clearly related cause and effect, that is, associated fatalities and injuries with seat failure. For example, in the NPRM it was stated that there were 368 fatalities and 346 serious injuries to passengers involved in accidents where seats could have been a contributing factor over the period 1970 to 1978, whereas in the Simula/RMS Technologies study it is stated that at least 107 fatalities and 63 serious injuries had the potential of being avoided through the use of improved seats over the period 1970 to 1983.

During the fourteen year period between 1970 and 1983, there were 3,343 million passenger enplanements on U.S. air carriers. Therefore, the casualty rate where improved seats could have been of benefit is 0.0320 fatalities per million passenger enplanements (107 fatalities divided by 3,343 million passenger enplanements) and 0.0188 serious injuries per million passenger enplanements.

The question arises of how effective an improved seat would have been in preventing the 107 fatalities and 63 serious injuries. In reality, the improved seats would not be 100 percent effective in preventing these deaths and injuries. In the NPRM it was estimated that the improved seat would be from 3 to 15 percent effective in preventing casualty loss of a much larger accident base, that is the improved seat would prevent from 0.00532 fatalities per million passenger enplanements to 0.0266. In reviewing the accidents discussed in the Simula/RMS Technologies study and the ability of the improved seats to match the strength and resiliency of the airplane floor, the FAA estimates that the improved seat would be at least 80 percent effective in preventing the casualty loss described in the study. The effectiveness is based on judgments made as the accident files were reviewed as to whether an injury or fatality was of the type that could have been prevented by an improved seat. It is also apparent that available accident records do not identify all seat related casualty loss. A correction for this lack of data, as indicated in the report, would more than compensate for the assumption associated with other than 100 percent effectiveness. Therefore, in this analysis the fatality rate (0.0320 fatalities per million passenger enplanements) calculated above will be used. The impact of variations in effectiveness of the improved seat will be discussed in the section on sensitivity.

To determine the benefits per seat, the number of enplanements per seat has to be developed. Tha FAA forecast indicates that there will be about 681,000 seats in the fleet in 1995. That year was used as the point when newly certificated airplanes would be entering the fleet. The number of enplanements for 1995 is forecast at 693.5 million. Therefore, the numbar of enplanements per seat per year is 1,018 (693.5 million enplanements divided by 681,000 seats). As indicated above, the fatality rate avoided as a result of improved seats is 0.0320 fatalities per million passenger enplanements. Therefore, the number of

fatalities avoided per million seats per year is 32.58 (0.0320 fatalities per million passenger enplanements times 1,018 enplanements per seat per year). For the purpose of analysis, the FAA has used the statistical minimum economic value of a human life of $1 million. This is the accepted value used by economists in Government policy analysis. Using this value, the benefit per year per seat is $32.58. Because a serious injury is estimated to cost society less than 10 percent of the cost of a fatality, and the reduction in serious injuries is less than that for fatalities, serious injuries will be neglected for the purpose of comparing benefits and costs.

The service life of a seat can vary widely. Some seats have been providing service in excess of 20 years. Others are replaced because airlines want to reconfigure cabins or desire seats with lower weight or maintenance costs. For the purpose of this analysis, the service life of a seat is assumed to be 7 years. This is in contrast to the ten years used in the Initial Regulatory Evaluation for the NPRM. It is based on additional discussions with the airline industry and makes the benefit estimate more conservative. The present value of benefits per seat is about $159 (7 year life, 10 percent discount rate).

In the Initial Regulatory Evaluation for the NPRM, the number of enplanements per seat was based on historical data during the 1970s. It was brought to the agency's attention that present and prospective data indicate that seats are being used more intensely, that is, load factors are higher and airplanes are being used more hours per day. Therefore, enplanements per seat for the year 1995 is used in this analysis. Also, in the analysis for the NPRM, the prospective accident rate compared to the historical rate was reduced by one-half based on improvements being made in the aviation system. It was difficult to corroborate this by means of statistical analysis, and it will be discussed in the section on sensitivity.

Costs

This cost analysis is based on the one developed for the NPRM and the comments received in response to that document. The two basic elements of the seat cost are the increase in manufacturing cost and the cost impact of any weight increase. Seats for transport category airplanes currently cost about $1,200 and weigh about 19 to 22 pounds per passenger.

The cost for a newly designed seat consists of fixed and variable (or recurring) cost elements. The fixed costs are composed of the following:

1. Engineering design.
2. Construction of prototypes.
3. Development and certification testing.
4. Tooling and training.
5. Documentation.

The seat manufacturers became aware that the FAA was investigating the merits of introducing improved seat standards several years ago and were informed of the details of the FAA proposals with publication of the NPRM in July 1986. As a result of this knowledge, as well as their desire to offer the safest product possible, the seat manufacturers began to develop seats to the proposed standards. Similarly, the airline operators started to specify that seats must meet the proposed standards. Several seat manufacturers are already selling seats which meet the proposed standards. Therefore, development costs can be considered as sunk costs.

The variable costs or recurring costs consist of the materials, labor, and expendables used in the manufacture of the seat. The additional materials are likely to be less than 2 or 3 pounds of metal, including scrap, and thus contribute only modestly to cost. Additional labor requirements are also expected to be modest since basically the same work tasks will be done as are now. For example, the time to forge two similar but slightly different structural elements is likely to be the same. The FAA estimates the increase in fabrication costs to be about 3 percent or about $36 per seat. Of the several seat manufacturers that commented in response to the NPRM, only one made a cost estimate. That estimate was that there would be a 3 percent increase in sales price as a result of the new standard. This is less than the FAA estimate since it includes all costs, both fixed and variable.

The increase in weight of the structure that is expected to result from this rule cannot be determined with any certainty. The FAA estimates the weight increase to be 0.6 pounds. Estimates from the seat manufacturers in response to the NPRM ranged from 0.3 pounds to 1.5 pounds per seat. Each pound of weight increase can result in 15 gallons of additional fuel burn per year. At 60 cents per gallon, the weight increase would cost $5.40 per year (i.e., 0.6 pounds weight increase times 15 gallons per pound times $.60 per gallon).

The annual seat cost is developed by annualizing the seat fabrication cost over a seven year period and adding it to the annual fuel cost. The annual seat cost is $12.79. The present value seat cost is $62.29.

The FAA expects that, with the exception of seats, there will be no significant modification of the airplane structure, its interior furnishings, or the seat restraint systems, such as seat belts, as a result of the rule. The FAA therefore estimates that there will be only negligible additional costs for these items. Several commenters questioned this estimate, and their comments were addressed in the section "Discussion of Comments."

Comparison of Benefits and Costs

As indicated in the section on benefits, the present value of benefits per seat is $159; the costs are about $62, yielding a benefit to cost ratio of 2.6.

Sensitivity

As stated previously, there is some uncertainty with respect to the FAA estimates of costs and benefits. The critical estimates are discussed below.

Life of Seat

In this analysis, it was estimated that the life of a seat is seven years. There is a greater probability that the life of a seat is greater than seven years rather than less. If, for example, the life of a seat were 10 years, the benefit to cost ratio would be 2.9 compared to 2.6.

Effectiveness of Seat

In this analysis, improved seats were estimated to be highly effective in preventing fatalities in which seats were judged to be the cause. It is recognized that the seats will not be 100 percent effective, but on the other hand, the Simula/RMS study stated that there were additional fatalities, due to seats, that could not be identified. In light of these two unquantifiable, off-setting factors, the FAA used the Simula/RMS numbers without adjustment. The FAA assumed that, had the improved seats been installed during the period studied by Simula/RMS, 107 lives could have been saved. The FAA also assumed a linear relationship between the effectiveness of the improved seats and the number of fatalities prevented. If, for example, the improved seat prevented only half of the fatalities estimated, the benefit to cost ratio would be 1.3 rather than 2.6.

"Value" of a Life

The "value" of a life is open to much debate and much has been written in the literature on that subject. The FAA uses $1 million for the "value" of a life for analysis purposes. The benefit to cost ratio will vary directly with the value, that is, if the value were $2 million, the benefit to cost ratio would be 5.2 rather than 2.6. The value must be at least

$385,000 for a benefit to cost ratio greater than one, in this analysis.

Future Accident Rate

The accident data for this analysis covered the period 1970 through 1983. The prospective accident rate in this analysis was assumed to be the same as in that period. Since accidents are relatively rare events, a single accident can change trends. If it is assumed that the prospective accident rate will be 50 percent of the historical rate, the benefit to cost ratio will be 1.3 rather than 2.6.

Cost of a Seat

The cost of a seat is made up of two elements, the sales price and the cost impact of any weight change. The present value of the sales price and of the weight change (0.6 pound) are $36 and $26, respectively. If the weight change were 1.2 pounds rather than 0.6 pound, the benefit to cost ratio would be 1.8, and if the sales price were increased $72 rather than $36, the benefit to cost ratio would be 1.6 rather than 2.6. If both the weight and price were to double, the benefit to cost ratio would be 1.3 rather than 2.6.

Trade Impact Assessment

The rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. Foreign firms seeking U.S. approval for their products must also meet the new standards. Most likely, the foreign airworthiness authorities will impose similar standards on products, of whatever origin, approved in their countries. Therefore, there should be no competitive advantage to anyone. There were no comments with respect to trade impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress 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."

This rule amends 14 CFR Part 25. Part 25 prescribes airworthiness standards for the issue of type certificates for transport category airplanes. The FAA size threshold for a determination of a small entity for aircraft manufacturers is 75 employees; that is, an aircraft manufacturer with more than 75 employees is considered not to be a small entity. The manufacturers of transport category airplanes such as Boeing, Gates Learjet, and McDonnell Douglas, are all large manufacturers. Therefore, it is clear that this rule does not impact small entities. There were no comments relating to the impact on small business.

Additional Information

Additional information relating to the regulatory evaluation is contained in a more detailed evaluation which is available in the docket.

Federalism Implications

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958 (Act), as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Section 601(a)(1) of the Act empowers the Administrator of the FAA to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design, materials, workmanship, construction, and performance of aircraft. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. In addition, the FAA certifies that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none are affected. Since this regulatory document concerns a matter on which there is substantial public interest, the FAA has determined that this document is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25, is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.561 by revising paragraphs (b)(3) (i), (ii), (iii) and (iv), and by adding new paragraphs (b)(3) (v) and (d) to read as follows:

§ 25.561 General.

* * * * *

(b) * * *

(3) * * *

(i) Upward, 3.0g

(ii) Forward, 9.0g

(iii) Sideward, 3.0g on the airframe; and 4.0g on the seats and their attachments.

(iv) Downward, 6.0g

(v) Rearward, 1.5g

* * * * *

(d) Seats and items of mass (and their supporting structure) must not deform under any loads up to those specified in paragraph (b)(3) of this section in any manner that would impede subsequent rapid evacuation of occupants.

3. By adding a new § 25.562 to read as follows:

§ 25.562 Emergency landing dynamic conditions.

(a) The seat and restraint system in the airplane must be designed as prescribed in this section to protect each occupant during an emergency landing condition when—

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided for in the design; and

(2) The occupant is exposed to loads resulting from the conditions prescribed in this section.

(b) Each seat type design approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat, in accordance with each of the following emergency landing conditions. The tests must be conducted with an occupant simulated by a 170-pound anthropomorphic test dummy, as defined by 49 CFR Part 572, Subpart B, or its equivalent, sitting in the normal upright position.

(1) A change in downward vertical velocity (Δv) of not less than 35 feet per second, with the airplane's longitudinal axis canted downward 30 degrees with respect to the horizontal plane and with the wings level. Peak floor deceleration must occur in not more than 0.08 seconds after impact and must reach a minimum of 14g.

(2) A change in forward longitudinal velocity (Δv) of not less than 44 feet per second, with the airplane's longitudinal axis horizontal and yawed 10 degrees

either right or left, whichever would cause the greatest likelihood of the upper torso restraint system (where installed) moving off the occupant's shoulder, and with the wings level. Peak floor deceleration must occur in not more than 0.09 seconds after impact and must reach a minimum of 16g. Where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees vertically (i.e., out of Parallel) with one rolled 10 degrees.

(c) The following performance measures must not be exceeded during the dynamic tests conducted in accordance with paragraph (b) of this section:

(1) Where upper torso straps are used for crewmembers, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

(2) The maximum compressive load measured between the pelvis and the lumbar column of the anthropomorphic dummy must not exceed 1,500 pounds.

(3) The upper torso restraint straps (where installed) must remain on the occupant's shoulder during the impact.

(4) The lap safety belt must remain on the occupant's pelvis during the impact.

