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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.

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RESERVATIONS: Call the St. Louis Federal Information Center:
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C,
26 Federal Plaza,
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WHEN: June 14; at 9:30 a.m.
WHERE: Lougheed Library,
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WHEN: June 16; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Maxine Hill, 202–523–5229

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–15 of May 20, 1988

Determination To Authorize the Furnishing of Transport Services for UNGOMAP Operations in Support of the Geneva Settlement

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 552(c) of the Foreign Assistance Act of 1961, as amended ("the Act"), I hereby determine that:

(1) an unforeseen emergency exists which requires the provision of assistance in amounts in excess of funds otherwise available for such assistance; and

(2) providing such assistance by immediate drawdown of resources of the Department of Defense is important to the national interest.

Therefore, I hereby authorize using Department of Defense services to provide air transport for observers and equipment of the United Nations Good Offices Mission to Afghanistan and Pakistan (UNGOMAP) under Chapter 6 of Part II of the Act.

You are authorized and directed to report to the Congress immediately and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, May 20, 1988.

[FR Doc. 88–12795
Filed 6–2–88; 3:08 pm]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations to permit processors to credit a distributor's account for the value of donated foods contained in an end product and to allow the use of value-pass-through systems not specifically authorized by regulations. Permitting processors to credit a distributor's account and use other types of valve-pass-through systems will enhance program operations.

EFFECTIVE DATE: This final rule is effective June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Permitting processors to credit a distributor's account and use other types of value-pass-through systems will enhance program operations. In order for these procedures to be effective for the 1988–89 school year, this rule must be made effective upon publication since the majority of processing contracts are negotiated prior to the beginning of the school year. This rule relieves restrictions concerning the use of value-pass-through systems. For this reason, the Administrator has found in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule effective less than 30 days after publication.

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

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 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 and final rule related notice published June 24, 1983 (48 FR 29112).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.15 of this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which State distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with food processors to incorporate government-donated commodities into processed end products.

On February 2, 1988, the Department published a proposed rule in the Federal Register (53 FR 2846–2849) to amend the Food Distribution Program Regulations to strengthen provisions concerning the processing of donated foods and to increase uniformity between provisions governing State processing activities and those governing the National Commodity Processing Program (Part 252). The proposed rule provided a forty-five day comment period.

This final rule addresses only those provisions that relate to alternative value-pass-through systems and the crediting of a distributor's account for the value of the donated foods contained in an end product. In an effort to enhance processing activities for the 1988–89 school year, these provisions are being finalized separately. Provisions regarding sales verification, contract duration, end product data, contract termination, refund applications, performance reports, annual reconciliation and audits will be finalized at a later date.

Since publication of the proposed rule, Part 250 has been restructured through an amendment which was published in the Federal Register on June 3, 1988. As a result of the restructuring, § 250.15, as referenced under the proposed rule, has become § 250.30. This rule amends the recently issued Part 250.

Analysis of Comments

A total of 158 comment letters were received from various entities such as the American School Food Service Association, National Association of State Agencies for Food Distribution, National Frozen Pizza Institute, and Diary Institute of California. Other commenters included processors, distributors, local school food authorities, State distributing agencies, private consultants and the U.S. Congress.

Definition of Refund Payments

Under the proposed rule, a definition of "Refund" was incorporated in § 250.3 which would permit a processor to credit a distributor's account rather than issue individual checks for refund applications.

Ten of the commenters supported this provision while six were opposed. The majority of the commenters who

opposed the provision did so because they are opposed to the use of a value-pass-through system under which distributors are provided refunds because of the additional paperwork and monitoring burden this system places on processors. The majority of the commenters who supported the provision support the use of the refund system and are of the opinion that the proposed change would decrease the paperwork burden for processors.

The Department continues to support the use of a value-pass-through system which provides refunds to distributors. Thus, since commenters confirmed that permitting a processor to credit a distributor's account rather than issue checks for the value of the donated food contained in an end product sold by the distributor will reduce the paperwork burden for processors while maintaining accountability, the definition of "Refund" as proposed is being incorporated in § 250.3 of this final rule.

Value-Pass-Through (VPT) Systems

Under the proposed rule, processors would be permitted to use VPT systems that are not explicitly authorized by the regulations, but which have been approved by FNS.

Eighty-eight of the commenters supported this provision while twenty-six were opposed. The majority of the commenters who opposed the provision did so because, in their view, the only VPT system that should be allowed is one that requires refund payments to recipient agencies. The majority of the commenters that supported the provision did so because of a belief that the current VPT systems are not flexible enough to meet local agency needs.

The Department is also very concerned about accountability and agrees that the refund system is the most accountable system that has been developed to date. However, the Department has received numerous requests from State and local agencies to permit the use of alternative VPT systems. State and local agencies have expressed concern about the amount of time it takes to receive a refund, increased costs due to the distributor's markup and the paperwork burden associated with the refund system.

As discussed in the proposed regulations, the only permissible alternative VPT systems would be those approved by FNS. As part of the approval process, the accountability of an alternative VPT system would be measured to ensure that such system demonstrates a degree of accountability that is at least equal to that of the refund system. In addition, to further ensure accountability, distributing agencies that permit the use of alternative VPT systems would be required to comply with the sales verification requirements or an alternative verification system approved by FNS.

Since the Department is concerned about meeting the needs of recipient agencies and since the approval of an alternative VPT system will be contingent on whether it is determined to be as accountable as a refund system, the Department feels that implementation of the provision is a viable means of encouraging the development and use of innovative VPT systems. Thus, § 250.30 (d) and (e) are revised in this final rule as proposed.

A few commenters suggested that the authority to approve alternative VPT systems be delegated to the State distributing agency.

Delegating this authority to distributing agencies could result in many State variations of alternative VPT systems. This could become quite cumbersome for processors that have contracts in several States and could add to the costs of processed end-products. Thus, to ensure consistency on a national basis, alternative VPT systems must be approved by FNS headquarters as proposed.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch program, Surplus agricultural commodities.

Accordingly, Part 250 is amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

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

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); Sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); Sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); Sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); Sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); Sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); Sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); Sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); Sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); Sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e) Title II, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), Pub. L. 100–237.

2. In § 250.3 the definition of "Refund" is added in alphabetical order to read as follows:

§ 250.3 Definitions.

* * * * *

"Refund" means (a) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (b) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

§ 250.30 [Amended]

3. In § 250.30, paragraphs (d) and (e) are revised to read as follows:

* * * * *

(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, the processing contract shall include (i) the processor's established wholesale price schedule for quantity purchases of specified units of end products, and (ii) an assurance that: (A) The price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or (B) a refund equal to the value of the donated foods contained therein shall be made upon presentation of proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section or (C) the value of the donated food contained therein shall be passed to the recipient agency through a system which has been approved by FNS at the request of the distributing agency.

(2) Any value pass through system approved under this section must comply with the sales verification requirements specified in 250.19(b)(2), or an alternative verification system approved by FNS. The Department retains the authority to inspect and review all pertinent records pertaining to value-pass-through systems, including records pertaining to the verification of a statistically valid sample of sales.

(e) *End products sold by distributors.* When a processor transfers end products to a distributor for sale and delivery to recipient agencies, such sales shall be under:

(1) A refund system as defined in § 250.3;

(2) A system which provides refunds to distributors and discounts to recipient agencies; or

(3) If approved by FNS at the request of the distributing agency, another system which passes to the recipient agency the value of donated food contained in end products.

The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

* * * * *

Date: May 27, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-12481 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 616]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 616 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period June 5 through June 11, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 616 (§ 910.916) is effective for the period June 5 through June 11, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on June 1, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.916 is added to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 910.916 Lemon Regulation 616.

The quantity of lemons grown in California and Arizona which may be handled during the period June 5, 1988, through June 11, 1988, is established at 385,000 cartons.

Dated: June 2, 1988.

Robert C. Keeney,

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

[FR Doc. 88-12804 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 915 and 944

[Docket No. AMS-FV-88-067]

Avocados Grown in South Florida and Imported Avocados; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This interim final rule changes the minimum maturity requirements currently in effect on a continuous basis for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The rule changes the maturity shipping schedules for the Pinkerton and Reed varieties of avocados, adds the Buccaneer variety to the schedule, and deletes the Day variety from the schedule. This action also makes changes in the maturity schedule in Table I of the regulation to synchronize it with the 1988-89 calendar years. Providing fresh markets with mature fruit is important in creating and maintaining consumer satisfaction and sales. The rule is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers.

DATES: Section 915.332 becomes effective June 6, 1988, and provisions applicable to avocados imported into the United States under § 944.31 shall become effective June 9, 1988. Comments which are received by July 6, 1988 will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20250, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915, as amended [7 CFR Part 915], regulating the handling of avocados grown in South Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

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

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 300 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

The maturity regulation for Florida avocados covered under this marketing order is specified in § 915.332 Florida avocado maturity regulation. The maturity regulation for avocados imported into the United States is specified in § 944.31. These regulations were issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The Florida avocado regulation provides that no handler shall handle any variety of avocados grown in the production area unless such varieties meet the prescribed minimum maturity requirements. Such requirements established color maturity specifications for certain varieties, and minimum weights and diameters for about 60 varieties during specified shipping periods each season. The avocado maturity import requirements are comparable to the requirements for Florida avocados.

This interim final rule amends the Florida avocado maturity regulation currently in effect in a continuous basis under § 915.322 [7 CFR Part 915]. This rule changes the maturity shipping schedule and minimum size requirements for weight and diameter for the Pinkerton and Reed varieties of avocados based on maturity test data developed last season. This rule also adds the Buccaneer variety to the maturity shipping schedule, and deletes the Day variety from the schedule, based on shipping data developed last season for all varieties. Such data indicates that a new variety, the Buccaneer, was shipped for the first time last season, while the Day variety was not shipped. In addition, this rule makes necessary changes in the effective periods specified in Table I of the maturity regulation to synchronize these periods with the 1988–89 calendar years.

The changes in the maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreement and order program.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1988–89 season, compared with fresh shipments of 1,129,587 bushels shipped in 1987–88, 956,217 bushels in 1986–87, and 1,110,130 bushels in 1985–86. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 9,000,000 bushels during the 1987–88 season. Avocados imported into the United States amounted to about 287,000 bushels in 1987.

The current minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida and imported avocados have been in effect on a continuous basis since the 1987–88 season. The maturity requirements for Florida avocados are intended to prevent the shipment of immature avocados, to improve buyer confidence in the marketplace, and to foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing will not be covered by the maturity requirements.

It is the Department's view that changing the maturity regulations would not adversely impact growers, handlers, and importers. The application of the maturity requirements of both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee continues to believe that the maturity requirements for Florida avocados ar needed to improve grower returns. Although compliance with these

maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

The Florida avocado maturity regulation establishes maturity requirements for fresh shipments of Florida avocados in terms of minimum weights or diameters for specified time periods during the shipping season for 60 varieties and 2 seedling types of avocados grown in Florida. These time periods are for 7-day increments, beginning on Monday of each week and ending on Sunday.

The minimum weight and diameter maturity requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 [7 CFR Part 915].