(5) Each occupant must be protected from serious head injury under the conditions prescribed in paragraph (b) of this section. Where head contact with seats or other structure can occur, protection must be provided so that the head impact does not exceed a Head Injury Criterion (HIC) of 1,000 units. The level of HIC is defined by the equation:

$$HIC = \left\{ (t_2 - t_1) \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t)\,dt \right]^{2.5} \right\}_{max}$$

Where:
t_1 is the initial integration time,
t_2 is the final integration time, and
a(t) is the total acceleration vs. time curve for the head strike, and where
(t) is in seconds, and (a) is in units of gravity (g).

(6) Where leg injuries may result from contact with seats or other structure, protection must be provided to prevent axially compressive loads exceeding 2,250 pounds in each femur.

(7) The seat must remain attached at all points of attachment, although the structure may have yielded.

(8) Seats must not yield under the tests specified in paragraphs (b)(1) and (b)(2) of this section to the extent they would impede rapid evacuation of the airplane occupants.

4. By amending § 25.785 by revising paragraph (a) to read as follows:

§ 25.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of inertia forces specified in §§ 25.561 and 25.562.

* * * * *

Issued in Washington, DC, on May 12, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-11047 Filed 5-13-88; 10:15 am]

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Federal Register

Tuesday
May 17, 1988

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 122 and 135

Retrofit of Improved Seats in Air Carrier Transport Category Airplanes; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25611; Notice No. 88-8]

Retrofit of Improved Seats in Air Carrier Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airway Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to "initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness." The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents.

DATES: Comments must be received on or before October 14, 1988.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25611, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25611. Comments may be examined in the Rules Docket weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Arthur J. Hayes, Aircraft Engineering Division (AWS-120), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9937.

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. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25611." The post card will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure, form APA-430 (see address above).

Background

The Need for Rulemaking Action

On December 30, 1987, President Reagan signed the Airport and Airway Safety and Capacity Expansion Act of 1987. Title III, section 303(b) of that act states:

> IMPROVED CRASHWORTHINESS STANDARDS FOR AIRCRAFT SEATS.—Not later than 120 days after the date of the enactment of this Act, the Secretary [of Transportation] shall initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness.

One hundred twenty days after December 30, 1987, is April 28, 1988.

Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, section 303 (December 30, 1987).

On May 12, 1988, the FAA amended Part 25 of the Federal Aviation Regulations (FAR) (14 CFR Part 25) to require that all newly type certificated transport category airplanes be designed to prevent serious injury to occupants when the occupant experiences ultimate inertia forces greater than those previously required (Amendment No. 25-64; available for public inspection on May 13, 1988). The amendment revised § 25.561(b)(3) to increase the ultimate inertia forces in the upward, downward, and sideward directions and to add an inertia force requirement in the aft direction. The forces enumerated in § 25.561(b)(3) are statically applied load factors, which the type certificate applicant must show that the airplane, including the seats, can withstand. The amendment also added a new § 25.562 and revised § 25.785(a) to include new dynamic test standards for seating systems. Amendment 25-64 resulted from a joint National Aeronautics and Space Administration (NASA)/FAA/transport airplane industry crash dynamics and research and development program.

It should be noted that the new seating system standards are applicable only to airplanes for which application for a new type certificate is made after the effective date of Amendment 25-64. Existing airplanes and airplanes yet to be manufactured under existing type certificates were not affected by Amendment 25-64.

This notice proposes to prohibit the operation of transport category airplanes under 14 CFR Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft, and the operation of transport category airplanes in air carrier operation and in scheduled intrastate common carriage under 14 CFR Part 135, Air Taxi Operators and Commercial Operators, unless the airplanes are equipped with seats that comply with the standards as defined in Amendment 25-64. This includes scheduled commuter air carriers, but does not include those air carriers conducting on-demand air taxi operations.

The FAA has determined that the consideration of operations only under 14 CFR Parts 121 and 135 is appropriate for air carriers. The FAA has also determined that air carrier operations and scheduled intrastate common carriage by commercial operators meet the intent of the statute. Additional discussion of the determination to limit

the proposal to transport category airplanes will follow.

The joint NASA/FAA evaluation of the crash dynamic characteristics of transport category airplanes indicated that seating systems designed to meet the requirements of 14 CFR Parts 25 (prior to Amendment 25–64) with some exceptions, provided adequate protection for occupants. A review of existing accident data has shown that, for survivable accident scenarios, the transport category airplane structure remains substantially intact and provides a livable volume for occupants throughout an impact sequence. Fuselage and floor elastic deformation may be present during an impact accident, but the deformation is not evident to investigators after an accident. Accident data indicated that incidents of undersirable seat performance are usually related to elastic displacement of cabin floors and excessive lateral inertial loads; however, an indepth seat dynamic test program of contemporary seat designs revealed differences in load distribution and failure modes between static and dynamic loading. It then became evident that the identified seat deficiencies could be addressed by establishing dynamic test standards to provide the same level of impact injury protection and structural performance as that provided by the airframe itself. The focus of the dynamic testing requirements is the seat performance as it relates to occupant survivability characteristics. Significant benefits could accrue by virtue of improved performance of properly designed seats.

History

Prior to Amendment 25–64, the emergency landing static load factors had remained unchanged since 1952. Part 4b of the Civil Air Regulations was amended at that time to increase the emergency landing static forward load factor for transport category airplanes from 6.0 to 9.0 g. Consideration has been given to increasing the emergency landing load factors since then. Notice No. 69–33 (34 FR 13036; August 12, 1969) proposed to increase the upward and sideward load factors for transport category airplanes to 4.5 g and 3.0 g, respectively. Notice No. 75–26 (40 FR 24802; June 10, 1975) proposed to add a rearward load factor of 1.5 g. In view of the prevailing state-of-the-art in seat design, understanding of crash dynamics, and service record, the FAA withdrew each proposal (37 FR 3964; February 24, 1972 and 43 FR 50583; October 30, 1978).

Research and development to support future rulemaking has continued from that time and as recently as October 7, 1987, the FAA, with industry participation, completed dynamic tests of seating systems in a full scale section of a transport category airplane at the Transportation Research Center in Ohio. The final report for that testing is expected in April 1988. Based on the preliminary assessment of the favorable results of that testing, the FAA has continued, with renewed vigor, the effort to provide for the retrofit of improved seats in the air transportation fleet. Improved seats would be practical, feasible, and consistent with current floor strength levels if the seats are designed properly. The recent tests in Ohio support this finding.

Notice No. 86–11, Improved Seat Safety Standards (51 FR 25982; July 17, 1986), was the basis for Amendment 25–64. In response to Notice 86–11, interested persons provided comments regarding retrofitting the air transportation fleet with improved seats and requiring improved seats on future production transport category airplanes. Two commenters stated that detailed comments were premature then and that the new improved seat standards of 14 CFR Part 25 need to be monitored first before considering a change to 14 CFR Part 121. Two commenters anticipated that future comments will be based on the extent to which retrofitting will require changes to existing airframes. "If the final dynamic testing criteria for seats are commensurable [sic] with airplane structural capabilities, replacement of existing seats on an attrition basis could make sense. If changes to the airplane structure are required, cost may become prohibitive." One commenter believes air carriers will try to standardize and will buy seats that meet improved crashworthiness requirements for use in large fleets. Three commenters stated that the seat retrofit should be required, regardless of cost, and that there should be an upgrade of the floor structure, if needed, to complement the retrofit.

The National Transportation Safety Board has made several recommendations to the FAA to improve seat safety standards. Also, several consumer groups, and groups representing flight crewmembers, support making a proposal as this.

Reference Material

For additional information, see the following:

- *Longitudinal Impact Test of a Transport Airframe Section,* Report DOT/FAA/CT–87/26, To Be Completed April 1988
- *Transport Controlled Impact Demonstration Seat Experiments and Cost Benefit Study,* DOT/FAA/CT–85/36, October 1986
- Draft Advisory Circular on Human Exposure to Impact; and a Preview of the Agency's Crash Dynamics Program (49 FR 37111; September 21, 1984)
- *Vertical Drop Test of a Transport Airframe Section,* DOT/FAA/CT–TN/86/34, October 1986

Related Actions

The joint NASA/FAA crash dynamics program has resulted in the following proposals:

- On July 17, 1986, the FAA issued Notice No. 86–11 (51 FR 25982) that proposed to require increased static load factors in certain directions for seating systems, fixed items of mass and their support structure in the cabin. The notice also proposed dynamic testing and the assessment of human body tolerance to impact as the pass-fail criteria during dynamic tests of seating systems intended for use in transport category airplanes type certificated after the rules become effective. As stated previously, Notice 86–11 was the basis for Amendment 25–64.
- On December 12, 1986, the FAA issued Notice No. 86–19 (51 FR 44878) that proposed to require increased static load factors in certain directions for seating systems, fixed items of mass in the cabin and their support structure, and the dynamic evaluation of seating systems intended for use in normal, utility, and acrobatic category airplanes type certificated after the rules become effective.
- On June 3, 1987, the FAA issued Notice No. 87–4 (52 FR 20938) that proposed dynamic impact design requirements for seating systems, increased static load factors for seating systems and items of mass in the cabin or adjacent to the cabin, a shoulder harness for each occupant, and human impact injury criteria to assess dynamic tests of seating systems intended for use in normal and transport category rotorcraft type certificated after the rules become effective.

Seating systems developed to meet the standards of Amendment 25–64 will provide improved occupant protection, and those standards will be used for the certification of seats intended to be used in transport category airplanes discussed in this proposal. The major focus of the joint NASA/FAA crash dynamics program has been the improvement of seating systems to ensure occupant survival in newly type certificated airplanes; however, the appropriate standards were further evaluated with respect to how improved seats might be used effectively in

existing transport category airplanes as well as airplanes newly manufactured under existing type certificates.

Although section 303(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 is phrased in terms of "seats on board *all* air carrier *aircraft* * * * based upon the *best available* testing standards * * *" (emphasis added), a final determination of new crashworthiness standards for normal and transport category rotorcraft has not been made. Similarly, new crashworthiness standards including dynamic testing of seats for airplanes type certificated in the commuter category have not even reached the proposal stage. (An airplane in the commuter category is a propeller-driven, multiengine airplane that has a seating configuration, excluding pilot seats, of 19 or less, and a maximum certificated takeoff weight of 19,000 pounds of less, that is intended for nonacrobatic operation.) The FAA expects to publish, concurrently with this proposal, a final rule delineating improved crashworthiness standards for seats installed in newly type certificated normal, utility, and acrobatic category airplanes (ref. 14 CFR Part 23). Although the focus of section 303(b) appears to be the retrofit of improved seats in transport category airplanes, it should be noted that a limited number of airplanes type certificated in the normal or utility category are used in air carrier operations or scheduled intrastate common carriage. Accordingly, the FAA will consider using the new Part 23 standards as the basis for a proposal to require the retrofit of seats in small airplanes used in air carrier operations and scheduled intrastate common carriage. Preliminary data indicates that the retrofit of seats in existing small airplanes would necessitate airframe modifications to achieve a safety benefit commensurate with the improvement of the seats. Thus, further analyses using additional pertinent date are necessary to propose technical requirements and to calcualte related costs. Other aircraft used in air carrier and commercial operations will be considered for rulemaking when new seat crashworthiness standards, appropriate to the type certification category and size, become finalized. Therefore, comments are specifically requested on the issues involved in requiring the retrofit of improved seats in aircraft type certificated in the normal, utility, and commuter airplanes and rotorcraft categories.

The FAA is planning to propose improved crashworthiness standards for seats intended to be used in newly type certificated commuter category airplanes as described. A decision will be made on requiring the replacements of seats in newly manufactured airplanes and in-service airplanes that are consistent with the commuter category of 14 CFR Part 23.

Discussion of Proposals

This proposal would prohibit the operation of transport category airplanes in air carrier operations under 14 CFR Part 121 and the operation of transport category airplanes in air carrier operations and in scheduled intrastate common carriage under 14 CFR Part 135 unles the airplanes are equipped with seats that comply with the standards as defined in Amendment 25–64. This proposal would affect each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing.

Amendment 25–64 revised the static load requirements of § 25.561(b)(3) to increase the ultimate inertia forces for emergency landing conditions from 2.0 g to 3.0 g in the upward direction; from 1.5 g to 3.0 g on the airframe and from 1.5 g to 4.0 g on seats and seat attachments in the sideward direction; and from 4.5 g to 6.0 g in the downward direction. The amendment added a requirement of 1.5 g in the rearward direction where, previously, there had been none.

The amendment also added § 25.562 to prescribe emergency landing dynamic conditions. Section 25.562 describes two dynamic load scenarios as follows:

> It must be demonstrated that the seat type can successfully complete—
>
> (1) A change in downward vertical velocity (ΔV) of not less than 35 feet per second, with the airplane's longitudinal axis canted downward 30 degrees with respect to the horizontal plane and with the wings level. Peak floor deceleration must occur in not more than 0.08 seconds after impact and must reach a minimum of 14 g.
>
> (2) A change in forward vertical velocity (ΔV) of not less than 44 feet per second, with the airplane's longitudinal axis horizontal and yawed 10 degrees . . . with the wings level. Peak floor deceleration must occur in not more than 0.09 seconds after impact and must reach a minimum of 16 g. Where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees vertically (i.e., out of parallel) with one rolled 10 degrees.

Section 25.562(c) requires an assessment of parameters during the dynamic tests described above to assess the potential for an occupant to survive. Among these parameters are the maximum strap tension for upper torso restraints, the maximum compressive load the test dummy should experience between pelvis and lumbar, upper torso restraint strap and lap safety belt positioning criteria, a defined Head Injury Criterion, and the maximum compressive load the test dummy should experience in either femur. In addition, the performance criteria require that the seat must remain attached at all points of attachment and that the seat must not yield under either of the dynamic load tests to the extent rapid evacuation of the airplane would be impeded. Section 25.785, as amended, requires that each seat, berth, safety belt, harness, and adjacent part of the airplane be designed so that no occupant is seriously injured in an emergency landing as a result of the inertia force specified in §§ 25.561 and 25.562.

Proposed §§ 121.311 and 135.169

This notice proposes to revise § 121.311, Seats, Safety Belts, and Shoulder Harnesses, to prohibit the operation of a transport category airplane, which was type certificated after January 1, 1958, unless *all* seats on board the airplane comply with the applicable requirements of § 25.785 as amended by Amendment 25–64. Additionally, this notice proposes to revise § 135.169, Additional Airworthiness Requirements, to prohibit the operation of a transport category airplane, which was type certificated after January 1, 1958, in air carrier operations and scheduled intrastate common carriage unless *all* seats on board the airplane comply with the applicable requirements of § 25.785 as amended by Amendment 25–64. In each case, operations would be prohibited after June 16, 1995, unless the replacements are made. *All* seats are defined as passenger seats (including divans and sidefacing seats), flight attendant seats, flight crew seats, observer seats, and courier seats in both passenger and cargo operations.

Alternatives

Considering the boundary conditions of transport category airplanes in air carrier operations and scheduled intrastate common carriage, the alternatives are as follows:

- Voluntary seat replacements.
- Required seat replacements 5 years after the adoption of Amendment 25–64.
- Required seat replacements 7 years after the adoption of Amendment 25–64.
- Required seat replacements 10 years after the adoption of Amendment 25–64.
- Required seat replacements 5 to 10 years after the adoption of Amendment 25–64 with an assessment of fixed items

of mass, their support structure in the cabin, and the airframe floor for increased static load factors.

Discussion of Alternatives

One alternative to this proposal is reliance upon air carriers and those commercial operators engaged in scheduled intrastate common carriage to incorporate, voluntarily, improved seats in their transport category airplanes. Additionally, it is possible that improved seats will weigh less in some cases, because reductions in weight may be achieved by the use of lightweight alloys and advanced composites. Any reductions in weight will stimulate voluntary retrofits to save weight since that translates to reductions in fuel-burn operating costs.

One variation to this alternative is that at some time new improved seat designs will be the only ones on the market because seat firms manufacture nothing else. The air carriers, affected commercial operators, and aircraft manufacturers would then be forced to purchase improved seats when they replace old ones. If this case of restricted supply should exist, in the absence of this rule, the air carriers and affected commercial operators could decide to avoid the small cost and weight penalties of improved seats by refurbishing or rebuilding existing seats.

In view of the small but nevertheless real economic disincentives of voluntarily using new improved seats, it is possible that either air carriers or affected commercial operators will decide, voluntarily, to purchase improved seats when replacements are either needed or just desired. In the absence of such voluntary incorporation of new improved seats in transport category airplanes at normal replacement points, airline passengers and crewmembers will be at greater risk of sustaining serious or fatal injuries in some future crashes than they would be if this proposal is adopted.

Since there is no guarantee that weight savings will be achieved by all seat manufacturers or that air carriers and affected commercial operators will act voluntarily, the FAA is proposing that *all* seats installed in transport category airplanes used in 14 CFR Part 121 operations and in 14 CFR Part 135 air carrier and scheduled intrastate operations be replaced within 6 years after improved seats become available. The FAA projects that seats that comply will be available in sufficient quantities within 1 year after the adoption of Amendment 25–26. This proposal applies to passenger seats (including divans and sidefacing seats), flight attendant seats, flight crew seats, observer seats, and courier seats. Divans and sidefacing passenger seats designated as occupiable during takeoff and landing must be improved also. All of these types of seating systems must be replaced by types that comply with improved crashworthiness standards. Comments are specifically requested on whether berths or other seating devices should also be replaced.

The FAA is not proposing to require an upgrade of the static strength standards on fixed items of mass in the cabin nor to require modification of the floor structure on either in-service transport category airplanes or transport category airplanes manufactured under existing type certificates, because it has been determined that such action is not necessary. As stated earlier, the current transport category airplane structure remains substantially intact and provides a livable volume for occupants throughout a survivable impact accident. Consequently, in addition to the goal of ensuring occupant survivability in newly type certificated transport category airplanes, the FAA had an objective to ensure that seats complying with improved crashworthiness standards could be used effectively in in-service and newly-manufactured transport category airplanes. That objective will be achieved if improved seats are designed properly as indicated earlier.

The static load factors adopted by Amendment 25–64 were selected to take advantage of existing floor strength without requiring significant structural modifications or weight increases. The data indicates that existing floor structures can withstand a side load factor of 3.0 g. Although the rule prior to Amendment 25–64 only requires a load factor of 1.5 g for the sideward emergency landing condition, most modern transport category airplanes are capable of sustaining higher loads. The forward static load factor has not changed since 1952. Therefore, the FAA concludes that the floors of in-service transport category airplanes are compatible with the static load factors of the improved crashworthiness standards.

The floors of in-service transport category airplanes type certificated after January 1, 1958, are structurally capable of accommodating improved seats, and there is sufficient justification to propose these seat replacements. Since the FAA has determined that 5 years is a reasonable time period in which to obtain a type certificate, transport category airplanes type certificated after 1957 should have 9.0 g floors, which have been required since 1952, that are compatible with the improved crashworthiness standards. Therefore, January 1, 1958, has been selected as the cutoff date and is the same date selected for transport category airplanes needing other new technology replacements in addition to improved seats.

The FAA has chosen 7 years as the compliance period for this proposed rule to provide maximum safety benefits at the earliest feasible date, while minimizing potential costs that could arise from an earlier compliance deadline. A 7-year compliance period, assuming 1 year for additional seat development and 6 years for installation, is relatively consistent with the average seat replacement cycle for transport category airplanes in air carrier operations and scheduled intrastate common carriage. An earlier compliance deadline would require some affected operators to purchase seats sooner than they otherwise would. This required investment in seats would preclude the possibility of earning a return on other potential revenue-generating investments. Thus, an earlier compliance deadline could cause significant additional costs in terms of a foregone return on other investments. A later compliance deadline might allow a compliance period longer than the average normal replacement cycle for seats, thus unnecessarily delaying safety benefits while saving few costs.

Regulatory Evaluation Summary

Benefit-Cost Analysis

The regulatory evaluation prepared for this proposed amendment to 14 CFR Parts 121 and 135 examines the benefit and cost elements associated with requiring that *all* seats of transport category airplanes used in air carrier and scheduled intrastate operations comply with improved crashworthiness standards. These standards are partially based on the best available dynamic testing criteria for seats.

This proposal is based in part on the requirements set forth in the Airport and Airway Safety and Capacity Expansion Act of 1987. The Act directs the Secretary of Transportation to propose that all seats on board all air carrier aircraft meet improved crashworthiness standards.

Costs

The FAA estimates the total cost of compliance expected to accrue from implementation of this proposed rule to be $33 million (discounted present value, 10%, 10 years), in 1987 dollars, over the 1989 to 1998 evaluation period.

In estimating potential costs of this proposed rule, the FAA assumes there would be no additional design or

development costs since several manufacturers have already developed and are producing seats meeting the improved standards of this proposed rule. Furthermore, the FAA assumes that there are unlikely to be any additional labor costs, for seat installment or replacement. This assessment is based on the finding that seats are regularly replaced on transport category airplanes affected by this proposed rule and that no additional labor cost would be incurred in substituting improved seats for existing seats during routine replacement.

This proposal would only affect air carriers and commercial operators engaged in scheduled intrastate common carriage. These operators would incur two types of costs as follows:

1. Incremental costs of improved seats over seats meeting existing standards.
2. Additional fuel costs due to the increased weight of improved seats.

Additionally, there could be costs incurred relative to a seat replacement cycle if operators were required to purchase large numbers of seats sooner than their normal seat replacement cycle. Each of these cost components is briefly discussed below.

1. Incremental Cost of Improved Seats

Between 1989 and 1998, over 900,000 improved seats are expected to be purchased by air carrier and commercial operators affected by this proposed rule. Each improved seat is expected to cost $36 more than a seat complying with current regulations. This cost component would result in an estimated cost of $20 million (discounted) in 1987 dollars.

2. Additional Fuel Costs Due to Improved Seats

Based on industry input, the FAA assumes that improved seats would weigh about 0.6 pound more than seats currently in U.S. air transportation service. The FAA and industry generally agree that 1 pound of weight added to an airplane equates to 15 gallons of additional fuel use each year, on average. At a current cost of $.60 per gallon for Jet Type A fuel, each improved seat installed in place of a current seat would add $5.40 per year in fuel costs. This cost component would result in an estimated cost of $13 million (discounted) in 1987 dollars.

3. Cost Considerations of a Seat Replacement Cycle of More Than 7 Years

In determining the estimated cost of compliance, the FAA assumed all seats of transport category airplanes used in air carrier operations and scheduled intrastate common carriage are replaced, on average, every 7 years for either marketing or cosmetic reasons, based on information received from U.S. aircraft seat manufacturers and the Air Transport Association. Nevertheless, this estimate contains some uncertainty. As the result of this uncertainty, the FAA solicits comments as to the reasonableness of the 7-year seat replacement cycle estimate. Specifically, the FAA solicits information on the age distribution of seats in the transport category airplanes fleet (Parts 121 and 135). This information would significantly enhance the agency's ability to estimate the potential cost of compliance of this proposed rule, because the current seat replacement cycle time is a critical factor in cost calculations. If operators were required to purchase large numbers of seats sooner than their normal seat replacement cycle, funds would have to be spent on seats that could otherwise earn a return on revenue-generating investments. There would also be an earlier reduction in the economic life or utility of the seats.

Benefits

This proposed rule would improve the crashworthiness of transport category airplanes operating under 14 CFR Parts 121 and 135 by mandating the use of seats that comply with revised testing criteria and sustainable load factors. This proposed rule, if implemented, is expected to prevent fatalities and injuries that otherwise would have occurred under certain circumstances. Therefore, the benefits of this proposed rule would be the reduction of casualty loss due to the installation of improved seats in transport category airplanes used in 14 CFR Part 121 and Part 135 operations.

There are many variables that can affect the magnitude of these potential benefits. Among these variables are the following:

- The degree of effectiveness of improved seats in preventing the sort of casualties that have been attributed to seat failure or displacement in the past.
- The extent to which other rulemaking actions may reduce the possibility of seat failure in the future, by increasing the overall safety level of the U.S. air transport system and thereby reducing the risk of future accidents where seat failure could occur.
- Uncertainties regarding the number of casualties in the past that could be attributed to seat failure.

Because of these and other variables, it is difficult to predict with certainty the value of the potential benefits expected to accrue from this proposed rule. Nonetheless, the FAA has undertaken a quantitative analysis of benefits, using the most current information available.

The FAA technical report entitled "Transport Controlled Impact Demonstration Seat Experiments and Cost Benefit Study" (October 1986) identifies up to 107 fatalities and 63 serious injuries that could have been caused by seats displacing forward or releasing in U.S. air transport accidents between 1970 and 1983. During this 14-year period, there were 3,342.6 million passengers enplaned on U.S. air carriers (including commercial operators). Thus, over the 1970–1983 period, there were approximately 0.0320 seat-related fatalities per million passengers enplaned and 0.0188 seat-related serious injuries per million passengers enplaned.

Applying these rates to forecasts of future passenger enplanements in the United States, the FAA has obtained projections of the number of seat-related casualties that could occur in the absence of this proposed rule over the 1989–1998 period. This proposed rule would not be able to prevent all of these projected casualties, since this proposed rule does not cover the entire fleet of U.S. air carrier airplanes, and gradual installation of improved seats over the compliance period would still leave a majority of current seats in the fleet until after 1992. Nonetheless, as more improved seats are installed, a greater share of these projected casualties would be prevented each year, in proportion to the percentage of the total population of U.S. transport seats represented by improved seats. The prospective number of lives saved and serious injuries prevented by this proposed rule would amount to an estimated 117 and 68, respectively, between 1989 and 1998.