An avocado import maturity regulation is currently in effect on a continuous basis under section 8e [7 U.S.C. 608e–1] of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Comparable requirements may be issued upon not less than 3 days notice whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity. The avocado import maturity regulation is prescribed in § 944.31 [7 CFR Part 944]. That section establishes comparable minimum weight and diameter maturity requirements for avocados imported into the United States, based on the maturity requirements specified in paragraph (a)(2) of § 915.332 for avocados grown in Florida. Moreover, avocado import grade requirements are currently in effect on a continuous basis under § 944.23 [7 CFR Part 944]. Such grade requirements specify that all avocados imported from all foreign countries must grade at least U.S. No. 2, which requires that the avocados be mature. An exemption provision in both avocado import regulations permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) Avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; (2) the changes to synchronize effective periods in the maturity table with 1988–89 calendar years must be made by late May when 1988–89 season Florida avocado shipments are expected to begin; (3) the avocado import requirements are mandatory under section 8e of the Act; and (4) the rule provides a 30-day comment period, and any comments received will be consistent prior to issuance of the final rule.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

For the reasons set forth in the preamble, 7 CFR Part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

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

§ 915.332 [Amended]

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows (this section will appear in the Code of Federal Regulations):

* * * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Kosel	3rd Mon May	5th Sun May	16	
	5th Mon May	2nd Sun June	13	
Arue	3rd Mon May	5th Sun May	16	
	5th Mon May	1st Sun July	14	3-3/16
Donnie	4th Mon May	1st Sun June	16	3-5/16
	1st Mon June	1st Sun July	14	3-4/16
Dr. Dupuis #2	5th Mon May	2nd Sun June	16	3-9/16
	2nd Mon June	1st Sun July	14	3-7/16
	1st Mon July	3rd Sun July	12	3-2/16
Fuchs	1st Mon June	3rd Sun June	14	3-3/16
	3rd Mon June	1st Sun July	12	3
K-5	2nd Mon June	4th Sun June	18	3-5/16
	4th Mon June	2nd Sun July	14	3-3/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Hardee	2nd Mon June	3rd Sun June	18	3-6/16
	3rd Mon June	4th Sun June	16	3-2/16
	4th Mon June	3rd Sun July	14	2-14/16
West Indian seedling [1]	3rd Mon June	3rd Sun July	18	
	3rd Mon July	3rd Sun Aug	16	
	4th Mon Aug	3rd Sun Sept	14	
Pollock	3rd Mon June	1st Sun July	18	3-11/16
	1st Mon July	3rd Sun July	16	3-7/16
	3rd Mon July	5th Sun July	14	3-4/16
Simmonds	3rd Mon June	1st Sun July	16	3-9/16
	1st Mon July	3rd Sun July	14	3-7/16
	3rd Mon July	5th Sun July	12	3-1/16
Nadir	3rd Mon June	4th Sun June	14	3-3/16
	4th Mon June	1st Sun July	12	3-1/16
	1st Mon July	3rd Sun July	10	2-14/16
Gorham	1st Mon July	3rd Sun July	29	4-5/16
	3rd Mon July	2nd Sun Aug	27	4-3/16
Reuhle	1st Mon July	2nd Sun July	18	3-11/16
	2nd Mon July	3rd Sun July	16	3-9/16
	3rd Mon July	5th Sun July	14	3-7/16
	1st Mon Aug	1st Sun Aug	12	3-5/16
	2nd Mon Aug	2nd Sun Aug	10	3-3/16
Peterson	2nd Mon July	3rd Sun July	14	3-8/16
	3rd Mon July	4th Sun July	12	3-5/16
	4th Mon July	1st Sun Aug	10	3-2/16
Biondo	2nd Mon July	2nd Sun Aug	13	
Bernecker	3rd Mon July	5th Sun July	18	3-6/16
	1st Mon Aug	2nd Sun Aug	16	3-5/16
	3rd Mon Aug	4th Sun Aug	14	3-4/16
232	3rd Mon July	5th Sun July	14	
	1st Mon Aug	2nd Sun Aug	12	
Pinelli	3rd Mon July	5th Sun July	18	3-12/16
	1st Mon Aug	2nd Sun Aug	16	3-10/16
Trapp	3rd Mon July	5th Sun July	14	3-10/16
	1st Mon Aug	2nd Sun Aug	12	3-7/16
Miguel (P)	3rd Mon July	5th Sun July	22	3-13/16
	1st Mon Aug	2nd Sun Aug	20	3-12/16
	3rd Mon Aug	4th Sun Aug	18	3-10/16
Nesbitt	5th Mon July	5th Sun July	22	3-12/16
	1st Mon Aug	1st Sun Aug	16	3-5/16
	2nd Mon Aug	3rd Sun Aug	14	3-3/16
Beta	1st Mon Aug	1st Sun Aug	18	3-8/16
	2nd Mon Aug	4th Sun Aug	16	3-5/16
K-9	1st Mon Aug	3rd Sun Aug	16	
Tower 2	1st Mon Aug	2nd Sun Aug	14	3-6/16
	3rd Mon Aug	1st Sun Sept	12	3-4/16
Christina	1st Mon Aug	3rd Sun Aug	11	2-14/16
Tonnage	1st Mon Aug	2nd Sun Aug	16	3-6/16
	3rd Mon Aug	3rd Sun Aug	14	3-4/16
	4th Mon Aug	4th Sun Aug	12	3
Waldin	1st Mon Aug	2nd Sun Aug	16	3-9/16
	3rd Mon Aug	4th Sun Aug	14	3-7/16
	5th Mon Aug	2nd Sun Sept	12	3-4/16
Lisa (P)	2nd Mon Aug	2nd Sun Aug	12	3-2/16
	3rd Mon Aug	3rd Sun Aug	11	3
Catalina	3rd Mon Aug	4th Sun Aug	24	
	5th Mon Aug	3rd Sun Sept	22	
Pinkerton (P)	1st Mon Oct	3rd Sun Oct	13	3-3/16
	3rd Mon Oct	1st Sun Nov	11	3
	1st Mon Nov	3rd Sun Nov	9	
Fairchild	3rd Mon Aug	4th Sun Aug	16	3-10/16
	5th Mon Aug	2nd Sun Sept	14	3-7/16
	2nd Mon Sept	3rd Sun Sept	12	3-4/16
Black Prince	3rd Mon Aug	4th Sun Aug	28	4-1/16
	5th Mon Aug	2nd Sun Sept	23	3-14/16
	2nd Mon Sept	1st Sun Oct	16	3-9/16
Loretta	5th Mon Aug	2nd Sun Sept	30	4-3/16
	2nd Mon Sept	1st Sun Oct	26	3-15/16
Blair	5th Mon Aug	2nd Sun Sept	16	3-8/16
	2nd Mon Sept	1st Sun Oct	14	3-5/16
Booth 8	5th Mon Aug	3rd Sun Sept	16	3-9/16
	3rd Mon Sept	1st Sun Oct	14	3-6/16
	1st Mon Oct	3rd Sun Oct	10	3-1/16
Booth 7	5th Mon Aug	2nd Sun Sept	18	3-13/16
	2nd Mon Sept	4th Sun Sept	16	3-10/16
	4th Mon Sept	2nd Sun Oct	14	3-8/16
Booth 5	1st Mon Sept	3rd Sun Sept	14	3-9/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Guatemalan Seedling [2]	3rd Mon Sept	1st Sun Oct	12	3-6/16
	1st Mon Sept	1st Sun Oct	15	
Marcus	1st Mon Oct	1st Sun Dec	13	
	1st Mon Sept	3rd Sun Sept	32	4-12/16
Brooks 1978	3rd Mon Sept	5th Sun Oct	24	4-5/16
	1st Mon Sept	2nd Sun Sept	12	3-4/16
	2nd Mon Sept	3rd Sun Sept	10	3-1/16
	3rd Mon Sept	2nd Sun Oct	8	2-14/16
Collinson	2nd Mon Sept	2nd Sun Oct	16	3-10/16
Rue	2nd Mon Sept	3rd Sun Sept	30	4-3/16
	3rd Mon Sept	1st Sun Oct	24	3-15/16
	1st Mon Oct	3rd Sun Oct	18	3-9/16
Hickson	2nd Mon Sept	4th Sun Sept	12	3-1/16
	4th Mon Sept	2nd Sun Oct	10	3
Simpson	3rd Mon Sept	2nd Sun Oct	16	3-9/16
Choquette	4th Mon Sept	3rd Sun Oct	28	4-4/16
	3rd Mon Oct	5th Sun Oct	24	4-1/16
	5th Mon Oct	2nd Sun Nov	20	3-14/16
Winslowson	4th Mon Sept	3rd Sun Oct	18	3-14/16
Leona	4th Mon Sept	2nd Sun Oct	18	3-10/16
Hall	4th Mon Sept	2nd Sun Oct	26	3-14/16
	2nd Mon Oct	4th Sun Oct	20	3-9/16
	4th Mon Oct	1st Sun Nov	18	3-8/16
Herman	1st Mon Oct	3rd Sun Oct	16	3-9/16
	3rd Mon Oct	5th Sun Oct	14	3-6/16
Lula	1st Mon Oct	3rd Sun Oct	18	3-11/16
	3rd Mon Oct	5th Sun Oct	14	3-16/16
	5th Mon Oct	2nd Sun Nov	12	3-3/16
Ajax (B-7)	2nd Mon Oct	5th Sun Oct	18	3-14/16
Taylor	2nd Mon Oct	4th Sun Oct	14	3-5/16
	4th Mon Oct	1st Sun Nov	12	3-2/16
Booth 3	2nd Mon Oct	3rd Sun Oct	16	3-8/16
	3rd Mon Oct	5th Sun Oct	14	3-6/16
Linda	5th Mon Oct	3rd Sun Nov	18	3-12/16
Monroe	1st Mon Nov	3rd Sun Nov	26	4-3/16
	3rd Mon Nov	1st Sun Dec	24	4-1/16
	1st Mon Dec	3rd Sun Dec	20	3-14/16
	3rd Mon Dec	1st Sun Jan	16	3-9/16
Booth 1	2nd Mon Nov	4th Sun Nov	16	3-12/16
	4th Mon Nov	2nd Sun Dec	12	3-6/16
Zio (P)	2nd Mon Nov	4th Sun Nov	12	3-1/16
	4th Mon Nov	2nd Sun Dec	10	2-14/16
Wagner	3rd Mon Nov	1st Sun Dec	12	3-5/16
	1st Mon Dec	3rd Sun Dec	10	3-2/16
Brookslate	2nd Mon Dec	3rd Sun Dec	18	3-13/16
	3rd Mon Dec	4th Sun Dec	16	3-10/16
	4th Mon Dec	2nd Sun Jan	14	3-8/16
	2nd Mon Jan	4th Sun Jan	12	3-5/16
	4th Mon Jan	1st Sun Feb	10	
Meya (P)	2nd Mon Dec	4th Sun Dec	13	3-2/16
	4th Mon Dec	2nd Sun Jan	11	3
Reed (CP)	2nd Mon Dec	4th Sun Dec	12	3-4/16
	4th Mon Dec	2nd Sun Jan	10	3-3/16
	2nd Mon Jan	4th Sun Jan	9	3
Buccaneer	5th Mon Oct	4th Sun Nov	13	3-6/16

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: May 31, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-12551 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is promulgating an amended rule which governs the backfitting of nuclear power plants. This action is necessary in order to have a backfit rule which unambiguously conforms with the August 4, 1987 decision of the U.S. Court of Appeals for the District of Columbia in Union of Concerned Scientists, et al., v. U.S. Nuclear Regulatory Commission. This action is intended to clarify when economic costs may be considered in backfitting nuclear power plants.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Steven F. Crockett, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone: (202) 492–1600.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1985, after an extensive rulemaking proceeding which included sequential opportunities for public comment on an advanced notice of proposed rulemaking (48 FR 44217; September 28 1983) and a notice of proposed rulemaking (49 FR 47034; November 30, 1984), the Commission adopted final amendments to its rule which governs the backfitting of nuclear power plants, 10 CFR 50.109 (50 FR 38097; September 20, 1985). Backfitting is defined in some detail in the rule, but for purposes of discussion here it means measures which are directed by the Commission or by NRC staff in order to improve the safety of nuclear power reactors, and which reflect a change in a prior Commission or staff position on the safety matter in question.

Judicial review of the amended backfit rule and a related internal NRC Manual chapter which partially implemented it was sought and, on August 4, 1987, the U.S. Court of Appeals for the DC Circuit rendered its decision vacating both the rule and the NRC Manual chapter which implemented the rule in part. UCS v. NRC, 824 F.2d 103. The Court concluded that the rule, when considered along with certain statements in the rule preamble published in the **Federal Register**, did not speak unambiguously in terms that constrained the Commission from considering economic costs in establishing standards to ensure adequate protection of the public health and safety as dictated by section 182 of the Atomic Energy Act. At the same time, the Court agreed with the Commission that once an adequate level of safety protection had been achieved under section 182, the Commission was fully authorized under section 161i of the Atomic Energy Act to consider and take economic costs into account in ordering further safety improvements. The Court therefore rejected the position of petitioners in the case, Union of Concerned Scientists, that economic costs may never be a factor in safety decisions under the Atomic Energy Act.

Because the Court's opinion regarding the circumstances in which costs may be considered in making safety decisions on nuclear power plants was completely in accord with the Commission's own policy views on this important subject, the Commission decided not to appeal the decision. Instead, the Commission decided to amend both the rule and the related NRC Manual chapter (Chapter 0514) so that they conform unambiguously to the Court's opinion. On September 10, 1987, the Commission published proposed amendments to the rule (52 FR 34223) and provided for a comment period ending on October 13, 1987.[1] The final rule as set out in this document is substantially the same as the proposed rule (52 FR 34223; September 10, 1987).

In this rulemaking the Commission has adhered to the following safety principle for all of its backfitting decisions. The Atomic Energy Act commands the Commission to ensure that nuclear power plant operation provides adequate protection to the health and safety of the public. In defining, redefining or enforcing this statutory standard of adequate protection, the Commission will not consider economic costs. However, adequate protection is not absolute protection or zero risk. Hence safety improvements beyond the minimum needed for adequate protection are possible. The Commission is empowered under section 161 of the Act to impose additional safety requirements not needed for adequate protection and to consider economic costs in doing so.

The 1985 revision of the backfit rule, which was the subject of the Court's decision, required, with certain exceptions, that backfits be imposed only upon a finding that they provided a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation were justified in view of this increased protection. The amended rule, set out in this document, restates the exceptions to this requirement for a finding, so that the rule will clearly be in accord with the safety principle stated above.

Particularly in response to the Court's decision, the rule now provides that if the contemplated backfit involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate, neither the rule's "substantial increase" standard, nor its "costs justified" standard, see § 50.109(a)(3), is to be applied. (See § 50.109(a)(4)(iii).) Also in response to the Court's decision, see 824 F.2d at 119, the rule now also explicitly says that the Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

On instruction from the Commission, the NRC staff has amended its Manual chapter on plant-specific backfitting to ensure consistency with the Court's opinion. Copies of the revised chapter are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.[2]

Response to Comments

Comments were received from 12 utilities, one Federal agency (DOE), one vendor, seven individuals, seven citizens' groups, and two industry groups. Lengthy and detailed comments were submitted by the Union of Concerned Scientists (UCS) and the Nuclear Utility Backfitting and Reform Group (NUBARG). Both organizations were active in the rulemaking which led to the 1985 revision of the rule. The comments submitted by these two groups encompassed most of the comments made by others. Below, the Commission paraphrases the chief comments and responds to them. The Commission has given careful consideration to every comment. The original comments may be viewed in the NRC's Public Document Room in Washington, DC.

[1] In its comments on the proposed amendments, the Union of Concerned Scientists asserts that the **Federal Register** notice of the proposed amendments was technically defective. UCS argues that since the Court had vacated the entire rule, the **Federal Register** notice should have proposed enactment of an entire, amended, rule, rather than simply amendments to the vacated rule. In weighing the technical merit of UCS' argument, it should be noted that as of the date of the **Federal Register** notice, the mandate of the Court had not yet issued and the rule was thus still legally in effect. However, the more important consideration is that the notice clearly revealed the Commission's intent to reissue the backfut rule once it had been conformed to the Court's decision. UCS understood this intent and took the opportunity to resubmit the comments it had submitted during the rulemaking leading up to the 1985 revision of the rule. In any event, the Commission is publishing the entire rule in this document.

[2] Several commenters argue that the revised Manual chapter should undergo what amounts to notice and comment rulemaking. However, the Manual chapter, if it is a rule at all, is a rule of agency organization, procedure, or practice, and therefore is not subject to the notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A); see also § 553(a)(2). The Commission did publish for comment an earlier version of Manual Chapter (49 FR 16900; April 20, 1984), but that version was already in effect when it was published for comment, and it was published for comment only because the Commission was still in the process of making fundamental changes to the backfitting process and wanted comment on the procedures then in effect. See id.

"Adequate Protection"

The great majority of the commenters raised issues about the rule's use of the phrase "adequate protection". This phrase is used in the rule's exception provisions. See § 50.109(a)(4). Generally, the rule requires, among other things, that it be shown for a given proposed backfit that implementation of the backfit would bring about a "substantial increase" in overall protection to public health and safety, and that the direct and indirect costs of the backfit are justified by that substantial increase. See § 50.109(a)(3). However, § 50.109(a)(4) also requires that these two standards not be applied in three situations:

First, where the backfit is required to bring a facility into compliance with NRC requirements or the licensee's own written commitments:

Second, where the backfit is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; and

Third, as noted above, where the backfit involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

The comments on the rule's use of the phrase "adequate protection" generally took two forms, each discussed more fully later on in this notice. The first form, most fully represented by UCS' comments, was that the rule itself should actually include a definition of "adequate protection" (the final rule set out in this document does not), a phrase nowhere explicitly defined in general terms, either in the Atomic Energy Act, from which the phrase comes, or in the Commission's regulations.

The second, more modest, form of the comments on "adequate protection", most fully represented by NUBARG's comments, was that one or another of the three exception provisions in the rule was redundant (none is). While not amounting to a call for a definition of "adequate protection", NUBARG's comments displayed some of UCS' uncertainty about what the Commission meant by the phrase.

Each group had difficulty applying the phrase to characterize past Commission action in backfitting. UCS claimed that the Commission had never backfitted in order to achieve something beyond "adequate protection." NUBARG, however, claimed that the Commission had never required a backfit on the grounds that compliance with the regulations was not enough to provide adequate protection. These views, differing in emphasis, reflect the two groups' opposite concerns about the possibility that the Commission would use the phrase "adequate protection" arbitrarily. UCS is concerned that the Commission might interpret the phrase "adequate protection" to refer to a level of safety such that every proposed improvement would be subjected to cost-benefit analysis. Conversely, the industry appears concerned that the Commission might interpret the phrase "adequate protection" to refer to a level of safety such that no proposed improvement would be subjected to cost-benefit analysis.

The Commission certainly did not intend that this rulemaking should focus on the meaning of the phrase "adequate protection". The main point of this rulemaking was simply to negate the misimpression left by two statements in the preamble to the 1985 version of the backfit rule. UCS puts forward two grounds for its emphasis on the phrase "adequate protection". First, UCS asserts that "(t)he crucial decision as to whether cost benefit analysis will be used in assessing the need for backfitting is dependent on whether the particular backfitting under consideration is needed to ensure adequate safety * * *." Second, UCS claims that the Court "ordered" the Commission to "stop trying to obscure its intentions through ambiguous and vague language * * *."

However, as will be explained more fully below, the Court's decision turned not on the rule's lack of a definition of "adequate protection" but rather on two statements which seemed to the Court to imply that the Commission intended to take costs into consideration in determining what "adequate protection" required; the meaning of "adequate protection" was simply not an issue in the litigation. Moreover, UCS overestimates the role the phrase "adequate protection" plays in the backfit rule. The threshold decision in considering a proposed backfit, and very often the only decision that need be made,[3] is not whether adequate protection is at stake but rather whether the facility is in compliance with the Commission's requirements and the licensee's written commitments.

Even if UCS is right about the importance of the phrase "adequate protection", there is nothing unusual or imprudent, and certainly nothing illegal, about decisions which ultimately turn on the application—by duly constituted authority and after full consideration of all relevant information—of phrases which are not fully defined. Consider, for instance, the "reasonable assurance" determination the Commission must make before issuing an operating license.[4] Indeed, most of the Commission's rules and regulations are ultimately based on unquantified and, as we note below, presently unquantifiable ideas of what constitutes "adequate protection".

Were there something peculiarly critical about the role of "adequate protection" in the backfit rule, the issue of the phrase's meaning could have been raised in the rulemaking for the 1985 rule. Two of the three exception provisions set out above were in the 1985 revision of the rule, where they used the equivalent phrase "undue risk" instead of "adequate protection". Also, as the Court in UCS v. NRC noted, 824 F.2d at 119, the statement of considerations which accompanied the 1985 version of the rule quite explicitly at least twice limited the consideration of costs in backfitting decisions to situations where "adequate protection" was already secured.[5]

Nonetheless, an issue which is a concern of almost every commenter in this rulemaking should not be ignored. Therefore, the Commission will answer as best it can the questions the commenters have raised concerning the rule's use of the phrase "adequate protection". We begin with UCS' call for an objective and generally applicable definition of "adequate protection". We argue that such a definition is not possible in the near future, but that the public and licensees are nonetheless protected against misuse of the phrase. In the course of responding to UCS' comments, we shall, of necessity, be making at least preliminary responses to most of NUBARG's comments also.

UCS argues that the rule permits the agency to escape its legal responsibility

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[3] For instance, a majority of the plant-specific backfits carried out during the first year after the 1985 revision of the backfit rule became effective were for the sake of compliance. See SECY-86-46, Evaluation of Managing Plant-Specific Backfit Requirements (November 21, 1986), Enclosure 1.

[4] "* * * [A]n operating license may be issued by the Commission * * * upon finding that: * * * (t)here is reasonable assurance * * * that the activities authorized by the operating license can be conducted without endangering the health and safety of the public * * *." 10 CFR 50.57(a)(3).

[5] "The consideration and weighing of costs contemplated by the rule applies to backfits that are intended to result in incremental safety improvements for a plant that already provides an acceptable degree of protection[.]" 50 FR 38103, col. 1; also, "(t)he costs associated with proposed new safety requirements may be considered by the Commission provided that the Atomic Energy Act finding 'no undue risk' can be made." Id. at 38101, col. 3.

to articulate the factors on which it bases its backfitting decisions. UCS asserts that the rule should "enunciate criteria and guidelines about what constitutes redefining and defining adequate protection levels, what constitutes an adequate as opposed to a beyond adequate protection level, and what factors place a particular circumstance within the rule or within the exceptions." Another comment asserts that any definition of "adequate protection" should include the resolution of all outstanding safety issues. Yet another calls for "objective criteria", "some real numbers" on releases, accident consequences, and the like.

There does not exist, and cannot exist, at least not yet, a generally applicable definition of "adequate protection" which would guard against every possible misuse of the phrase. Congress established "adequate protection" as the standard the Commission is to apply in licensing a plant, see 42 U.S.C. 2232(a), and gave the Commission authority to issue rules and regulations necessary for protection of public health and safety, see 42 U.S.C. 2201, but Congress did not define "adequate protection", nor did it command the Commission to define it.

Such a definition would have to take one of two forms, one of them incapable of preventing the abuses the commenters are concerned about, and the other simply not possible yet. The first of these would be a verbal definition of the kind encountered in, for instance, the various "reasonable man" standards in the common law. After the pattern of these, the Commission could say, correctly, that "adequate protection" is not zero risk, that it is the same as "no undue risk", that it has long-term and short-term aspects, and that it is that level of safety which the Atomic Energy Act requires for initial and continued operation of a nuclear power plant. However, such a definition clearly will not, of itself, prevent the abuses UCS and NUBARG are concerned about, nor is such a standard sufficiently helpful to the NRC staff in actual practice.

Thus, if there is to be a useful and generally applicable definition of "adequate protection", it must take another, more precise form, namely, quantitative. Several of the commenters seem to have such a definition in mind when they call for "objective criteria", some "real numbers", and the like. In fact, the Commission is actively pursuing reliable quantitative measures of safety, and some quantitative and generally applicable definition of "adequate protection" may eventually emerge as a byproduct of the Commission's efforts, still in their early stages, to implement its general safety goals, which take a partly quantitative form. (See 51 FR 30028; August 21, 1986, Policy Statement on Safety Goals.) However, given the state of the art in quantitative safety assessment, it is not reasonable to expect that the Commission could make licensing decisions—let alone decisions on whether to consider cost in backfitting—wholly on a quantitative definition of "adequate protection". Surprisingly, some of the commenters who call for "objective criteria", "some real numbers", and the like, have in the past criticized quantitative risk assessments.