For purposes of regulatory evaluations, the FAA has used the statistical minimum economic value of a human life of $1 million and the value of a serious injury of $54,000. Applying these values to the number of potential lives saved and injuries prevented yields estimated total benefits of $62 million (discounted present value, 10%, 10 years), in 1987 dollars, over the 1989–1998 evaluation period.

Comparison of Costs and Benefits

Total costs of the proposed rule are expected to be $33 million (discounted) over the 1989 to 1998 evaluation period. Benefits over this 10-year period are estimated to total $62 million (discounted), yielding a potential societal net benefit of $29 million from implementation of this proposed rule.

Because of uncertainties in predicting benefits, however, it is impossible to state for certain that net benefits of this proposed rule would be as high as $29 million. Other FAA rulemaking actions may continue to have a significant effect in reducing future accidents. If the accident rate declines, there may be a corresponding decline in the number of circumstances where improved seats would be beneficial in preventing fatalities and serious injuries. Despite these uncertainties in the future risk exposure of passengers, it is nonetheless likely that benefits of this proposed rule would exceed costs.

The regulatory evaluation that has been placed in the docket contains additional information related to costs and benefits that are expected to accrue from implementation of this proposed rule.

International Trade Impact Analysis

This proposal would have no impact on the trade opportunities for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. Historically, foreign countries have adopted safety regulations similar to those in the United States. The FAA believes this practice would continue in concert with this proposed rulemaking action. Thus, neither U.S. nor foreign air carrier operators would have a competitive advantage as the result of this proposal. If, however, foreign countries do not implement safety regulations similar to this proposed rulemaking action, U.S. air carrier operators would incur a slightly higher cost on an annual passenger enplanement basis. Nonetheless, such cost would be minimal. Therefore, consumer demand for U.S. services would not be significantly affected by this proposed rule. United States commercial operators engaged in air carrier operations and in scheduled intrastate common carriage would not be affected by this proposed rule because they do not compete with foreign commercial operators. Virtually all of their operations take place or originate in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress 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."

This proposal would amend 14 CFR Parts 121 and 135. Part 121 prescribes rules governing the certification and operations of air carriers. Part 135 prescribes certification and operating rules for air taxi and commercial operators. The FAA defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed or existing rule. The FAA size threshold for a determination of a small entity for either air carrier operators or commercial operators is nine aircraft owned, but not necessarily operated. That is, any operator with more than nine aircraft is not considered to be a small entity. Virtually all U.S. air carriers own more than nine transport category airplanes. While some air carriers with nine or less transport category airplanes owned would incur costs, a substantial number of them would not be affected. That is, less that 11 or less than one-third of the air carriers defined as small entities would be affected by this proposed rule; however, this assessment is not necessarily true for commercial operators with less than 10 aircraft owned. This is because some operators equip their aircraft with more luxurious seats than those seats equipped on most air carriers. Therefore, the cost to upgrade from current to improved seats could be disproportionately higher. The FAA does not know to what extent these small entity operators would be affected. As a result of this uncertainty, the FAA solicits comments from the aviation industry in general and from commercial operators of less than 10 aircraft in particular as to potential economic impacts.

Federalism Implications

The regulations (proposed) in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in this preamble, and based on the findings in the Initial Regulatory Evaluation, the Initial Regulatory Flexibilitry Determination, and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. The FAA cannot determine, at this time, if this proposal, if adopted, will have a significant economic impact, positive or negative, on a substantial number of 14 CFR Part 135 operators defined as small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Initial Regulatory Evaluation of this proposal, including an Initial Regulatory Flexibility Determination and an International Trade Impact Analysis, has been placed in the docket A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 121

Air carriers, Airplanes, Air transportation, Aviation safety, Safety, Seating, Transportation.

14 CFR Part 135

Air carriers, Air transportation, Aviation safety, Safety, Seating.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.311 is amended by adding a new paragaph (i) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(i) After June 16, 1995, no person may operate a transport category airplane that was type certificated after January 1, 1958, unless each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing complies with the applicable requirements of § 25.785 of this chapter in effect on June 16, 1988.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. Section 135.169 is amended by adding a new paragraph (d) to read as follows:

§ 135.169 Additional airworthiness requirements.

* * * * *

(d) After June 16, 1995, no person may operate a transport category airplane that was type certificated after January 1, 1958, in air carrier operations or scheduled intrastate common carriage, unless each seat, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff or landing complies with the applicable requirements of § 25.785 of this chapter in effect on June 16, 1988.

Issued in Washington, DC, on May 11, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88–11048 Filed 5–13–88; 10:15 am]

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federal register

Tuesday
May 17, 1988

Part IX

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Analysis of Public Comments and Final Staff Compliance Guidelines

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Analysis of public comments on staff compliance guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its analysis of the public comments received in response to its request for comment on the staff compliance guidelines for the Used Car Rule. This notice summarizes and analyzes the issues raised by the commenters and notes those parts of the guidelines that have been modified in response to the comments. The revised compliance guidelines are published in a separate notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joyce E. Plyler (202–326–3021) or Matthew D. Gold (202–326–3019), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Division of Enforcement staff published compliance guidelines for the Used Car Rule in the **Federal Register** on May 18, 1987. The guidelines are meant to provide guidance concerning how the Rule applies in specific situations. They are the opinion of staff only and have not been adopted by the Commission and are not binding on the Commission. However, the guidelines serve as criteria for the staff in assessing compliance with the Used Car Rule.

Five comments were received during the 30-day comment period after publication of the guidelines.[1] Three comments were submitted by trade associations—the National Automobile Dealers Association ("NADA"), the National Independent Automobile Dealers Association ("NIADA"), and the National Vehicle Leasing Association ("NVLA"). One bank holding company, First Virginia Banks, Inc., also commented. The fifth comment, from a consumer, did not make specific substantive comments about the guidelines and is not discussed here. The comments raised six substantive issues, which are discussed separately below, in the order of their appearance in the guidelines.

Based on its analysis of the comments, further review of the guidelines, and subsequent Commission action, the staff has made both substantive and editorial revisions.

A. Public Comments

1. Demonstrators

NADA objected to staff's interpretation that all demonstrators, including those still in service as demonstrators, must have a Buyers Guide posted on them before being shown to a consumer. In its comment, NADA distinguished between demonstrators that are "offered for sale" and those that are "available for sale."

Although NADA agreed that demonstrators are "used" vehicles, it contended that demonstrators are not "offered for sale" until they are taken out of demonstrator service and put on the car lot. While acknowledging that demonstrators are always "available" for sale, NADA argued that a salesperson who merely responds to a customer's questions about a demonstrator does not offer that vehicle for sale. NADA proposed that the guidelines instruct dealers that they must post Buyers Guides on demonstrator vehicles only after the demonstrators have been removed from service.

Staff rejects NADA's interpretation. We disagree that in used car sales there is a meaningful distinction between "offering" a vehicle for sale and making it "available" for sale. In staff's view, when a salesperson discusses a vehicle that is available for sale with a customer, and is willing to sell the vehicle, then that vehicle is "offered" for sale.

The guidelines have not been substantively revised on this issue, but the illustrations concerning demonstrators have been clarified. Illustration 2.6 has been modified to apply to situations in which demonstrators are still in service so that dealers will be guided on that specific issue. Illustration 2.7 in the former guidelines was deleted because staff agrees with NADA's suggestion that the illustration would not apply in the "real world" and therefore is not helpful to dealers. Dealers do not impose time or mileage restrictions within which demonstrators are not available for sale, as suggested in the former illustration.

2. Lessor/Lessee Sales

All three trade associations commented about sales of leased vehicles. NADA resubmitted the comments it made in the leasing company exemption proceeding, which was considered by the Commission in September, 1987.[2] NADA commented during that proceeding that sales by any dealer, not just a lessor, at auctions, repossession lots, through solicitation for bids and by consignment should be exempted from the Rule. The Commission rejected the petitioners' and NADA's request to exempt sales to consumers through such methods.[3] NADA's comment on the petitions for exemption raises no issues that have not been previously considered by the Commission. Staff has revised the guidelines to make them consistent with the Commission's decision.

NIADA and NVLA both disagreed with staff's advice that sales by lessors to buyers procured by lessees would be covered by the Rule if the lessees advertised the vehicles for sale, but would not be covered if the buyer approached the lessee about purchasing the vehicle. Staff's advice was prompted by its interpretation that the Rule intended to exclude only sales to buyers procured by individual lessees for the vehicles they had personally driven, and not to exclude sales when numerous buyers had been procured by lessees for vehicles the lessees had never driven, as in the case of leased fleets.

NIADA contended that the Rule should apply to all non-lessee or non-employee sales, regardless of how the buyers were procured. NVLA argued that the Rule should not apply to any sales by lessors to buyers procured by lessees because the Rule makes no distinction based on how purchasers are acquired by lessees.

Upon reconsideration of the Rule, staff agrees with NVLA. Section 455.1(d)(3) of the Rule excludes from its definition of dealer "a lessor selling a leased vehicle *by or to* that vehicle's lessee or to an employee of the lessee." (emphasis added). The Statement of Basis and Purpose (SBP) for the Used Car Rule, states:

> The definition of dealer specifically excludes * * * a lessor selling leased vehicles to the vehicle's lessee, to a buyer procured by the vehicle's lessee, or to the lessee's employee.[4]

Neither the Rule nor the SBP distinguishes between the methods a lessee uses to procure a buyer. Thus, staff deleted its advice that lessors would have to comply with the Rule for sales to buyers procured by lessees through advertising.

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[1] The comments were placed on the public record in FTC File 215–54 and are labelled 109–1 through 109–5.

[2] *See* 52 FR 34769 (1987) (Commission denial of petitions for exemption).

[3] *Id.*

[4] Statement of Basis and Purpose for the Used Car Rule ("SBP"), 49 FR 45692, 45708 (Nov. 19, 1984).

However, the Rule excludes only certain sales by *lessors*. It does not exclude *lessees* if the lessee offers for sale more than five vehicles within twelve months and therefore is a "dealer" as defined by the Rule. Thus, lessees offering for sale six or more vehicles wihin a year are responsible for complying with the Rule.

Staff has modified the guidelines to state that lessors are not required to comply with the Rule for sales to buyers procured by lessees, regardless of how the buyer is procured. Staff also has added a guideline stating that lessees will be required to comply with the Rule if they offer for sale, to persons other than their employees or dealers, six or more used vehicles within a year.

3. Disclosure of Mandatory Warranties

NIADA took exception to staff's advice that the Rule requires dealers to disclose on the Buyers Guide any warranty that they must provide as mandated by state or local law. NIADA analogized mandatory warranties to unexpired manufacturers' warranties because neither is a type of warranty provided voluntarily by the dealer and subject to negotiation. NIADA argued that because the disclosure of unexpired manufacturers' warranties is optional under the Rule, then the Rule must have meant to make disclosure of mandatory warranties optional as well.

Staff rejects NIADA's analysis because it draws an inapt parallel between dealer warranties mandated by law and unexpired manufacturers' warranties. The distinction between the two types of warranties is that the former must be honored by the dealer while the latter is the responsibility of the manufacturer. Section 455.2(b)(2) of the Rule states: "If you [the dealer] offer the vehicle with a warranty, briefly describe the warranty terms in the space provided." Although a dealer may be required by law to provide a warranty, such a mandatory warranty is nevertheless a dealer-offered warranty that must be disclosed.[5] Disclosure of warranties that a dealer must provide, as required by the Rule, is important to ensure that consumers are aware of their potential rights to have repairs made by the dealer. Therefore, staff has not changed its guidance that warranties mandated by law must be disclosed on the Buyers Guide.

4. Service Contracts

NADA requested that one minor word change be made in staff's explanation regarding the disclaimer of implied warranties when service contracts are sold. NADA suggested that staff substitute the words "enter into" for the word "sell" to make clear that implied warranty obligations attach only when a dealer *enters into* a service contract, *i.e.*, when the contract obligates the dealer, rather than a third party, to perform services under the contract. If the dealer sells a third party service contract, the dealer may disclaim implied warranties in states allowing such disclaimers.

Although staff did not intend the word "sell" to include the sale of a third party contract, staff has substituted "enter into" for "sell" in order to make absolutely clear that only when a dealer "enters into" a service contract for any period of time within 90 days of sale may the dealer not disclaim implied warranties. The only sentence affected by this change now reads, "if you also enter into a service contract covering the engine for six months, you automatically provide an implied warranty on the engine."