Nonetheless, even in the absence of a useful and generally applicable definition of "adequate protection", the Commission can still make sound judgments about what "adequate protection" requires, by relying upon expert engineering and scientific judgment, acting in the light of all relevant and material information. As UCS itself said in its comments on the proposed 1985 revision of the rule, "(u)ltimately, the determination of what standards must be met in order to provide a reasonable assurance that the public health and safety will be protected comes down to the reasoned professional judgment of the responsible official."

The Commission's exercise of this judgment will take two familiar forms, of which the most important is rule and regulation. An essential point of the Commission's having regulations is to flesh out the "adequate protection" standard entrusted to the Commission by Congress. See UCS v. NRC, 824 F.2d at 117–18. Exercising engineering and scientific judgment in the light of all relevant and material information, the NRC identifies potential hazards and then requires that designs be able to cope with such hazards with sufficient safety margins and reliable backup systems. Regulations and guidance arrived at in this way do not, strictly speaking, "define" adequate protection, since there will be times when the NRC issues rules which require something beyond adequate protection. Nonetheless, compliance with such regulations and guidance may be presumed to assure adequate protection at a minimum. As the Commission has said on many occasions, compliance with the Commission's regulations and guidance "should provide a level of safety sufficient for adequate protection of the public health and safety and common defense and security under the Atomic Energy Act." (49 FR 47034, 47036, col. 2, November 30, 1984, proposed 1985 rule; see also 50 FR 38097, 38101, col. 3, September 20, 1985, final 1985 rule; 51 FR 30028, col. 1, August 21, 1986, Policy Statement on Safety Goals.)

Because "adequate protection" is presumptively assured by compliance with the regulations and other license requirements, all the versions of the backfit rule—the 1970 rule, the 1985 rule, and the one set out in this document, see § 50.109(a)(4)(i)—have a "compliance" exception: plants out of compliance may be backfitted without findings of "substantial increase" in protection or a "justification" of costs.

However—and here is where the lack of a general definition for "adequate protection" poses a challenge—"adequate protection" is only presumptively assured by compliance. As the Commission said in promulgating the 1985 revision, the presumption may be overcome by, for instance, new information which indicates that improvements are needed to ensure adequate protection. (50 FR 38101, col. 3.) Such new information may reveal an unforeseen significant hazard or a substantially greater potential for a known one, or insufficient margins and backup capability. Engineering judgment may, in the light of such information, conclude that restoration of the level of protection presumed by the regulations requires more than compliance. Thus both the 1985 revision and the revision below contain exemptions for backfits necessary to assure "adequate protection", or, as the 1985 rule equivalently said, "no undue risk". See § 50.109(a)(4)(ii) of the rule set out in this document.

If compliance does not assure adequate protection, the Commission must be able to determine how much more protection is required, and a precise and generally applicable definition of "adequate protection" would facilitate that determination. But such a definition would have only a limited role to play. The first and most crucial question is whether the proposed backfit is required to bring a plant into compliance. Only if the proposed backfit requires more than compliance with NRC regulations and license conditions need there be a determination as to what "adequate protection" requires. Given this relation between compliance and "adequate protection", the industry might be more concerned than UCS is about the lack of a general definition of "adequate protection", for UCS will at least have the comfort of knowing that compliance will be secured before cost is considered, but the industry cannot be

sure how much more than compliance may be asked of it despite the cost.

Where, as in the cases contemplated by the second exception provision of the rule, more than compliance is required and quantitative criteria do not define "adequate protection", the agency must fall back on the second familiar form in which engineering judgment is exercised by the Commission, namely, case-by-case. Administrative agencies are not required to proceed by rule alone, for the method of case-by-case judgment is quite capable of meeting the requirement that the factors on which administrative decisions are based be articulated. Rather than proceeding by an almost ministerial application of "objective criteria", the Commission must fashion a series of case-by-case judgments into a well-reasoned and factually well-supported body of decisions which, acting as reasoned precedent, can control and guide the Commission's exercise of the discretion granted it by Congress in precisely the way in which common-law precedents control and guide the common law judge's exercise of his or her judgment. See Nader v. Ray, 363 F.Supp. 946, 954–55 (D.D.C. 1973) (determining what constitutes adequate protection calls for exercise of discretion in a judgmental process very different from acting in accord with a clear, non-discretionary legal duty).

The Commission foresaw the need to proceed case-by-case on occasion and therefore made it a principal aim of the backfit rule to centralize the responsibility and document the bases for case-by-case decisions for such decisions. The Commission thereby hoped to better assure that such decisions as might of necessity be case-by-case would form a reasoned and coherent body.[6]

Nothing in the Court's ruling in UCS v. NRC forbids the Commission's approach to "adequate protection". UCS boldly asserts that the proposed rule "completely fail[ed] to comport with the orders and directions of the Court of Appeals in UCS v. NRC", that the Court "could not have been more clear about the defects of the backfit rule", that the proposed revised rule "suffers from the exact same defects" as the one vacated, that, indeed, "the new proposal is even more devoid of objective guidance or criteria * * * than was its predecessor."

UCS' criticisms are based on part of a single paragraph in the Court's decision. In pertinent part, that paragraph says, "* * * In our view, the backfitting rule is an exemplar of ambiguity and vagueness; indeed, we suspect that the Commission designed the rule to achieve this very result. The rule does not explicate the scope or meaning of the three listed 'exceptions'. The rule does not explain the action the Commission will (in italics) take when a backfit falls within one of these exceptions. In short, the rule does not speak in terms that constrain the Commission from operating outside the bounds of the statutory scheme." 824 F.2d at 119.

UCS says that this portion of a paragraph was an "order" by the Court to get the Commission to "stop trying to obscure its intentions through ambiguous and vague language * * *." Whether the Court's language amounts to an "order" or only strong advice, we have followed it. For one thing, the rule explicitly says that backfits falling within the exceptions will be imposed (inexplicably, UCS asserts that the proposed rule did not have this provision). See § 50.109(a)(4). For another, both in what we have already said, and in what we shall be saying in response to NUBARG's comments on the exceptions provisions, we shall have explicated the scope and meaning of the three listed exceptions.

However, we have not taken the quoted language of the Court to mean that, after years of making rules and adjudicating cases which ultimately depend on the Commission's judgment about what "adequate protection" requires, the Commission should be obliged to give a mechanically applicable definition of "adequate protection" in order to avoid using the time-honored method of case-by-case, precedent-guided, judgment to implement only a part of the backfit rule. Certainly, the Court never even noted a lack of a general definition of "adequate protection" in the rule, let alone "ordered" the Commission to provide such a definition.

[6] UCS alleges that in three instances the Commission has abused its discretion by applying cost considerations in specific cases where licensees are in compliance but adequate protection is at stake. However, UCS is misinformed about the first of the three cases, and its allegations about the other two reduce simple to disagreement over what constitutes adequate protection. We briefly discuss the three cases below.

Citing trade journal articles which quote unnamed NRC sources, UCS claims that the backfit rule caused the NRC staff to change its mind about requiring two licensees to conduct certain inspections and analyses in order to justify continued operations. The two plants in question had reactor pump coolant shafts similar to ones which elsewhere had shown a high probability of shearing off under certain conditions. UCS asserts that "[w]e * * * learn from this example the inherent lack of logic and circularity embedded in the rule: NRC is prevented, by operation of the rule, from asking questions needed to learn the degree of risk of a known equipment problem because they do not know the answers in advance."

However, the facts of the situations were not what UCS alleges them to have been: indeed the backfit rule was not involved. Letters were sent on April 23, 1986 requiring the licensees to submit within 20 days information which would "enable the Commission to determine whether or not (their) license(s) should be modified." Such information included information on design, operational history, schedules for inspection, plans for operator training, and "any analysis performed subsequent to those done for the FSAR (Final Safety Analysis Report) which would address the consequences of a locked rotor or broken shaft event during plant operation." These letters were sent under the first part of 10 CFR 50.54(f). This part authorizes such information requests without consideration of cost. As an earlier draft of the April 23 letter available in the NRC's Public Document Room shows, the NRC had planned to ask for new analyses under a later part of § 50.54(f) which authorizes requests not required to assure adequate protection if "the burden to be imposed * * * is justified in view of the potential safety significance of the issue to be addressed in the requested information." 10 CFR 50.54(f). (This "safety significance" standard, by its emphasis on "potential", requires less than is required by the "(actural) substantial increase" standard in the backfit rule and also avoids the circularity UCS alleges.) However, the staff sensibly opted for first asking whether such analyses had already been done. In fact they had, or were underway when the letters were sent. The backfit rule played no part here.

UCS' second instance of alleged abuse involves the Mark I containment, about whose performance in beyond-design-basis accidents (ones which involve damage to the reactor core) there is substantial uncertainty. UCS asserts that cost considerations have blocked staff action which would have brought about a significant reduction in some of the figures which estimate the probability that the Mark I would fail in certain kinds of beyond-design-basis accidents. UCS adds in passing that those figures represent undue risk. The NRC staff has already made a formal reply to similar charges of undue risk. See, e.g., Boston Edison Co. (Pilgrim Nuclear Generating Station), Interim Director's Decision under 10 CFR 2.206, DD–87–14, 26 NRC 87, 95–106 (1987). Suffice it here to say that the NRC staff has by no means completed its considerations of the Mark I containment, but that, given present information, the staff has concluded that overall severe-accident risks at plants with Mark I containments are not undue. Id. at 104–106. UCS is content to put forward only unsupported assertions to the contrary. Thus the staff may legitimately consider cost when deciding whether to backfit the Mark I containments.

UCS' third allegation of abuse rehearses part of its February 10, 1987 § 2.206 Petition to the Commission for immediate action to relieve allegedly undue risks posed by nuclear power plants designed by the Babcock & Wilcox Company. The NRC's Director of Nuclear Reactor Regulation responded fully to the Petition, denying it, on October 19, 1987 (UCS' comments on the proposed backfit rule were submitted on October 13). See Director's Decision Under 10 CFR 2.206, DD–87–18, 26 NRC—(October 19, 1987). The Director concluded that "there are no substantial health and safety issues that would warrant the suspension or revocation of any license or permit for such facilities." Slip Opinion at 63. Simply because UCS disagrees with such conclusions does not mean that the Commission is misusing the "adequate protection" standard.

UCS' position lacks all sense of proportion. We must emphasize the core of the Court's decision, rather than get bogged down by transforming a suspicion and a few criticisms of the rule into an order to undertake an unprecedented task of definition.

Reviewing the exceptions in the rule, and various statements in the Federal Register notice accompanying the rule, the Court said, "We conceivably could read the terms of this rule to comply with the statutory scheme we have described above (that is, a scheme in which economic costs can play no part in establishing what adequate protection requires)." Id. Moreover, the Court says this despite the lack of any summary, general, "objective" definition of "adequate protection" in the rule.

But the Court then went on to say, "Statements that the Commission has made in promulgating the rule and in defending it before this court, however, disincline us from interpreting the rule in this fashion." Id. Again, it is not the lack of a definition of adequate protection that disinclined the Court from saving the rule, but rather certain statements the Commission had made which seemed to suggest that the Commission might consider economic cost when deciding what adequate protection required.

The Three Exceptions

Echoing the Court's remark that the rule "does not explicate the scope or meaning of the three listed 'exceptions' ", id., NUBARG "believes that there is a substantial amount of overlap in these exceptions and that they have not been adequately defined or explained in the proposed rule." NUBARG and others representing the industry are concerned that the two exception provisions which use the phrase "adequate protection", §§ 50.109(a)(4) (ii) and (iii), may "swallow" the rule. One industry commenter objects to the notion, implied by § 50.109(a)(4)(ii), that adequate protection might require more than compliance. Another is concerned that § 50.109(a)(4)(iii), the exception which has been added in response to the Court's ruling, might lead to redefinitions of "adequate protection" that would threaten loss of licenses.

To avoid these results, NUBARG and others recommend deleting one of the two exception provisions which use the phrase "adequate protection". NUBARG's choice is § 50.109(a)(4)(ii), retained from the 1985 version of the rule, where it used the equivalent phrase, "no undue risk". This section provides that the "substantial increase" and "costs justified" standards will not apply to backfits necessary to provide adequate protection to public health and safety. NUBARG calls this provision redundant to the exception for backfits required for the sake of compliance, § 50.109(a)(4)(i). As was noted above, NUBARG reports that its research has uncovered no case in which the Commission "has recognized that some additional measures not contained in existing requirements are necessary to ensure that a facility continues to meet the current level of adequacy." Two other commenters believe that the exception provision added because of the litigation, § 50.109(a)(4)(iii), should be deleted, as being redundant to the provision NUBARG would like to see deleted.

No matter which of the two provisions the commenter would like to see deleted, the commenter would like some restrictions placed on the use of the remaining one. The restriction by far the most frequently proposed is that no action may be taken under the remaining exception provision in the absence of "significant new information or the occurrence of an event which clearly shows" that the action is necessary.

In sum, these commenters either reopen an issue settled in 1985 or they recommend deleting that part of the rule which directly responds to the Court's ruling. We take neither course, for, even putting the 1985 rule and the Court's ruling aside, if either of the two provisions were to be deleted, an essential power of the Commission would be remain unimplemented.

First, the exception for backfits necessary to secure adequate protection, § 50.109(a)(4)(ii), must be retained, because it must be made clear that Commission action is not to be obstructed by cost considerations in a situation where compliance has indeed proved to be insufficient to secure the level of protection presumed in the rule, order, or commitment in question. Despite the results of NUBARG's research, such situations have arisen. See, e.g., SECY-86-346, "Evaluation of Managing Plant-Specific Backfit Requirements", November 21, 1986. Accordingly, this exception provision is not redundant to the exception for backfits necessary to restore compliance. Neither is it redundant to the exception for backfits involving the defining or redefining of "adequate protection", for the latter exception assumes some change in the NRC's judgment of what level of protection should be regarded as "adequate".

Retaining § 50.109(a)(4)(ii) will not give the Commission the power to proclaim at will that compliance is not enough. As we said in the statement of considerations accompanying the 1985 rule, and have in part reiterated in the response to UCS' comments, the regulations, though they do not define "adequate protection", are presumed to ensure it, and, in the absence of a redefinition of "adequate protection", that presumption can be overcome only by significant new information or some showing that the regulations do not address some significant safety issue. "(I)t may be presumed that the current body of NRC safety regulations provides adequate protection. Where new information indicates that improvements are needed to ensure there is 'no undue risk' on * * * a * * * basis which the Commission believes to be the minimum necessary, such requirements must be imposed." (50 FR at 38101-102.)

Second, the exception provision for backfits which are necessary under a defining or redefining of "adequate protection", § 50.109(a)(4)(iii), must be retained because it must be made clear that, as the Court held, cost may not be a factor in setting the level of protection judged as "adequate".[7] As NUBARG acknowledges, citing Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, AFL-CIO, 367 U.S. 396, 408 (1961), the Commission has both the power to define "adequate protection", and the power to re-define it.[8] Without this last exception provision, it might appear from the rule either that the Commission had no such power or that it was restricted by cost considerations, contrary to the Court's ruling. Nor should this exception provision be limited to situations involving "significant new information," as proposed in several comments.

This last exception may be thought by some to threaten to swallow the backfit rule. We believe, however, that instances of backfits based on a "redefinition" of "adequate protection" will be rare. Moreover, the case-by-case approach which is required in the

[7] As the rule notes in § 50.109(a)(7), cost may nonetheless be a consideration in choosing the means of achieving "adequate protection".

[8] The words "defining or redefining" in this third exception should not be construed necessarily to mean "providing a useful and generally applicable definition", at least not until such a definition becomes possible. Under present conditions, the Commission will have "defined or redefined what level of protection is to be regarded as adequate" if it makes a judgment that, although compliance assures the level of protection that had been thought of as adequate, that level of protection should no longer be considered adequate.

absence of a general definition of "adequate protection" provides licensees—and the public—a large measure of protection from arbitrary action by the Commission. Citing case law, NUBARG says that, in applying this last exception provision, the Commission "must act rationally and consistently in light of available evidence", and "must apply a reasoned analysis indicating the prior policies and standards are being changed, not casually ignored * * *." We wholly agree, and believe that the approach envisioned by the backfit rule will facilitate the Commission's acting accordingly.

Other Matters

Two other comments bearing on the phrase "adequate protection" require an explicit response. First, several commenters from the industry would prefer that the rule state that the "documented evaluation" which the NRC must prepare in connection with any action under one of the exception provisions, see § 50.109(a)(4), should include consideration of as many of the factors which § 50.109(c) requires of a "backfit analysis" as are appropriate.

The suggested modification of the rule would have only limited utility. Few of the factors listed in § 50.109(c) of the rule are appropriate for consideration in a documented evaluation justifying action under the compliance exception in the rule. It is true that several of the factors in § 50.109(c), indeed, all of them but those in paragraphs (c) (5) and (7) and some of those in paragraph (c)(8) are appropriate for consideration under the "adequate protection" exception, to the extent that they require a showing of exactly what the licensees must do and a showing that the backfit in question actually contributes to safety. However, the Commission believes that the rule's requirement that the documented evaluation "include a statement of the objectives of and reasons for the modification and the basis for invoking the exception" adequately assures that the factors in § 50.109(c) will be considered to the extent relevant, without their being listed and labeled as if they were a part of a § 50.109(c) analysis. Thus, little, if anything, is to be gained by an explicit requirement that § 50.109(c) factors be considered in a documented evaluation.

Second, one citizens' group asserts that the backfit rule should not apply to rulemaking. This issue was thoroughly discussed in 1985. However, this group's comment puts the issue in a slightly altered light, and provides another opportunity to clarify the meaning of "adequate protection". The group argues that since rules "define" "adequate protection", the Commission cannot apply the rule's "substantial increase" and "cost justified" standards in rulemaking without applying cost considerations in setting the standard of adequate protection, contrary to the Court's holding.

The answer to this comment is, of course, that the rules do not, strictly speaking, "define" "adequate protection", and they only presumptively assure it. Not only may there, as stated above, be individual cases that require actions that go beyond what is necessary under the regulations to assure adequate protection, there will also be times when the NRC issues a rule which requires something beyond adequate protection. This follows directly from the Commission's power under section 161 of the Atomic Energy Act, affirmed by the Court, to issue rules or orders to "minimize danger to life or property." See 42 U.S.C. 2201; see also USC v. NRC, 824 F.2d at 118. If a proposed rule requires something more than adequate protection, applying a cost standard to the proposed rule will not be introducing cost considerations into the setting of the adequate protection standard and is therefore permitted. Of course if the rule is directed at either establishing what level of protection is "adequate" or assuring that such a level of protection is met, then cost will play no role.

The backfit rule as set out below is substantially the same as the rule proposed in the **Federal Register**. (See 52 FR 34223; September 10, 1987.) Provisions which appeared at the end of § 50.109(a)(4) of the proposed rule, or in the footnote to that paragraph, appear below in new paragraphs (a) (5) through (7).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3140–0011.

Regulatory Analysis

The revision to 10 CFR 50.109 will bring it into conformance with the holding in Union of Concerned Scientists, et al., v. U.S. Nuclear Regulatory Commission, D.C. Cir. Nos. 85–1757 and 86–1219 (August 4, 1987). The revision clarifies the backfit rule to reflect NRC practice that, in determining whether to adopt a backfit requirement, economic costs will be considered only when addressing those backfits involving safety requirements beyond those needed to ensure the adequate protection of public health and safety. Such costs are not considered when establishing the adequate protection of public health and safety. This revised rule does not have a significant impact on State and local governments and geographical regions, public health and safety, or the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The affected facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because it does not impose requirements on 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92, Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102. Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.109 is revised to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985; or

(ii) Six months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985; or

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses; or

(iv) The date of issuance of the design approval under Appendix M, N, or O of this part.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriated documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety or the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action.

(7) If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the applicant or licensee is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) Paragraph (a)(3) of this section shall not apply to backfits imposed prior to October 21, 1985.

(c) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the licensee or applicant in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental off-site release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(d) No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(e) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.

Dated at Rockville, Maryland, this 31st day of May, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-12624 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 88-9]

Description of Office, Procedures, Public Information; Deputy Chief Counsel (Operations) et al.

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The structure of the Law Department of the Office of the Comptroller of the Currency ("OCC") has recently been changed. This final rule sets forth the new descriptions for the positions of Deputy Chief Counsel (Operations) and Deputy Chief Counsel (Policy).

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ferne Fisherman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On April 6, 1988, the OCC's Chief Counsel announced certain changes to the positions of Deputy Chief Counsel (Operations) and Deputy Chief Counsel (Policy); this amendment reflects these changes.

Notice and Comment

The OCC has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to rules of agency organization and procedure.

Reason for Immediate Effective Date

This final rule informs the public about a change in the Law Department's organization that has already occurred. Confusion could result if the proper position descriptions are not employed immediately.

Regulatory Flexibility Act

A Regulatory Flexibility Analysis is required only for rules issued for notice and comment. Because this final rule pertains to office organization and is therefore exempt from notice and comment procedures, no Regulatory Flexibility Analysis will be prepared.

Executive Order 12291

Section 1(a)(3) of Executive Order 12291 exempts from the requirements that a Regulatory Impact Analysis be prepared those regulations related to agency organization, management or personnel. Since this final rule is so classified, no Regulatory Impact Analysis is required.

List of Subjects in 12 CFR Part 4

National banks, Organization and functions (government agencies), Public information, Official forms, District offices, Field offices, Procedures, Delegation.

For the reasons given in the preamble, Part 4 of Chapter I, Title 12 of the Code of Federal Regulations is amended as follows:

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

1. The authority citation for Part 4 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. In Part 4, § 4.1a is amended by revising paragraph (a) (20) and (21) to read as follows:

§ 4.1a Central and field organization; delegations.

(a) * * *

(20) *Deputy Chief Counsel (Operations).* The Deputy Chief Counsel (Operations) is responsible for Law Department administration, the District Counsels, and the Legislative and Regulatory Analysis Division of the Law Department.

(21) *Deputy Chief Counsel (Policy).* The Deputy Chief Counsel (Policy) is responsible for the Enforcement and Compliance, Legal Advisory Services, Litigation, and Securities and Corporate Practices Divisions of the Law Department.

* * * * *

Date: May 27, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-12605 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-427]

Miscellaneous Conforming and Technical Amendments

Date: May 31, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Saving and Loan Insurance Corporation ("FSLIC"), is amending its regulations in order to correct typographical and other technical errors, and to correct a reference to the Board's recordkeeping requirements with respect to accounts held in institutions the deposits of which are insured by the FSLIC ("insured institutions").

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome L. Edelstein, (202) 377-7057, Deputy Director; or Carol J. Rosa, (202) 377-7037, Paralegal Specialist, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 15, 1986, the Board adopted final amendments expanding and clarifying its regulation concerning basic loan records that institutions chartered by the Board or insured institutions and their service corporations are required to maintain. 51 FR 30848 (August 29, 1986). One of the amendments revised 12 CFR 563.17-1(c) by providing that records related to accounts held in insured institutions reflect the Board's recent deletion of the requirement that for insurance of accounts purposes the insured institution's records disclose the names of the settlor (grantor) and trustee of a trust and contain a signature card for the trust executed by the trustee. The Board's deletion of this recordkeeping requirement was adopted on April 4, 1986. 51 FR 12122 (April 9, 1986). The April 1986 revision of 12 CFR 564.2 to delete paragraph (b)(3) was intended to decrease the recordkeeping requirements associated with obtaining trust account insurance coverage and to expedite settlement of insurance claims on such accounts. This amendment was not intended to apply to loan recordkeeping requirements of an insured institution or its service corporations but only to insurance

account coverage and settlement of insurance claims on trust accounts. The Board wishes to state that insured institutions should continue to require the signature card as a recordkeeping provision for purposes of its loan records. By its action today, the Board removes the reference to the deletion of the signature card requirement for trust accounts in 12 CFR 563.17–1(c) and corrects other typographical errors contained in 12 CFR Part 563.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.17–1 by revising paragraph (c)(8) to read as follows:

§ 563.17–1 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) *Establishment and maintenance of records.* * * *

(8) *Records with respect to insured accounts.* The records of an insured institution with respect to each withdrawable or repurchasable share, investment certificate, deposit, or savings account it issues shall include the signature of the owner of such account of the duly authorized representative of such owner, together with a record reflecting the balance in such account.