5. Sales Contract Disclosures

NADA questioned staff's guidance that final warranty terms must be identified in the contract of sale, arguing that it is unnecessary to include such terms in the sales contract since they must appear in a warranty document. The original guidelines stated: "You must include warranty information in the sales contract. (The warranty information may be printed in your sales contract, *or* it may be on a separate warranty page that is referred to and made part of your sales contract)" (emphasis in original).

Staff revised the guidelines to clarify that although final warranty terms must appear in one single document that is part of the contract with the consumer, they are not required to be placed in a document titled, "sales contract," or incorporated by reference into it. The contract with the consumer may include several documents, only one of which must include all of the warranty disclosures required by the Warranty Disclosure Rule.[6] However, neither the Used Car Rule nor the Warranty Disclosure Rule requires that warranty terms be referenced to or repeated in the "sales contract." In addition to revising the main text, staff deleted Illustration 4.2 to eliminate confusion on this issue.

These revisions merely clarify that warranty terms need not be placed in the sales contract as long as they appear in a separate document. Of course, the disclosure regarding incorporation of the Buyers Guide into the contract must be placed conspicuously in the sales contract as required by § 455.3(b) of the Rule.

6. Financing Agreements

First Virginia Banks, Inc., NADA, and NIADA each commented that a "financing agreement" should not be required to include the foreclosure concerning incorporation of the Buyers Guide into the sales contract, contained in § 455.3(b) of the Rule.[7] The original guidelines had advised dealers that the financing agreement might have to include the incorporation disclosure if the financing agreement contained terms apart from those governing the financing of the transaction.

Staff agrees with the commenters that this guideline should be revised to state that a financing document must contain the § 455.3(b) disclosure only if the financing document is the only document used to record the transaction or if the document contains a clause stating that it is the complete and total agreement between the dealer and the consumer. Illustration 4.1 was revised to make this point.

B. Other Revisions

Staff made two substantive changes that were unrelated to the comments. First, staff modified slightly its explanation of the Rule's exclusion of banks and financial institutions. Section 455.1(d)(3) states that the definition of dealer "does not include a bank or financial institution * * *." The guidelines explain that the "definition of 'dealer' specifically excludes banks and financial institutions selling used vehicles forfeited as collateral on consumer loans." Staff has revised the guidelines to delete the phrase "forfeited as collateral on consumer loans."

Although the SBP specifically identified the sale of cars forfeited as collateral as a type of sale by banks that would be excluded from coverage,[8] this was only an illustration of one transaction that is excluded. The Rule itself unequivocally excludes banks and financial institutions. Deletion of the phrase "forfeited as collateral on consumer loans" will eliminate the incorrect implication that a bank's sale of used vehicles other than those forfeited as collateral would be covered by the Rule.

[5] *See id.* at 45710.

[6] 16 CFR Part 701 (1975).

[7] NADA was apparently under the mistaken impression that the guidelines indicated that warranty terms must sometimes appear in a financing agreement. Illustration 4.1, which is the relevant section, applied only to the question of whether the § 455.3(b) disclosure should appear in the financing agreement.

[8] 49 FR at 45708.

Second, staff revised its guidance concerning sales at auctions to make the guidelines consistent with the Commission's ruling in the proceeding denying exemptions to a number of automobile leasing companies.[9] The guidelines previously stated that sales at auctions are covered by the Rule if the auctions are open to consumers *and* advertised to consumers. The revised guidelines eliminate advertising as a condition to coverage of the Rule in auction settings and state that sales to consumers at any auctions that are open to consumers are covered by the Rule.

Finally, the staff made a number of nonsubstantive editorial changes. For example, all of the illustrations are now placed at the end of the text to make them easier to find within the document.

C. Conclusion

In this notice, staff has analyzed comments on its initial compliance guidelines for the Used Car Rule and has noted a number of areas in which it agrees that changes in the guidelines are warranted. Final staff compliance guidelines for the Used Car Rule incorporating these changes are published in a separate notice in the **Federal Register**.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily Rock,

Secretary.

[FR Doc. 88-11012 Filed 5-16-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Staff compliance guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Used Car Rule to provide assistance to industry members. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce E. Plyler (202/326-3021) or Matthew D. Gold (202/326-3019), Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Staff Compliance Guidelines Outline

I. Introduction

These staff compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or "Used Car Rule"), 16 CFR Part 455, which was promulgated on November 19, 1984.[1] The Used Car Rule became effective on May 9, 1985.[2] Violations of the Rule can result in the imposition of civil penalties of up to $10,000 per violation.[3]

These final guidelines are a modification of the guidelines published in the **Federal Register** on May 18, 1987. Some of the changes were based on several comments that were received. An analysis of those comments is included in a separate notice in the **Federal Register**.

The guidelines neither amend nor modify the Rule. Staff is publishing these guidelines to provide assistance to industry members in understanding the Rule and complying with its obligations. In addition, staff has prepared a brochure entitled "Facts For Business: [A] Dealer's Guide to the FTC Used Car Rule," designed to assist dealers in understanding the Rule. Staff mailed a copy of this brochure to more than 89,000 dealers before the Rule took effect. If you are a new dealer, did not receive this brochure, or need another copy, you may request a free copy by writing to the Publications Branch, Federal Trade Commission, Washington, DC 20580. You also may request a free copy of these compliance guidelines.

The views expressed in these guidelines are those of staff only. These views have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Used Car Rule.

The Used Car Rule is primarily intended to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule requires clear disclosure through a window sticker, called the "Buyers Guide," of any warranty coverage and the terms and conditions of any dealer-offered warranty, including the duration of warranty coverage and the percentage of total repair costs that the dealer will pay. The Rule also requires certain additional disclosures on the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of the fourteen major systems of an automobile and defects that can occur in these systems.

In addition, the Rule provides that the Buyers Guide disclosures are incorporated into the sales contract. Dealers are required to place a specific,

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[9] Staff made public its enforcement policy regarding consumer sales at auctions in a staff opinion letter to each of the leasing companies who had petitioned for exemption from the Rule.

[1] 49 FR 45692 (1984). That notice included the Used Car Rule and the Commission's Statement of Basis and Purpose concerning the Rule.

[2] *Id. But see* Section II(G), *infra*, concerning the application of the Rule within the State of Wisconsin.

[3] 15 U.S.C. 45(m)(1)(A)

two-sentence disclosure in the sales contract informing the purchaser that, in the event of any inconsistency between the Buyers Guide and the sales contract, the information on the Buyers Guide will govern. The Rule also requires dealers to give a copy of the Buyers Guide reflecting the final warranty terms to the purchaser.

When the used car transaction is conducted in Spanish, the Rule requires that the dealer display a Spanish-language version of the Buyers Guide on the vehicle prior to offering the vehicle for sale. The Rule includes a text for the Spanish-language version.

These guidelines explain the Rule's requirements, section by section. The discussion includes illustrations of how the Rule applies in specific fact situations that are faced by many dealers. If further compliance questions arise, dealers may seek an informal staff advisory opinion,[4] or if appropriate, a formal advisory opinion from the Commission, as provided for in Section 1.1 through 1.4 of the Commission's Rules of Practice, 16 CFR 1.1–1.4.

II. What Transactions Does the Rule Cover?

Generally, all sellers of used vehicles are covered by the Rule, except those who sell, or offer to sell, fewer than six (6) used vehicles in a twelve month period. A used vehicle is any car, light-duty van or light-duty truck that has been driven more than the distance necessary for test driving or moving the vehicle prior to delivery to a consumer.

The following definitions, included in the Used Car Rule, provide more detailed information as to the persons, firms, and vehicles that are covered by the Rule. The Used Car Rule does not affect the definitions of terms in state law such as "dealer," "used vehicle," "new vehicle," or "vehicle." Likewise, state law definitions of the specific terms set out in § 455.1(d) of the Rule have no effect on the Used Car Rule.

A. "Vehicle" Defined—Section 455.1(d)(1)

For the purposes of the Rule, a "vehicle" is defined as "any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) [the loaded weight] of less than 8,500 lbs., a curb weight [the weight of an unloaded vehicle] of less than 6,000 lbs., and a frontal area of less than 46 sq. ft." Thus, the Rule covers automobiles, including "classic cars," as well as most light-duty vans and light-duty trucks. Due to the limit on the vehicle size built into this provision, large trucks and recreational vehicles generally are not covered.

Staff believes the Rule also does not apply to the sale of tractors, combines, tillers, and other vehicles that are designed primarily for agricultural use, but which meet the definition of the term "vehicle" that is set forth in the Rule. Motorcycles are not covered by the Rule. Staff believes that mopeds, like motorcycles, also are not covered by the Rule.

B. "Used Vehicle" Defined—Section 455.1(d)(2)

Under the Rule, the term "used vehicle" includes all vehicles that have been "driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer." This definition, therefore, includes demonstrators and company cars.[5] However, a vehicle sold as scrap or for its parts and not as an operating vehicle is specifically excluded from the definition of used vehicle, if the dealer surrenders any title documents to the appropriate state authority and obtains a salvage certification. Illustrations 2.5 and 2.7 discuss the application of the Rule to demonstrator vehicles. Illustration 2.6 discusses how the Rule applies when a vehicle is transferred from one dealer to another.

C. "Dealer" Defined—Section 455.1(d)(3)

Under the Rule, the term "dealer" includes any person or business that is presently selling or offering for sale a used vehicle, after having sold or offered for sale five or more used vehicles during the previous twelve months. In other words, a person or business becomes a "dealer," for purposes of the FTC Used Car Rule, upon offering for sale the sixth used vehicle in twelve months. The Rule does not impose any requirements on persons or businesses that offer fewer than six used vehicles for sale in twelve months. Illustrations 2.1 and 2.2 discuss this provision of the Rule.

The Used Car Rule's definition of "dealer" specifically excludes banks and financial institutions selling used vehicles. However, the Rule applies to the retail sale of used vehicles by affiliates and subsidiaries of banks or financial institutions. Illustration 2.11 discusses the application of the Rule to banks.

Section 455.1(d)(3) of the Rule also excludes sales of used vehicles by a business to its own employees. In addition, the term "dealer" excludes a lessor offering to sell a leased vehicle to any of the following parties: (1) The lessee; (2) an employee of the lessee; or (3) a buyer procured by the lessee.[6] Sales and offers for sale by lessors to all other parties are covered by the Rule. If a *lessee* offers for sale (other than to its employees) more than five leased vehicles within a twelve month period, the lessee most comply with the Rule because the lessee fits the definition of "dealer" and is not specifically excluded. Illustration 2.8 discusses how the Rule applies to the sale of leased vehicles.

D. "Consumer" Defined—Section 455.1(d)(4)

For purposes of the Used Car Rule, the term "consumer" is broadly defined to include any person who is not a used vehicle dealer. Section 455.2(a) of the Rule requires you (the dealer) to prepare and display a Buyers Guide before offering to sell a used vehicle to a consumer. In the Statement of Basis and Purpose, the Commission indicated that the term "consumer" also includes small businesses. 49 FR 45692, 45708 (1984). If you are offering to sell a used vehicle only to another dealer, the Rule does not apply to the sale of that vehicle. Illustrations 2.3 and 2.4 highlight this provision of the Rule.

E. Consignment Sales

Before you offer to sell a used vehicle that you have on your lot through a consignment, power of attorney or other such agreement, the Rule requires you to prepare and display a Buyers Guide. The point to remember is that whenever you, the dealer, offer to sell a used vehicle to a consumer, you are responsible for making sure that there is full compliance with the Rule. If you are a dealer who consigns a car to another dealer for sale to a consumer on your behalf, both you and the other dealer are responsible for complying with the Rule.

F. Auctions

The Rule does not apply if you offer to sell a vehicle through an auction that is open only to other dealers. It does apply when your vehicles are offered for sale at an auction that is open to consumers.[7]

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[4] Staff may be contacted at the address listed in the beginning of these guidelines, under the heading "For further Information."

[5] As used in these guidelines, the term "demonstrator" refers to "new" vehicles that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving. This may include use by the dealer, the dealer's employees, the dealer's corporate officers, or anyone else.

[6] *See* Statement of Basis and Purpose, 49 FR at 45708.

[7] *See* 52 FR 34769 (1987) (Commission declined to exempt from the Used Car Rule sales to consumers of used vehicles at auctions that are open to consumers.)

The auction company is also covered by the Rule if it has sold or offered to sell six or more used vehicles to consumers within a twelve month period. In this case, as with consignment sales, both you and the auction company are responsible for complying with the Rule. See Illustrations 2.9–2.10 for a further discussion of sales through auctions.

G. Where Does the Rule Apply?

The Used Car Rule was issued by the FTC based upon two sources of authority: Section 109(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309(b), and section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a. These Acts apply in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. 15 U.S.C. 2301(15). In addition, the Rule covers vehicles exported from the United States for sale at military post exchanges. 16 CFR 700.1(i).

Therefore, with the exceptions of Wisconsin and Maine, which have been granted statewide exemptions, the Used Car Rule applies in each of these jurisdictions. The Commission granted these exemptions under § 455.6 of the Rule, based on the finding that the relevant law in each state "affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule." 51 FR 20936, 20943 (1986); 53 FR 16390, 16394 (1988).

III. The Buyers Guide

A. General Information

Section 455.2 of the Rule requires dealers to prepare and display a window sticker called the "Buyers Guide" before offering a used vehicle for sale to a consumer. The Buyers Guide must disclose whether any warranty is offered and the basic terms of any warranty. If the dealer does not provide an express warranty, then the Buyers Guide must indicate that the vehicle is being offered for sale "as is" (with no express or implied warranties), or with only the applicable "implied warranties" required by state law. Each of these terms is explained on the Buyers Guide.

The Buyers Guide also includes several additional disclosures, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. Finally, at the time of sale, the dealer must give the buyer the original Buyers Guide (or an accurate copy) that was displayed on the vehicle. This Buyers Guide must reflect the final warranty terms agreed on between the buyer and seller.

B. Preparing the Buyers Guide

Section 455.2(a) of the Rule explains how to fill in the Buyers Guide. You must complete four different parts of the preprinted Buyers Guide: (1) Vehicle information; (2) warranty information; (3) servce contract availability; and (4) dealer identification and consumer complaint information.

1. Buyers Guide Format—Section 455.2(a)

The Rule requires dealers to use the exact format for the Buyers Guide that is shown in the Rule. The text of the Rule contains a model Buyers Guide, in both English and Spanish, and also provides specific printing instructions. Dealers may print their own Buyers Guides or get copies from any other source, such as trade associations and from companies.

All Buyers Guides must comply exactly with the standardized wording, type style, type size, and format required by the Rule. Section 455.2(a)(2) of the Rule requires that the Buyers Guide be printed in 100% black ink on white stock that is at least 11 inches high and 7¼ inches wide. Dealers also may post a completely separate window sticker to make other truthful and non-deceptive information known to the consumer, as long as that information does not conflict with the Buyers Guide and the sales contract.

2. Vehicle Information—Section 455.2(d)

In the spaces provided at the top of the Buyers Guide, fill in the vehicle make, model, model year, and vehicle identification number (VIN). You may write in a dealer stock number in the space provided or you may leave this space blank.

3. Warranty Information—Section 455.2(b)

a. "As Is—No Warranty" version. If you offer a vehicle "as is," which means without any express or implied warranties, mark the box provided next to the "As Is—No Warranty" disclosure. The Used Car Rule does not affect any state law that requires you to use special language or a separate form to make an effective "as is" sale. "As is" disclosures will excuse you from liability under state law only if you follow state law requirements for making the disclosure. Illustration 3.2 further discusses this portion of the Rule.

b. *"Implied Warranties Only" version.* Some states limit or prohibit the sale of used vehicles "as is." The Used Car Rule does not override such state laws. In those states § 455.2(b)(1)(ii) of the Rule requires you to use the version of the Buyers Guide containing the following "Implied Warranties Only" heading instead of the "As Is—No Warranty" heading:

> Implied Warranties Only. This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you brought the vehicle.

If you are not offering an express warranty, the "Implied Warranties Only" box must be checked. If you offer an express warranty, check the "Warranty" box on this Buyers Guide.

In states that allow "as is" sales you also must use the "Implied Warranties Only" heading when you choose to offer only implied warranties. If a state allows "as is" sales for some, but not all, used vehicles, you may use an "As Is—No Warranty" Buyers Guide on those vehicles that the state will allow you to sell "as is."

Buyers Guides with the "Implied Warranties Only" heading are available from the same sources that supply the "As Is—No Warranty" version of the Buyers Guide. Alternatively, dealers could have the "Implied Warranties Only" disclosure printed on labels, and then simply affix these labels to the Buyers Guide, covering up the "As Is—No Warranty" state. Illustration 3.1 discusses use of Buyers Guides with the "Implied Warranties Only" heading. Appendix A gives an example of the "Implied Warranties Only" Buyers Guide.

c. Filling in the Warranty Portion of the Buyers Guide. Dealers who offer a warranty on the vehicle must mark the large box next to the word "warranty," and complete the other parts of the warranty section of the Buyers Guide. Section 455.2(b). First, mark one of the smaller boxes to indicate whether the warranty offered is "Full" or "Limited." Section 455.2(b)(2)(i). Under federal law your warranty is "full" if each of the following five statements about your warranty's terms and conditions is true:[8]

[8] These standards are set out in section 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304. The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers are not required to indicate whether the warranty offered is

Continued

(1) You provide warranty service to anyone who owns the vehicle during the warranty period, when they report a problem.

(2) You provide warranty service free of charge, including such costs as returning the vehicle or removing and reinstalling a "covered" system when necessary.

(3) You provide, at the consumer's choice, either a replacement or a full refund if you are unable, after a reasonable number of tries, to repair the vehicle.

(4) You do not require consumers to perform any duty as a precondition for receiving service, except notifying you that service is needed, unless you can demonstrate that the duty is reasonable.

(5) You do not limit the duration of implied warranties.

If any one of these statements is not true, then your warranty is "limited." A "limited" warranty tells your customers that there are some costs or responsibilities that you will not cover for the specified systems.

A "full" or "limited" warranty need not cover the entire vehicle. You may give a "full" warranty on some systems, and a "limited" warranty on others. If most systems are covered by a "limited" warranty, check the limited warranty box, and list which systems will be covered by a full warranty. See Illustration 3.4 for an additional discussion of this issue.

Second, fill in the percentage of the repair cost that will be paid by the dealer. For example, "The dealer will pay 100% of the labor and 100% of the parts * * *." [9] See Illustration 3.6 for a discussion of how the Rule applies to the use of a deductible. Section 455.2(b)(2)(iv).

Third, indicate which of the specific systems are covered. Do not use shorthand terms such as "drive train" or "power train". Rather, indicate the exact systems (*e.g.*, frame and body, brake systems, etc.) that are covered. A list of the major systems of an automobile is printed on the back of the Buyers Guide. Those terms may be used to indicate the specific systems covered by the warranty. Illustration 3.5 provides an explanation of how to disclose the systems covered. Section 455.2(b)(2)(ii).

Some dealers may wish to provide warranty coverage for some systems of a used vehicle and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. A dealer may use the space provided for warranty disclosures to write in any disclaimers or exclusions. You may enlarge the Buyers Guide, if necessary, to provide additional warranty information. Illustration 3.3 further discusses this issue.

Fourth, indicate the duration of the warranty. For example, "30 days or 1,000 miles, whichever occurs first." If there are different durations for different systems, write out each different duration. If the duration of the warranty is the same for all systems covered by the warranty, you need only write the duration once. Section 455.2(b)(2)(iii).

d. *Unexpired Manufacturer's Warranties.* If you choose, you may disclose unexpired manufacturer's warranties in the warranty section of the Buyers Guide. To disclose that a manufacturer's warranty still applies on a used vehicle, staff suggests that dealers use one of two methods, depending on whether the dealer offers a warranty in addition to the unexpired manufacturer's warranty. Section 455.2(b)(2)(v).

First, if additional warranty coverage is not offered by the dealer, the dealer should check the large box to indicate that a "warranty" is offered, and then simply fill in (with a rubber stamp, if desired) the following statement, which is set forth in § 455.2(b)(2)(v):

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.

Separately, and beneath that statement, the dealer may add the following language, but only if permitted by state law to sell a used vehicle on an "as is" basis:

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty.

An example of a completed Buyers Guide with this language is included as Appendix B to these guidelines.

Second, if a dealership warranty is offered and the dealer also chooses to disclose the unexpired manufacturer's warranty, the dealer should: (1) Mark the large box to indicate that a "warranty" is offered, and fully complete the rest of the Buyers Guide's warranty section, indicating whether the dealer's warranty is full or limited, what percentage of parts and labor are covered, the systems covered, and the duration of coverage, as required by § 455.2(b) of the Rule; and (2) fill in (with a rubber stamp, if desired) the unexpired manufacturer's warranty statement below the dealer's warranty disclosure. An example of a completed Buyers Guide with this language is included as Appendix C to these guidelines.

e. *Mandatory Warranties.* Although the Used Car Rule does not require dealers to disclose on the Buyers Guide warranties that are the responsibility of another party, such as the manufacturer, the Rule does require dealers to disclose information about all warranty coverage that they provide. Therefore, if federal, state, or local laws require you to give a specific warranty on a used vehicle that you offer for sale, you must briefly describe this warranty on the Buyers Guide.[10] Section 455.2(b)(2). This warranty information should be included in the "systems covered/duration" portion of the Buyers Guide. If necessary, you may enlarge the "system covered/duration" portion of the Buyers Guide to accommodate additional warranty information. You also must fully comply with disclosure requirements of the state or local law. For example, you must comply with a state or local law that requires you to give the consumer a separate warranty document.[11]

4. Service Contract Availability

A "service contract" is defined in Section 455.1(d)(7) of the Used Car Rule as "a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle [which is] *provided at an extra charge beyond the price of the used vehicle.*" (emphasis added). Although a warranty also may provide such protection it is distinguishable from a service contract because it is provided at no extra charge beyond the price of the vehicle.

If you offer a service contract on a particular vehicle, § 455.2(b)(3) requires you to mark the box provided on the Buyers Guide, next to the following disclosure:

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

"full" or "limited." Rather, dealers may simply cross out the terms "full" and "limited," leaving just the term "warranty." However, all other provisions of the Used Car Rule apply to sales of such vehicles.

[9] The Used Car Rule does not require that a dealer pay any specific percentage of repair or labor costs. The figure in the example is provided only for illustration.

[10] For one example, see New York General Business Law Section 198–b. This provision of New York law requires dealers to give consumers written warranties covering seven mechanical systems of any used vehicle that is sold for over $1,500.

[11] *See, e.g.*, New York General Business Law Section 198–b(b).

Remember: When a dealer enters into a service contract with a consumer within 90 days of selling the vehicle, federal law prohibits the dealer from disclaiming implied warranties on the systems covered in that service contract. For example, if you are a dealer who sells a car "as is," the car normally will not be covered by implied warranties (assuming that state law permits "as is" sales). But if you also enter into a service contract covering the engine for six months, you automatically provide an implied warranty on the engine.

If you are in a state that regulates service contracts as the "business of insurance," you need not include the service contract disclosure on your Buyers Guides. Section 455.2(b)(3). In those states, you have the option to check the box next to the service contract disclosure, cross out the service contract disclosure, delete it from the Buyers Guide, or do nothing to change the pre-printed Buyers Guide that you have obtained.

5. Dealer Identification and Consumer Complaint Information

Put the name and address of your dealership in the space provided on the back of the Buyers Guide. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address. Section 455.2(c).

In the space provided below the dealer's name and address, you must put the name and telephone number of the person to contact if the buyer has a complaint. You might want to include the position of the person to be contacted, along with their name, so that consumers will know who to contact if the individual named has left the dealership. Section 455.2(e).

C. Spanish Language Sales—Section 455.5

Section 455.5 of the Rule sets forth a Buyers Guide in Spanish that must be used by a dealer who conducts a sale in Spanish. From a practical standpoint, dealers must post both the English and Spanish versions of the Buyers Guide where a substantial number of sales are made in both languages. See Illustration 3.10 for a further discussion of this provision of the Rule.

D. How to Display the Buyers Guide

The Buyers Guide must be displayed in a side window of the vehicle so that the front side (with the title "Buyers Guide") faces the outside. You may display copies of both the front and back of the Buyers Guide so that both sides can be read from outside. Section 455.2(a)(1).

The Buyers Guide should be firmly affixed to the inside of the side window. This may be accomplished using any method you select, such as tape, light glue, etc. If desired, you may display the Buyers Guide inside a clear plastic sleeve which holds the Buyers Guide against the inside of the side window. If necessary, the form may be removed from the window temporarily during a test drive, but you must return it to the window as soon as the test drive is over.

E. Changes in Warranty Coverage

If you and the buyer agree to any changes in the warranty that was described on the Buyers Guide, you must write those changes onto the Buyers Guide. Section 455.2(b)(2)(v) (paras. 2–3). If, for instance, the car was originally offered with a warranty, but following negotiations it was actually sold without a warranty, cross out the offered warranty and mark the "As Is—No Warranty" or "Implied Warranties Only" box, as appropriate. If you first offer the vehicle for sale "as is" (or with only implied warranties), but then sell it with a warranty, simply cross out the box for the "As Is—No Warranty" Disclosure (or the "Implied Warranties Only" disclosure) and fill in the warranty terms. In these cases, be sure that the Buyers Guide that you give to the buyer accurately reflects the final warranty terms. Appendix D and Illustrations 3.7 and 3.8 further explain this provision of the Rule.