* * * * *

3. Amend § 563.22 by revising the first two sentences of paragraph (e)(1)(xii) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) * * *

(xii) The resulting association's (other than an association that is neither insured by the Corporation nor chartered by the Board) regulatory capital would not at least equal the amount required under the Board's regulatory capital requirements. (Where the resulting association's accounts are insured by the Federal Deposit Insurance Corporation, its regulatory capital would not at least equal the required amount under the capital requirements of the Federal Deposit Insurance Corporation.) * * *

* * * * *

4. Amend § 563.31 by revising paragraph (b)(1) to read as follows:

§ 563.31 Other insurance or guaranty.

* * * * *

(b) *Exceptions.* * * *

(1) A Federal association may give bond or security pursuant to §§ 545.16 and 545.103 of this chapter; and

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12604 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8206]

Income Tax; Taxable Years Beginning After December 31, 1953; Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the definition of a qualified business unit. This regulation is intended to provide immediate guidance for taxpayers who must make income tax determinations for their QBUs for taxable years beginning after December 31, 1986. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Chip Collins 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) (202–634–5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 989 of the Internal Revenue Code of 1986 defining the term "qualified business unit" (QBU). This section was added to the Code by section 1261 of the Tax Reform Act of 1986. In general, Subpart J of the Code (which includes section 989) provides rules for the tax treatment of foreign currency transactions for United States tax purposes. Certain foreign operations of a U.S. person or of a foreign corporation may have a functional currency other than the U.S. dollar if such operations satisfy the requirements for a qualified business unit within the meaning of section 989. There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code relating to foreign currency transactions (sections 985–989) are generally effective for tax years beginning after 1986. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Statutory Provision

Section 989(a) of the Code provides that a QBU is any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

Explanation of Temporary Regulations

Section 1.989(a)–1T(a) states the applicability of the definition of a QBU and provides that the effective date is for taxable years beginning after December 31, 1986.

Section 1.989(a)–1T(b) defines a "QBU." This section provides that every corporation is a QBU, but an individual is not. In addition, the activities of an individual or corporation will qualify as a QBU (separate from the individual or corporation itself) if such activities constitute a trade or business for which separate books and records are maintained. This section reserves the issue of the application of the QBU definition to partnerships, trusts, and estates.

Section 1.989(a)–1T(c) defines the term "trade or business." With respect to corporate activities, a trade or business is generally any specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit. This test also applies in determining whether an individual's activities constitute a trade or business, except that such activities must not generate expenses that are deductible only under section 212.

Section 1.989(a)–1T(d) defines the term "separate books and records." In general, separate books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records.

Non-Applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is P. Ann Fisher 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 the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 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—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C 7805. * * * Sections 1.989(1)–0T and 1.989(a)–1T also issued under 26 U.S.C. 989(c).

Par. 2. New §§ 1.989(a)–0T and 1.989(a)–1T are added immediately after § 1.981–3 to read as follows:

§ 1.989(a)–0T Outline of regulation (Temporary).

§ 1.989(a)–1T Definition of a Qualified Business Unit.

(a) Applicability.
(b) Definition of a qualified business unit.
(c) Trade or business.
(d) Separate books and records.
(e) Examples.

§ 1.989(a)–1T Definition of a Qualified Business Unit (Temporary).

(a) *Applicability*—(1) *In general.* This section provides rules relating to the definition of the term "qualified business unit" (QBU) within the meaning of section 989.

(2) *Effective date.* These rules shall apply to taxable years beginning after December 31, 1986.

(b) *Definition of a qualified business unit*—(1) *In general.* A QBU is any separate and clearly identified unit of a trade or business of a taxpayer provided that separate books and records are maintained.

(2) *Applicability of the QBU definition to corporations*—(i) *A corporation.* A corporation itself is a QBU.

(ii) *Activities of a corporation.* Activities of a corporation qualify as a QBU of a corporation (separate from the QBU described in subparagraph (2)(i)) if—

(A) The activities constitute a trade or business as defined in paragraph (c)(1) of this section; and

(B) A complete and separate set of books and records described in paragraph (d) of this section is maintained with respect to the activities.

(3) *Application of the QBU definition to individuals*—(i) *An individual.* An individual is not a QBU.

(ii) *Activities of an individual.* Activities of an individual qualify as a QBU of the individual if—

(A) The activities constitute a trade or business as defined in paragraph (c)(2) of this section; and

(B) A complete and separate set of books and records described in paragraph (d) of this section is maintained with respect to the activities.

(4) *Application of the QBU definition to partnerships, trusts, and estates.* [RESERVED]

(c) *Trade or business*—(1) *In general.* The determination as to whether the activities of a taxpayer constitute a trade or business is ultimately dependent upon an examination of all the facts and circumstances. Generally, a trade or business is a specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit. To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. Such group of activities must ordinarily include the collection of income and the payment of expenses. It is not necessary that the activities carried out by a QBU constitute a different trade or business than those carried out by other QBUs of the taxpayer. A vertical, functional, or geographic division of the same trade or business may be a trade or business for this purpose provided that the activities otherwise qualify as a trade or business under the paragraph (c)(1). However, activities that are merely ancillary to a trade or business will not constitute a trade or business under this paragraph (c)(1).

(2) *Special rules for individuals.* In determining whether the activities of an individual constitute a trade or business, the provisions of paragraph (c)(1) of this section apply, except that any activities that give rise to expenses that are deductible only under section 212 do not constitute by themselves a trade or business for purposes of this section. Activities of an individual as an employee are not considered to constitute a trade or business of the individual.

(d) *Separate books and records.* In order to be considered a QBU, a complete and separate set of books and records must be maintained. Such set of books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records. For example, in the case of a taxpayer using the cash receipts and disbursements method of accounting, the books of original entry include a cash receipts and disbursements journal where each receipt and each disbursement is recorded. Similarly, in the case of a taxpayer using an accrual method of accounting, the books of original entry include a journal to record

sales (accounts receivable) and a journal to record expenses incurred (accounts payable). In general, a journal represents a chronological account of all transactions entered into by an entity for an accounting period. A ledger account, on the other hand, chronicles the impact during an accounting period of the specific transactions recorded in the journal for that period upon the various items shown on the entity's balance sheet (*i.e.*, assets, liabilities, capital accounts) and income statement (*i.e.*, revenues and expenses).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a domestic corporation. Corporation X manufactures widgets in the U.S. for export. Corporation X sells widgets in the United Kingdom through a branch office in London. The London office has its own employees and solicits and processes orders. Corporation X maintains in the U.S. a separate set of books and records for all transactions conducted by the London office. Corporation X is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. The London branch office is a QBU under paragraph (b)(2)(ii) of this section because (1) the sale of widgets is a trade or business as defined in paragraph (c)(1) of this section; and (2) a complete and separate set of books and records (as described in paragraph (d) of this section) is maintained with respect to its sales operations.

Example (2). A domestic corporation incorporates a wholly-owned subsidiary in Switzerland. The domestic corporation is a manufacturer that markets its product abroad primarily through the Swiss subsidiary. To facilitate sales of the parent's product in Europe, the Swiss subsidiary has branch offices in France and West Germany that are responsible for all marketing operations in those countries. Each branch has its own employees, solicits and processes orders, and maintains a separate set of books and records. The domestic corporation and the Swiss subsidiary are both QBUs under paragraph (b)(2)(i) of this section because of their corporate status. The French and West German branches are QBUs of the Swiss subsidiary. They satisfy paragraph (b)(2)(ii) because each constitutes a trade or business (as defined in paragraph (c)(1) of this section) and because a complete and separate sets of books and records (as described in paragraph (d) of this section) of their respective operations is maintained. Each branch is considered to have a trade or business although each is a geographical division of the same trade or business.

Example (3). W is a domestic corporation that manufactures product X in the United States for sale worldwide. All of W's sales functions are conducted exclusively in the United States. W employs individual Q to work in France. Q's sole function is to act as a courier to deliver sales documents to customers in France. With respect to Q's activities in France, a separate set of books and records as described in paragraph (d) is maintained. Under paragraph (c)(1) of this section, Q's activities in France do not constitute a QBU since they are merely ancillary to W's manufacturing and selling business. Q is not considered to have a QBU because an individual's activities as an employee are not considered to constitute a trade or business of the individual under paragraph (c)(2).

Example (4). The facts are the same as in example (3) except that the courier function is the sole activity of a wholly-owned French subsidiary of W. Under paragraph (b)(2)(i) of this section, the French subsidiary is considered to be a QBU.

Example (5). A corporation incorporated in the Netherlands is a subsidiary of a domestic corporation and a holding company for the stock of one or more subsidiaries incorporated in other countries. The Dutch corporation's activities are limited to paying its directors and its administrative expenses, receiving capital contributions from its United States parent corporation, contributing capital to its subsidiaries, receiving dividend distributions from its subsidiaries, and distributing dividends to its domestic parent corporation. Under paragraph (b)(2)(i) of this section, the Netherlands corporation is considered to be a QBU.

Example (6). Taxpayer A, an individual resident of the United States, is engaged in a trade or business wholly unrelated to any type of investment activity. A maintains a portfolio of foreign-currency-denominated investments through a foreign broker. The broker is responsible for all activities necessary to the management of A's investments and maintains books and records as described in paragraph (d) of this section, with respect to all investment activities of A. A's investment activities do not qualify as a QBU under paragraph (b)(3)(ii) of this section because the activities engaged in by A generate expenses that are deductible only under section 212 and, therefore, do not constitute a trade or business of A under paragraph (c)(2) of this section.

Example (7). Taxpayer A, an individual resident of the United States, is the sole shareholder of foreign corporation (FC) whose activities are limited to trading in stocks and securities. FC is a QBU under paragraph (b)(2)(i) of this section.

Example (8). Taxpayer A, an individual resident of the United States, markets and sells in Spain and in the United States various products produced by other United States manufacturers. A has an office and employs a salesman to manage A's activities in Spain. A keeps a complete and separate set of books and records (as described in paragraph (d) of this section) of A's activities in Spain and is engaged in a trade or business as defined in paragraph (c)(2) of this section. Therefore, under paragraph (b)(3) of this section, the activities of A in Spain are considered to be a QBU.

Example (9). Foreign corporation FX is incorporated in Mexico and is wholly owned by a domestic corporation. The domestic corporation elects to treat FX as a domestic corporation under section 1504(d). FX operates entirely in Mexico and maintains a complete set of books and records with respect to its activities in Mexico. FX is a QBU under paragraph (b)(2)(i) of this section. The activities of FX in Mexico also constitute a QBU under paragraph (b)(2)(ii) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: O. Donaldson Chapoton, Assistant Secretary of the Treasury, April 22, 1988.

[FR Doc. 88-12558 Filed-6-3-88; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8207]

Income Tax; Taxable Years Beginning After December 31, 1953; Transition Rules for Certain Qualified Business Units Using a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), which used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. This regulation is intended to provide immediate guidance for taxpayers who must change from a net worth method of accounting to the profit and loss method of accounting for taxable years beginning after December 31, 1986. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Rosenberg 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 (INTL-984-86) (202-634-5406, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to procedures to be followed by branches of United States

persons, *i.e.* qualified business units (QBUs), using a net worth method of accounting prior to the enactment of Subpart J of the Internal Revenue Code of 1986. The Secretary is empowered to prescribe such regulations under Section 989(c)(1) of the Internal Revenue Code (26 U.S.C. 989) as enacted by section 1261(a) of the Tax Reform Act of 1986 (Pub. L. 99-514). New §§ 1.989 (c)-0T and 1.989(c)-1T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations in order to provide immediate guidance as to the transition rules for branches that used a net worth method of accounting under old law and will remain in effect until superseded by final regulations on this subject. Immediate guidance is needed by taxpayers who will report under the profit and loss method under section 987 for a taxable year beginning in 1987. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

Section 987 of the Internal Revenue Code of 1986 provides that QBUs that have a functional currency other than the U.S. dollar must account for their operations under the profit and loss method set forth in section 987 and regulations thereunder. Prior to the Tax Reform Act of 1986, foreign branches of U.S. corporations could account for their operations under either a similar nonstatutory profit and loss method of accounting or a net worth method of accounting. Section 989(c)(1) of the Internal Revenue Code provides that the Secretary shall set forth procedures to be followed by taxpayers with QBUs using the net worth method for tax years beginning on or before December 31, 1986.

Under the net worth method presented in Rev. Rul. 75-106, 1975-1 C.B. 31, a taxpayer calculated the taxable income of a foreign branch by comparing the change in the dollar value of its net assets (assets less liabilities) over the course of a year. In general, the foreign currency value of current assets and current liabilities was translated into U.S. dollars using the year-end exchange rate, while the foreign currency value of noncurrent assets and liabilities was translated into dollars using the appropriate historical exchange rates. Thus, under the net worth method, branches adjusted their income currently for unrealized foreign currency gain or loss on their current assets and liabilities and realized exchange gains and losses on their long term assets and liabilities.

Under section 987, however, unrecognized currency gains or losses of QBUs that have a functional currency other than the U.S. dollar will now be deferred until a remittance of property. Thus, it is important to ensure that branches on a net worth method, which were permitted to accrue realized and certain unrealized currency gains or losses under old law prior to remittance, do not recognize the same exchange gain or loss again when property is remitted from the branch. In addition, it is important to ensure that any unrecognized currency gains or losses may be taken into income on remittances of property from the branch.

These rules achieve these objectives by establishing a dollar basis for remittances in excess of post-86 earnings (*i.e.* pre-87 earnings and all capital contributions (EQ)). The dollar basis reflects the dollar net worth of the QBU at the end of the last tax year beginning on or before December 31, 1986 (final dollar net worth) plus any other capital contributions. Upon a remittance of EQ, a portion of this dollar basis is deemed remitted and currency gain or loss on the remittance is determined. Since the dollar basis of the EQ has been adjusted for currency gains or losses previously recognized at the QBU, double counting of previously recognized currency gains or losses upon remittance is avoided. Further, the inclusion of historic dollar basis of noncurrent assets and liabilities in the calculation of the QBU's final dollar net worth ensures that currency gains or losses on noncurrent assets and liabilities, unrealized prior to the transition and therefore still included in the historical basis, may be taken into income on remittances of property from the branch.

The Service is especially interested in receiving comments concerning methods for calculating remittances from foreign branches under section 987 that would permit the calculation of currency gain or loss with respect to remittances on an aggregate basis. The Service is also interested in receiving comments as to whether branch equity should be deemed remitted on a transfer of branch assets and liabilities in a transaction in which gain or loss would not otherwise be recognized.

These rules also clarify how a net worth branch should calculate the functional currency adjusted basis of branch assets and the amount of branch liabilities for purposes of determining gain or loss on disposition or adjustment in basis. The post-transition functional currency adjusted basis of such assets is their historical functional currency basis. Similarly, the post-transition amount of such liabilities is their historical functional currency amount.

Thus, for purposes of determining income under section 987, the correct adjusted basis for depreciable assets held by a branch on a net worth method under old law will ordinarily be the original functional currency basis of the asset as adjusted for depreciation since its acquisition, regardless of when the assets were acquired. While the net effect of this rule is to increase or decrease the dollar value of depreciation on these assets in post-transition years, this rule places branches that formerly used the net worth method on the same footing as branches who have always used a version of the profit and loss method in computing income.

Section 1.989(c)-0T sets forth the outline of this section. Section 1.989(c)-1T sets forth the transition rules. Paragraph (a) sets forth the applicability of this section. Paragraph (b) provides rules for: (1) determining the functional currency pool of EQ; (2) determining the correct dollar basis of EQ; (3) determining the pool from which a remittance is drawn; (4) calculating the dollar basis of a remittance of EQ; and (5) calculating the exchange gain or loss on a remittance of EQ. Paragraph (c) provides the adjusted basis rule for assets of a foreign branch that formerly used the net worth method. Paragraph (d) provides the rule for the functional currency amount of liabilities of a foreign branch that formerly used a net worth method. Paragraph (e) provides rules about the character and source of exchange gain or loss determined upon remittance. Finally, paragraph (f) provides an example of the foregoing rules.

Non-Applicability of Executive Order 12291

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is David Rosenberg of the Office of Associate Chief Counsel (International) of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1—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—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.989(c)–0T and 1.989(c)–1T are also issued under 26 U.S.C. 989(c).

Par. 2. New §§ 1.989(c)–0T and 1.989(c)–1T are added immediately after § 1.961–3 to read as follows:

§ 1.989 (c)-0T Outline of regulation (temporary).

(a) Applicability.
(b) Transition rule.
(c) Functional currency basis of branch assets acquired in tax years beginning before January 1, 1987.
(d) Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.
(e) Character and source of exchange gain or loss determined upon remittance.
(f) Example.

§ 1.989 (c)-1T Transition rules for certain branches of United States persons using a net worth method of accounting for taxable years beginning before January 1, 1987 (temporary).

(a) *Applicability*—(1) *In general.* This regulation provides transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), whose functional currency (as defined in section 985 of the Code and regulations issued thereunder) is other than the dollar and that used a net worth method of accounting (as described in paragraph (b) of this section) for their last taxable year beginning before January 1, 1987. Under section 987 of the Code and regulations issued thereunder, such QBUs must account for their taxable income under the profit and loss method of accounting for all taxable years beginning after December 31, 1986, except to the extent otherwise provided in regulations issued.

(2) *Insolvent QBUs.* This section shall not apply to a QBU that used a net worth method of accounting for its last taxable year beginning before January 1, 1987 whose final net worth (as defined in paragraph (b)(2) of this section) is negative.

(3) *Taxpayers electing to use the dollar as their functional currency under section 985 (b)(3).* This section shall not apply to a taxpayer that makes the election to use the dollar as its functional currency under section 985(b)(3) and regulations issued thereunder. Transition rules for such situations will be provided in regulations under section 985.

(b) *Transition rule.* This transition rule sets forth rules for calculating exchange gain or loss on a remittance (as defined in section 987 and regulations issued thereunder) that occurs in a taxable year beginning after December 31, 1986, from a QBU that was on a net worth method of accounting for the taxpayer's last taxable year beginning before January 1, 1987. A net worth method of accounting is any method of accounting under which the taxpayer calculates the taxable income of a QBU based on the net change in the dollar value of the QBU's equity over the course of a taxable year, taking into account any remittances made during the year. QBU equity is the excess of QBU assets over QBU liabilities. Under section 987, exchange gain or loss is determined on a remittance of post-86 QBU earnings (which are the previously unremitted earnings of the QBU, as adjusted according to United States generally accepted accounting and tax accounting principles) for taxable years beginning on or after January 1, 1987. Exchange gain or loss is also determined on a remittance in excess of post-86 QBU earnings. In order to calculate the exchange gain or loss occurring on such remittances the taxpayer assigns its unremitted QBU earnings and capital to two pools, one pool consisting of post-86 QBU earnings and the other pool consisting of the sum of pre-87 equity (earnings and capital) and post-86 capital (hereinafter referred to as the EQ pool). A remittance first represents an amount of post-86 QBU earnings and secondly an amount of EQ. This transition rule provides a 5-step method for calculating exchange gain or loss upon a remittance from these pools. The exchange gain or loss is determined by comparing the current dollar value of the remittance to the historical dollar basis of the remittance as determined under this transition rule and section 987 and regulations issued thereunder. Such exchange gain or loss shall be considered realized in the taxable year of the remittance and shall be recognized except to the extent otherwise provided in regulations.

(1) *Step 1 Calculating the functional currency pool of EQ*—(i) *Beginning amount.* The beginning pool of EQ is equal to the functional currency adjusted basis of the branch's assets less the functional currency amount of the branch's liabilities as these amounts are determined under paragraphs (c) and (d) of this section.

(ii) *Adjusting the EQ pool.* The EQ pool is increased by the functional currency amount of any capital contributions (as determined under section 987 and regulations issued thereunder). If the capital contribution is made in a nonfunctional currency, this amount is translated into functional currency at the spot rate at the date of the contribution. Upon a remittance representing EQ (as determined by the ordering rules in paragraph (b)(3) of this section), the pool is decreased by the functional currency amount considered remitted from the pool under section 987 and regulations issued thereunder.

(2) *Step 2 Calculating the dollar pool of equity*—(i) *Beginning value.* The dollar equity pool (hereinafter referred to as the $E pool) equals the final net worth of the QBU. Final net worth of the QBU equals the QBU's equity value (assets less liabilities) measured in dollars at the end of the taxpayer's last taxable year beginning before January 1, 1987, determined on the basis of the QBU's books and records as adjusted according to United States generally accepted accounting and tax accounting principles.

(ii) *Adjusting the $E pool.* The $E pool is increased by the dollar amount of any capital contributions (as determined under section 987 and regulations issued thereunder). If the capital contribution is made in a currency other than the dollar, this amount is translated into dollars at the spot rate at the date of the contribution. Upon a remittance representing $E (as determined by the ordering rules in paragraph (b)(3) of this section), the $E pool is decreased by the dollar amount considered remitted from the pool (as determined under paragraph (b)(4) of this section).

(3) *Step 3 Determination of the pools from which remittances are drawn.* To the extent the functional currency amount of the remittance (as determined under section 987 and regulations issued thereunder) exceeds unremitted post-86

functional currency earnings, it is considered to come out of the EQ pool (as determined under paragraph (b)(1) of this section).

(4) *Step 4 Calculation of the dollar basis of a remittance of EQ.* The dollar basis of the EQ remitted equals:

$$\frac{\text{functional currency amount remitted from EQ}}{\text{EQ}} \times \$E$$

Where:

EQ = the QBU's functional currency pool of branch equity (determined under paragraph (b)(1)(ii) but not reduced by any remittance in the current taxable year)

$E = the QBU's dollar pool of branch equity (determined under paragraph (b)(2)(ii) but not reduced by any remittance in the current taxable year)

(5) *Step 5 Calculation of the exchange gain or loss on the remittance of EQ.* The exchange gain or loss determined on the remittance of EQ equals—

(i) The dollar value of the EQ remitted (as determined under section 987 and regulations issued thereunder), less

(ii) The dollar basis of the EQ remitted as calculated under paragraph (b)(4) of this section.

(c) *Functional currency adjusted basis of branch assets acquired in taxable years beginning before January 1, 1987.* (1) For taxable years beginning after December 31, 1986, the functional currency adjusted basis of a QBU asset acquired in a taxable year beginning before January 1, 1987 is the functional currency basis of the asset at the date of acquisition as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency adjusted basis of an asset for which a functional currency basis was not determined at the date of acquisition is the nonfunctional currency adjusted basis of the asset at the date of acquisition multiplied by the spot exchange rate at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles.

(2) Any future adjustments to the functional currency adjusted basis of such assets is determined with respect to the appropriate functional currency adjusted basis of the asset as determined under this paragraph (c).