In addition to noting any agreed-upon changes in warranty coverage on the Buyers Guide, you must remember to include the final warranty terms in your sales contract or separate warranty document. Section 455.4. Your contract with the consumer may include several documents. It might include a "sales contract" as well as a separate warranty document that gives detailed warranty information. Whether you make warranty disclosures in the sales contract or in a separate warranty document, you must remember to make any necessary changes to the warranty information to reflect the final warranty terms after negotiations with the customer. Sales contract and warranty disclosures are discussed in more detail in the next section.

IV. Sales Contract and Warranty Disclosures

A. The Used Car Rule's Requirements

Pursuant to § 455.3(b) of the Rule, information on the Buyers Guide will override any contrary provisions that there may be in the sales contract. To inform consumers of this provision of the Used Car Rule, you must place the disclosure that follows in the sales contract in a conspicuous manner:

> The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.[12]

See Illustration 4.1 for a discussion of whether a financing document must contain the disclosure.

B. The Warranty Disclosure Rule's Requirements

If you offer a warranty, you must comply with the Federal Trade Commission's Warranty Disclosure Rule, 16 CFR Part 701. The disclosures required by this Rule may be placed in the "sales contract" or in a separate warranty document, but they must all appear together in the same document. Specifically, in simple and readily understood language, your warranty document must:

(1) State whether the warranty offered is "full" or "limited."

(2) Indicate the percentage of the repair costs that you will pay.

(3) List the specific systems that are covered by the warranty.

(4) List any parts or systems that are excluded from coverage under the warranty, if it is necessary for clarification. For example, "battery not covered."

(5) Indicate the duration of warranty coverage for each of the covered systems.

(6) Explain how a customer gets warranty service. Include your company's name, address, and the telephone number of the person to call concerning warranty service.

(7) Include the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."

(8) Disclose all obligations that the consumer has, if any, as a condition to obtaining warranty service.

(9) Include the following disclosure only if you wish to limit the duration of implied warranties: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."

(10) Include the following disclosure only if you wish to exclude or limit consequential or incidental damages:

[12] 16 CFR 455.3(b). The Spanish translation of this disclosure is: La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establezca lo contrario y que aparezca en el contrato de venta.

"Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to you."

(11) Indicate who is covered by the warranty, if you choose to limit the coverage. For example, "warranty covers only the original purchaser" or "commercial use excluded."

Put into the warranty document everything that you will do and everything that you expect your customers to do under the warranty. Make sure that your customers can find each item of information in the warranty easily.

The Federal Trade Commission has prepared several publications that also may help you to comply with the laws and regulations governing warranties. "Writing Readable Warranties" is available for $2.00, from the Superintendent of Documents, Washington, DC 20402, GPO Order #: 018–000–000303–1. "A Businessperson's Guide to Federal Warranty Law," GPO Order #: 018–000–00324–4, is available for $1.50, also from the Superintendent of Documents. A supplement to that publication, containing the relevant statutes and regulations, is available at no charge from the Publications Branch, Federal Trade Commission, Washington, DC 20580.

You may also want to consult your lawyer to be sure that your warranty meets all the requirements of both Federal and state laws.

V. Contrary Statements—Section 455.4

Section 455.4 of the Rule prohibits dealers from making "any statements, oral or written, or tak[ing] other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3 (of the Rule)." For example, you may not write that there is a warranty on the Buyers Guide, but disclaim all warranties in the contract of sale. As discussed in section IV(A) of these guidelines, the information on the Buyers Guide supercedes contrary information in the contract, under § 455.3(b) of the Rule. However, staff does not interpret § 455.4 to mean that the Used Car Rule prohibits a dealer from repairing a vehicle that was sold "as is."

VI. State Exemption Petitions—Section 455.6

The Used Car Rule includes a specific provision that sets out the standards for granting statewide exemptions from the Rule. This provision States that the Used Car Rule will not be in effect in a state, to the extent specified by the Commission, where:

(1) There is a state requirement in effect which applies to any transaction to which this rule applies, and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by [the Used Car] Rule; * * * for as long as the State administers and enforces effectively the state requirement.

Final staff guidelines for state exemption petitions have been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule"). The state exemption provision in the Funeral Rule (16 CFR 453.9) is virtually identical to the Used Car Rule provision (16 CFR 455.6). Therefore, staff recommends that states that are interested in filing a petition for statewide exemption from the Used Car Rule consult the state exemption guidelines for the Funeral Rule for more detailed information about § 455.6 of the Rule. These guidelines (published at 50 FR 12521 (1985)) provide an analysis of the procedures and materials that staff believes are relevant to an exemption proceeding.

VII. Illustrations

When Does the Rule Apply?

Illustration 2.1: You are opening your first dealership, and on your first day of business, you offer to sell five used vehicles to consumers. In the past twelve months, you have not offered to sell any other used vehicles to consumers. Are you covered by the Rule?

No. You are not a "dealer," because you have not offered to sell at least six used vehicle is a twelve month period. However, as soon as you offer your sixth used vehicle for sale to consumers within a twelve month period you become a "dealer," as defined in the Rule, and therefore must prepare and display a Buyers Guide on all used vehicles that you offer for sale to consumers. Section 455.1(d)(3).

Illustration 2.2: You are an individual who occasionally buys used cars, repairs then, and then offers them for sale to the public. In the past twelve months, you have offered five used cars for sale. You now are offering to sell your sixth used car to the public. Are you covered by the Rule?

Yes. Even if you are not considered a "dealer" under state law, the Rule defines you as a "dealer." Because you are offering to sell your sixth used vehicle to consumers within twelve months, you must comply with all aspects of the Rule, including preparing and displaying a Buyers Guide on that vehicle. Section 455.1(d)(3).

Illustration 2.3: You are a dealer offering to sell a particular used vehicle only to dealers. You do not offer to sell the vehicle to consumers. Must you comply with the Rule in this instance?

No. Because you are not offering to sell the vehicle to consumers the Rule does not apply. Section 455.2(a).

Illustration 2.4: Same as in 2.3 above, but it is your company's policy to offer a vehicle for sale to consumers for only 30 days, and then if the vehicle is unsold, it would be sold to a dealer at wholesale. Must you comply with the Rule during the 30 days that the vehicle is offered for sale to consumers?

Yes. Whenever you offer to sell a used vehicle to a consumer, you must comply with the Rule by preparing and posting a Buyers Guide before offering the vehicle for sale. In this example, you would be required to prepare and display a Buyers Guide while the used vehicle is being offered for sale to consumers. However, the Rule does not apply when you conduct a wholesale transaction, even if the vehicle was first offered for sale to consumers. Section 455.2(a).

Illustration 2.5: You are a dealer who regularly offers both new and used vehicles to the general public. You currently have four "demonstrator" vehicles in service. Are the demonstrators covered by the Rule?

Yes. Under the Rule demonstrator vehicles are included within the definition of "used vehicles."[13] Therefore, before you show a demonstrator vehicle to a consumer, you must post a properly completed Buyers Guide on that vehicle. Demonstrators that are segregated from other vehicles being offered for sale need not have Buyers Guides displayed at all times. However, as a practical matter, you may wish to post Buyers Guides on all demonstrators whenever they are on your lot so that you can ensure your compliance with the Rule. On demonstrators that have never been titled to a consumer, both the Buyers Guide and the new vehicle disclosure sticker (the "Monroney Sticker") must be posted.[14] Section 455.1(d)(2).

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[13] *See supra* note 5 for a discussion of the term "demonstrator."

[14] The Automobile Information Disclosure Act (commonly known as the Monroney Act) can be found at 15 U.S.C. 1231–33. *See also* the Commission's Statement of Basis and Purpose for the Used Car Rule, 49 FR at 45707 n. 234 (recognizing that dealers would have to display both the Monroney Sticker and the FTC Buyers Guide on some vehicles.

Illustration 2.6: You are a dealer who sometimes "transfers" or "trades" new vehicles with another dealer so that you can provide your customers with the exact car that they want. Do these trade cars have to display a Buyers Guide before you can offer them for sale to a consumer?

No. By simply trading a car with another dealer you have only accumulated mileage for the purpose of delivering the vehicle to the consumer. Therefore, the car would not be a "used vehicle" under the Rule. Section 455.1(d)(2).

Illustration 2.7: Same as 2.6 above, except that the first dealer drove the vehicle as a demonstrator before trading it to you. Does the traded car have to have a Buyers Guide before it can be offered for sale to a consumer?

Yes. If the vehicle was used as a demonstrator at any time, it must have a Buyers Guide in its side window before it can be offered for sale to a consumer. Section 455.1(d)(2).

Illustration 2.8: You are a dealer who also leases vehicles. You lease a car to Jones, who is not a dealer. At the end of the lease term you offer to sell the car to Jones. Must you prepare a Buyers Guide for this vehicle?

No. Although you are a used vehicle dealer, the Rule does not cover situations in which you sell or offer to sell the leased vehicle to the lessee, to an employee of the lessee, or to a buyer who is found by the lessee. Thus, you would not have to comply with the Rule if you offered to sell the car to Jones (the lessee) or to an employee of Jones. In addition, you would not be required to display a Buyers Guide if Jones' next door neighbor asked Jones about buying the car. But, if you reclaimed the car at the end of the lease term and then offered it for sale to the public, the Rule would apply. Section 455.1(d)(3).

Illustration 2.9: You are a used vehicle dealer who sells vehicles, from time to time, at auctions. These auctions are open only to other dealers. The only advertisements for these auctions are in trade journals. Are these sales covered by the Rule?

No. Selling at an auction that is open only to other dealers is just like a non-auction sale to another dealer: the Rule does not apply. Sections 455.1(d)(3), 455.2(a).

Illustration 2.10: Same as 2.9 above, but instead the auctions are open to consumers. Are these sales covered?

Yes. Before your used vehicles are offered for sale, sold, or made available for inspection at an auction that is open to consumers, you must prepare and display a Buyers Guide as required by the Rule. If the vehicle is sold to a consumer, you must comply with the other requirements of the Rule, just as if you had sold the vehicle from your regular place of business. If your used vehicle is sold at the auction to another dealer, you need not comply with respect to that particular vehicle.

Illustration 2.11: In your state, banks and financial institutions may own or operate general businesses as separate entities. You operate a retail used vehicle dealership that is owned in part by a bank. Must you comply with the Rule?

Yes. The Rule is intended to cover all used vehicle dealers, regardless of ownership. However, banks and financial institutions that directly offer to sell used cars are not covered by the Rule. Section 455.1(d)(3); Statement of Basis and Purpose, 49 FR at 45708.

Preparing the Buyers Guide

Illustration 3.1: You are offering a used vehicle for sale in a state that prohibits you from selling used vehicles "as is." Do you have to replace the "As Is—No Warranty" disclosure with the "Implied Warranties Only" disclosure on the Buyers Guide?

Yes. The "Implied Warranties Only" disclosure must appear on the Buyers Guide in place of the "As Is—No Warranty" disclosure if: (1) the vehicle is offered for sale in a state which prohibits "as is" sales; or (2) you decide to offer implied warranties, but no other warranties. In states that prohibit "as is" sales, the "Implied Warranties Only" heading must appear on the form even if you offer an express warranty. If you do offer a warranty you would leave the box next to "Implied Warranties Only" blank, check the warranty box, and fill out the rest of the warranty portion of the Buyers Guide. See Appendix A for an example of a Buyers Guide incorporating the "Implied Warranties Only" disclosure. Section 455.2(b)(1)(ii).

Illustration 3.2: You offer all your used vehicles for sale on an "as is" basis. Under the laws of your state, you must prepare a warranty disclaimer form, using specific language required by state law, and have the buyer sign the form. Can you display that form instead of the Buyers Guide?

No. The state law requirement does not affect your obligation to prepare and post a Buyers Guide on the used vehicle, nor will the Buyers Guide substitute for a state-required form. The Used Car Rule does not affect your obligations under state law, so you still must comply with all applicable provisions of state law, including warranty disclaimer requirements. Sections 455.2(a), 455.2(b)(1)(i).

Illustration 3.3: You are a dealer who is offering a used vehicle for sale and you want to offer a warranty on the vehicle. You would like to warrant only the engine, transmission and drive shaft, differential and electrical systems, and you would like to disclaim any warranties, express or implied, on the other systems of the vehicle. Can you indicate this disclaimer on the Buyers Guide?

Yes. Mark the large box to indicate that a warranty is offered on the vehicle. Indicate whether the warranty is "full" or "limited." [15] Fill in the lines to show what percentage of parts and labor you will pay for repairs to covered systems. Beneath the warranty disclosure, fill in the list of covered systems, and the duration of the warranty coverage for each covered system. Below that, you may indicate that you disclaim all warranties, express or implied, on other systems or parts of the vehicle. Of course, you still must describe the warranty in a separate warranty document, including the systems covered and the systems not covered. This requirement is more fully discussed in Section IV(B) of these guidelines.

Be careful to check your state's laws for any restrictions that might apply to disclaimers of express warranty coverage or disclaimers of implied warranty coverage.

Illustration 3.4: You are a dealer who is offering a warranty on a used vehicle. The warranty that you offer covers less than 100% of the cost of labor and parts for the systems covered. Is this a "full" warranty?

No. A "full" warranty is one which meets the minimum standards for a warranty under Section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304. All other warranties are called "limited." In the example provided in this illustration, the warranty covers less than 100% of the repair costs of the covered systems, and thus does not meet one of the elements of a "full" warranty. The elements of a "full" warranty are discussed more completely in the text that accompanies footnote 8, *supra.* Section 455.2(a)(2)(i).

Illustration 3.5: You are a dealer who wishes to provide a warranty covering all vehicle systems shown on the reverse of the Buyers Guide. Under "systems covered" in the warranty section of the Buyers Guide, can you write "all systems shown on reverse of the Buyers Guide"?

Yes. To indicate that your warranty covers all systems shown on the reverse

[15] *See supra* text accompanying note 8 for a discussion of the terms "full" and "limited."

side of the Buyers Guide, write in the "systems covered" section that the warranty covers: "All systems shown on the reverse side of the Buyers Guide." If you choose to use this sentence, you must specifically list in the "systems covered" section any systems not covered. For example, if your warranty covers all systems shown on the reverse of the Buyers Guide, except for the fuel system, write: "All systems shown on the reverse side of the Buyers Guide, except the fuel system."

You may not use shorthand terms, such as "power train" or "drive train" to describe the systems covered by a warranty. These requirements are designed so that both you and the consumer will understand exactly what is covered by the warranty. This avoids misunderstandings and potential disputes that might otherwise occur. Section 455.2(a)(2)(ii).

Illustration 3.6: You offer a warranty that covers 100% of labor and parts, but with a $50 deductible over the course of the warranty. Should you fill in "100%" on the Buyers Guide in the lines for percentage of repair cost covered under the warranty?

Yes. Fill in "100%*" in the lines for percentage of parts and labor, and include a note to explain the deductible on the first line of the "systems covered/duration" portion of the Buyers Guide. For example, on the first line of the "systems covered/duration" portion, write: "*—A one-time $50 deductible will apply on repairs." See Appendix E for an example of a completed Buyers Guide with this language. Section 455.2(a)(2)(iv).

Illustration 3.7: You are a dealer who is offering a used car for sale "as is" in a state that permits such sales. The Buyers Guide displayed on the vehicle indicates that the car is offered "as is." However, after negotiating with the buyer, you agree to warrant the vehicle's engine for 90 days or 3,000 miles, whichever comes first, and to pay 75% of the cost of parts and labor involved in necessary repairs during the warranty period. Do you have to change the Buyers Guide before you give it to the buyer?

Yes. Before you give the buyer a copy of the Buyers Guide, you must change it to indicate the warranty you have agreed to provide. In the alternative, you may simply fill out a new Buyers Guide with the new information. If, however, you choose to change the "old" Buyers Guide, first cross out the "As Is—No Warranty" box. Next, fill in the warranty portion of the Buyers Guide just as you would if you were originally offering the car with that warranty. Remember that the final warranty terms must be included in the sales contract for the car. An example of the front of a Buyers Guide like the one described in this illustration is included as Appendix D to these guidelines. Sections 455.2(a)(2)(v) (paras. 2–3), and 455.4.

Illustration 3.8: Same as above, but instead you originally offered the car with a warranty. Now you want to sell it with implied warranties only. Do you have to change the Buyers Guide before you offer the vehicle with implied warranties only?

Yes. You should cross out the warranty portion of the Buyers Guide and mark the box for the "Implied Warranties Only" disclosure. Alternatively, you could prepare a new Buyers Guide, and just mark the box next to the "Implied Warranties Only" disclosure. Sections 455.2(a)(1)(ii), 455.2(a)(2)(v) (paras. 2–3), and 455.4.

Ilustration 3.9: Your dealership has a used vehicle that is still being prepared for sale. A consumer is interested in looking at that vehicle, with the understanding that it cannot be delivered until the preparations are complete. Does the vehicle need to have a Buyers Guide?

Yes. Before you offer to sell, show, or actually sell any used vehicle to a consumer, you must prepare and display a Buyers Guide in the side window of that vehicle. Therefore, you may want to prepare and display a Buyers Guide soon after you acquire the vehicle. Section 455.2(a).

Illustration 3.10: You are a dealer who makes a substantial number, but not a majority, of your sales to Spanish speaking customers. Your staff is trained to conduct sales in both Spanish and English. Should you display both a Spanish and English version of the Buyers Guide on all your vehicles?

Yes. To ensure your compliance with the Rule, it is a good idea to post both versions of the Buyers Guide if you expect that a sale could be conducted in either Spanish or English. A Spanish language Buyers Guide must be posted on a used vehicle before you begin to discuss, in Spanish, that vehicle with a customer. Therefore, as a practical way to ensure compliance, you should post both English and Spanish Buyers Guides if you make a large number of sales in both languages. Sections 455.2, 455.5.

Sales Contract and Warranty Disclosures

Illustration 4.1: When you sell a vehicle, you complete a customer order, or bill of sale, and, if the consumer finances the vehicle, a financing document prepared by a bank. Do both of these documents have to contain the contract disclosure required by § 455.3(b) of the Rule?

No. The disclosure is required only on the "contract of sale." The contract of sale is the document by which you agree to transfer title to the vehicle upon payment of the purchase price. The "financing agreement" must contain this disclosure if the document contains a clause stating that the financing document represents the complete and total agreement between the dealer and the consumer, or if the financing agreement is the only document given to the consumer to record the transaction.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily Rock,

Secretary.

Editorial note.—This form, which appears in the Code of Federal Regulations in 16 CFR Part 455, is republished for the convenience of the reader.

BILLING CODE 6750-01-M

APPENDIX A

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep thi[illegible]n.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

☐ IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:	DURATION:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.

DEALER

123 Main Street

ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX B

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service locations, etc.

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty.

DURATION:

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.
DEALER

123 Main Street
ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890
SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX C

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ WARRANTY

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 100 % of the labor and 100 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
Engine	)
Frame & Body	)
Transmission	)
Drive Shaft	)
Differential	) 12,000 miles or 12 months after
Electrical System (except battery)	) sale, whichever comes first

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service locations, etc.

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

XYZ Auto Sales, Inc.

DEALER

123 Main Street

ADDRESS

Anytown, U.S.A. 01234

Ms. Smith, Used Car Sales Manager (123) 456-7890

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

APPENDIX D

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☒ **AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ **WARRANTY**

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 75 % of the labor and 75 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
Engine	90 days or 3,000 miles, whichever comes first

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- Oil leakage, excluding normal seepage
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- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
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- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

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- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

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☒ WARRANTY

☐ FULL ☒ **LIMITED WARRANTY. The dealer will pay 100*% of the labor and 100*% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

SYSTEMS COVERED:	DURATION:
* - A one-time $50.00 deductible will apply on repairs.	
Engine	)
Transmission & Drive Shaft	)
Electrical System	) 6 months or 6,000 miles,
Brake System	) whichever comes first
Steering System	)
Cooling System	)

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- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

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- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
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- Leakage

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[FR Doc. 88-11011 Filed 5-16-88; 8:45 am]
BILLING CODE 6750-01-C

Federal Register

Tuesday
May 17, 1988

Part X

Department of Education

Adult Education for the Homeless Program; Final Funding Procedure Availability for Fiscal Year 1987; Supplemental Appropriation; Notice

DEPARTMENT OF EDUCATION

Adult Education for the Homeless Program

AGENCY: Department of Education.

ACTION: Notice of final funding procedure under the adult education for the homeless program for funds made available by the fiscal year 1987 Supplemental Appropriation.

SUMMARY: The Secretary establishes a distribution formula for alloting funds from the fiscal year 1987 supplemental appropriation to States under the Adult Education for the Homeless Program. Because of the enactment of Pub. L. 100–297, the Secretary is not distributing funds from the fiscal year 1988 appropriation pursuant to this notice.

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

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202–5609. Telephone: (202) 732–2241.

SUPPLEMENTARY INFORMATION: Under section 702 of the Stewart B. McKinney Homeless Assistance Act (Act), (Pub. L. 100–77, 42 U.S.C. 11301 *et seq.*), the Secretary of Education (Secretary) makes grants to State educational agencies to assist them in developing and implementing a program of literacy training and basic skills remediation for adult homeless individuals. Under section 702(c)(2) of the Act, Federal funds are to be distributed, in part, "on the basis of the assessments of the homeless population in the States" provided in each State's Comprehensive Homeless Assistance Plan (CHAP) submitted to the Secretary of the Department of Housing and Urban Development under section 401 of the Act in order to receive a grant under the Emergency Shelter Grant Program. However, while the Act requires the States to include in their CHAPs an assessment of the need for literacy training and basic skills remediation for homeless individuals, it does not require them to provide an assessment or count of the homeless population for the purpose of distributing funds under the Adult Education for the Homeless Program. Nonetheless, the Secretary has reviewed the CHAPs to determine the feasibility of allocating funds to States on the basis of information they contain.

The Secretary's review revealed that States are experiencing considerable difficulty in obtaining accurate counts of homeless individuals. Many CHAPs continued estimates of homeless populations in the form of a range with numbers at both the upper and lower extremes; others reflect diverse methodologies used to derive estimates; and still others provided no estimates at all. Few States provided estimates for comparable time periods.

The Secretary believes that it is not possible to allocate funds to the States on a consistent, principled, and defensible basis based upon the assessments contained in the CHAPs. In order to implement the Adult Education for the Homeless Program, the Secretary establishes a special funding procedure. The Secretary will allot the funds from the fiscal year 1987 supplemental appropriation to State educational agencies on the following basis:

From the sums available under section 702(c) of the Act, each State will be allotted an amount that bears the same ratio as the number of individuals in each State who have attained 16 years of age, do not have a certificate of graduation from a school providing secondary education (or its equivalent), and are not enrolled in such a school, bears to the number of those individuals in all States, except that no State will receive an allotment of less than $75,000.

Any funds from the fiscal year 1987 supplemental appropriation that are not applied for by States by July 1, 1988 will become available for reallotment to participating States according to the formula used in making the original allotment. However, States that received a minimum allocation in the original allotment will not receive additional funds unless the initial formula distribution, plus the reallocated amount, exceeds $75,000.

While the funding procedure does not incorporate a direct count of the homeless population in each State, a count that would be very difficult to achieve, it does provide a reasonable proxy for the potential population of homeless persons with no or minimal literacy/educational skills. The funding procedure uses as its basis reliable data that are derived from the 1980 census, and are used, in part, to compute allocations under the Adult Education Act. Additionally, the procedure uses the $75,000 minimum allotment required by section 702(c)(2) of the Act.

Because of the enactment of Pub. L. 100–297, only the fiscal year 1987 appropriation will be distributed according to the funding procedure in this notice.

Public Comment

On February 11, 1988, the Secretary published in the **Federal Register** (53 FR 4102) a notice of proposed funding procedure under the Adult Education for the Homeless Program for funds made available by the fiscal year 1987 supplemental appropriation and the fiscal year 1988 appropriation. In the notice the Secretary invited comments on the proposed funding procedure. The only comment the Secretary received supported the proposed funding procedure. The Secretary has made no changes in the funding procedure since publication of the proposed notice. However, as a result of the enactment of Pub. L. 100–297, the funding procedure will apply only to the fiscal year 1987 supplemental appropriation.

Authority: 42 U.S.C. 11421

(Catalog of Federal Domestic Assistance Number 84.192 Adult Education for the Homeless Program)

Dated: May 4, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–11095 Filed 5–16–88; 8:45 am]

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Tuesday, May 17, 1988

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S.J. Res. 212/Pub. L. 100-316

To designate the period commencing May 8, 1988, and ending on May 14, 1988, as "National Tuberous Sclerosis Awareness Week". (May 12, 1988; 102 Stat. 467; 1 page) Price: $1.00

S.J. Res. 240/Pub. L. 100-317

To designate the period commencing on May 16, 1988 and ending on May 22, 1988, as "National Safe Kids Week". (May 13, 1988; 102 Stat. 468; 1 page) Price: $1.00

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