(d) *Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.* For the first taxable year beginning after December 31, 1986, the amount of QBU liabilities incurred in taxable years beginning before January 1, 1987 is the functional currency amount of the liability at the date incurred as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency amount of a liability for which a functional currency amount was not determined at the date incurred is the nonfunctional currency amount of the liability at the date incurred multiplied by the spot exchange rate at the date incurred, as adjusted according to United States Generally accepted accounting and tax accounting principles.

(e) *Character and source of exchange gain or loss determined on a remittance.* Any exchange gain or loss determined on a remittance is sourced and characterized as provided by section 987 and regulations issued thereunder.

(f) *Example.* The provisions of this section are illustrated by the following example.

Example. (i) *Facts.* U.S. is a domestic corporation. B, a branch of U.S., operates in country X. B is a QBU and its functional currency is the FC. U.S. is on a calendar taxable year and, prior to January 1, 1987, accounted for the operations of B by the net worth method of accounting as set forth in Rev. Rul. 75–106, 1975–1 C.B. 31. B's books and records were kept according to United States tax accounting principles. B's functional currency net worth as of December 31, 1986 (beginning pool of EQ) is 15,000 FC. B's dollar final net worth as of December 31, 1986 (beginning pool of $E) is $9,000. Under section 987, B has earnings of 8,000 FC in 1987 worth $1,000. B has no earnings and incurs no loss in 1988. There are no contributions to branch capital in 1987 and 1988. B remits 18,000 FC in 1988. Under section 987, the appropriate exchange rate for the 1988 remittance is 10 FC/$1.

(ii) *Calculation of exchange gain or loss on remittance.*

A. *Post-86 earnings.*

Under paragraph (b)(3) of this section, the 18,000 FC remittance comes first out of post-86 earnings (8,000 FC) and second out of EQ (10,000 FC). The loss of the 1988 remittance of post-86 earnings equals:

(Dollar value of post-86 earnings) – (Dollar basis of post-86 earnings)
= (8,000 FC x 10 FC/$1) – $1,000
= $800 – $1,000
= <$200> loss

B. *EQ.*

Under paragraph (b) of this section, U.S. will calculate exchange gain or loss on the 10,000 FC remittance of EQ from B.

Step 1. Total EQ equals 15,000 FC (the historic functional currency value of B's assets over the historic functional currency value of its liabilities). There are no adjustments necessary under paragraph (b)(1)(ii) of this section.

Step 2. $E (final net worth) is $9,000. There are no adjustments necesssary under paragraph (b)(2)(ii) of this section.

Step 3. The entire 10,000 FC remittance is deemed to come out of EQ.

Step 4. The dollar basis of the EQ equals:

Dollar basis of EQ remitted
= N x $9,000

$$= \frac{10{,}000 \text{ FC}}{15{,}000 \text{ FC}} \times \$9{,}000$$

= $6,000

Where:

N = *Portion of remittance out of EQ* Total EQ (determined under paragraph (b)(1)(ii) but not reduced by current year remittances)

Step 5. Exchange loss of U.S. on remittance equals:

(Dollar value of the EQ remitted) – (Dollar basis of the EQ remitted)
= (10,000 FC X 10 FC/$1) – $6,000
= $1,000 – $6,000
= <$5,000> loss

C. *Total loss of remittance.* The total combined loss of the remittance is <$5,200>.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

April 22, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–12560 Filed 6–3–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–88–01]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. The shifting of the boundary will prevent damage from anchoring vessels to an existing submarine power cable and a newly installed fiber optic telecommunications cable. This will reduce the southern reaches of the anchorage in the shallow waters off Treasure Island.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: On March 17, 1988 the Coast Guard

published a notice of proposed rule making in the Federal Register for these regulations (52 FR 8773). Interested persons were requested to submit comments and no comments were received.

Discussion of Comments: No comments were received. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Drafting Information: The drafters of these regulations are Lieutenant Junior Grade Michael Lodge, project officer, and Lieutenant G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under 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. These regulations will have minor impact because the small area being deleted is seldom used due to limited depth of water.

Since the 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 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 741, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(4) is revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(4) *Anchorage No. 7, Treasure Island.* In San Francisco Bay at Treasure Island bounded a line connecting the following coordinates:

Latitude	*Longitude*
37°49'36" N.,	122°22'40" W; to
37°50'00" N.,	122°22'57" W; to
37°50'00" N.,	122°23'44" W; to
37°49'22.5" N.,	122°23'44" W; to
37°48'40.5" N.,	122°22'38" W; to
37°49'00.0" N.,	122°22'16" W; thence along the shore to
37°49'36" N.,	122°22'40" W.

* * * * *

Dated: May 16, 1988.

A.B. Beran,

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

[FR Doc. 88–12667 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 13

Fiduciary Activities; Investments by Legal Custodians; Estates $1,500; Determination of Value of Estate

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is amending its regulations to allow a Federally appointed fiduciary to purchase a pre-need burial arrangement for an incompetent VA beneficiary, thus providing the beneficiary with a decent burial; and, exempt the value of the veteran's burial arrangement and the value of the veteran's home from the provisions of 38 U.S.C. 3202(b) while the veteran is hospitalized. Certain technical amendments are also incorporated.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: William Saliski, Program Analyst, Investigation and Compliance Staff, Veterans Assistance Service (273), Departmnent of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2091.

SUPPLEMENTARY INFORMATION: On pages 33248–33250 of the Federal Register of September 2, 1987, the VA published proposed amendments to 38 CFR 13.103, 13.108 and 13.109. Interested persons were given until October 16, 1987, to submit comments, suggestions or objections to the proposed amendments. No comments, suggestions or objections were received. Accordingly, the proposed amendments are adopted.

The Administrator hereby certifies that these regulatory amendments 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), these regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulatory amendments impose no regulatory burdens on small entities, and only claimants for VA benefits and their dependents will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are nonmajor for the following reasons: (1) They will not have an effect on the economy of $100 million or more; (2) they will not cause a major increase in costs or prices; (3) they will not have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance Program number.

These regulatory amendments contain no information collection requirements.

List of Subjects in 38 CFR Part 13

Administration practices and procedures, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

Approved: May 11, 1988.

Thomas K. Turnage,

Administrator.

PART 13—[AMENDED]

38 CFR Part 13, FIDUCIARY ACTIVITIES, is amended as follows:

§§ 13.77, 13.101, 13.105, and 13.106 [Amended]

1. Add the citation "(Authority: 38 U.S.C. 210)" at the end of each section.

§ 13.100 [Amended]

2. Add the citation "(Authority: 38 U.S.C. 3202)" at the end of paragraphs (a) and (c); add the citation "(Authority: 38 U.S.C. 210)" at the end of paragraph (b); and add the citation "(Authority: 38 U.S.C. 3501)" at the end of paragraph (d).

3. In § 13.102, paragraph (a) is revised and a citation is added at the end of the section to read as follows:

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without spouse or child.* The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon

request to the VA for funds received from the VA for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

* * * * *

(Authority: 38 U.S.C. 210)

4. Section 13.103 is revised to read as follows:

§ 13.103 Investments by Federal fiduciaries.

(a) *Type authorized.* VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Veterans Administration benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) *Registration.* (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Veterans Administration.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) *Pre-need burial arrangements.* Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

(Authority: 38 U.S.C. 210)

§ 13.107 [Amended]

5. Add the citation "(Authority: 38 U.S.C. 3203(b)(3))" at the end of the section.

6. Section 13.108 is revised to read as follows:

§ 13.108 Estate $1,500; 38 U.S.C. 3203(b)(1).

(a) *Discontinuance of payments.* When a veteran, rated incompetent by the VA, without spouse or child, is receiving hospital treatment or domiciliary or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds $1,500, the Veterans Services Officer shall, with regard to those estates monitored by the Veterans Services Officer, immediately notify the Adjudication Division so that VA payments, other than insurance, may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to $500, immediately notify the Adjudication Division of that fact.

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the Veterans Services Officer's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The Veterans Services Officer should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority: 38 U.S.C. 3203(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate exceeds $1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veterans for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award.

(Authority: 38 U.S.C. 3203(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 210)

7. In § 13.109, the section heading is revised and paragraphs (d)(5), (6) and (7) are added to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1)(A).

* * * * *

(d) * * *

(5) The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this title.

(Authority: 38 U.S.C. 210)

[FR Doc. 88-12612 Filed 6-3-88; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 87-015a]

Delegation of Authority to Measure Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing the criteria necessary for an organization to qualify as a delegate to formally measure U.S. commercial, recreational, and public non-combatant vessels. This rulemaking implements the statutory provision authorizing the Coast Guard to delegate measurement functions, yet ensures high quality service to the maritime industry.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph T. Lewis, Tonnage Survey Branch, (202) 267-2992.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Transportation (Coast Guard) is authorized by statute (46 U.S.C. 14103) to delegate to a "qualified person" the authority to measure, and to issue certificates of measurement for, vessels that are required or eligible to be documented as a vessel of the United States. The Coast Guard published a

Final Rule (52 FR 15947; May 1, 1987) which delegated to the American Bureau of Shipping (ABS) the authority to perform U.S. formal tonnage measurement services for commercial, recreational, and public non-combatant vessels. In the preamble to that rule, the Coast Guard indicated its intention to extend this delegation to other qualified organizations once it had established criteria for eligibility.

On December 4, 1987, the Coast Guard published a Notice of Proposed Rulemaking (52 FR 46103) to develop criteria for eligibility. Comments were received from three international ship classification societies, three marine trade associations, four shipbuilders, five shipping companies, five naval architects, five tonnage surveyors, two maritime unions, and one U.S. Senator. A public hearing was not requested and one was not held.

Because this final rule is administrative in nature and concerns only matters of agency organization and procedure, it is being made effective in less than 30 days after publication in the **Federal Register**. This rule merely establishes criteria for delegating an existing function to other organizations without substantively changing the function. Because this rule has no substantive effect, good cause exists for making it effective in less than 30 days after publication, under 5 U.S.C. 553(d).

Drafting Information

The principal persons involved in drafting this rule are Mr. Joseph T. Lewis, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

Vessels that measure five net tons or greater are either required or eligible to be documented as a vessel of the United States. Before a vessel may be documented, it first must be measured to establish its tonnage. Traditionally, vessel measurement has been exclusively a governmental service and was provided free of charge. However, with the passage of Pub. L. 99–509, the Coast Guard is authorized to charge a fee for measurement services or, if it chooses, to delegate measurement authority to the private sector. On May 1, 1987 (52 FR 15947), the Coast Guard delegated this authority to the American Bureau of Shipping with the proviso that the Coast Guard would develop criteria for delegation to other similar organizations. This rulemaking establishes those criteria.

This delegation is in keeping with the Coast Guard's policy to discontinue its formal tonnage measurement services for U.S. commercial, recreational, and public non-combatant vessels and to transfer these services entirely to qualified private measurement organizations. Delegation of authority to additional organizations should assure optimum responsiveness to the public and enhance competition in the marketplace, while continued oversight by the Coast Guard should ensure correct and consistent application of measurement laws and regulations.

Discussion of Comments

The major areas of concern raised by the comments are as follows:

(1) *Varying interpretation of laws and regulations by the organizations.* Several comments suggest that further delegation would increase the likelihood of varying interpretations of the measurement laws and regulations by the delegates and that the Coast Guard would be unable to ensure consistency. By limiting delegation to those within a small pool of large organizations recognized internationally for competency in the field, by retaining oversight authority, by requiring contractually that delegates comply with and apply tonnage measurement laws and regulations (§ 69.01–20(d)(4)(vi)), by having the right to terminate a delegation at any time by simply giving written notice (46 U.S.C. 14103(d)), and by requiring all appeals be routed directly to the Commandant (46 CFR 69.01–17(b)), this program should provide an adequate framework for assuring compliance by, and controlling consistency among, delegates.

Finally, one comment questioned why delegates could not limit their services to Tonnage Convention measurement. The Coast Guard's intention in establishing delegation criteria is to assure that each delegate will provide the full range of tonnage measurement services perviously provided by the Coast Guard. Though Convention measurement business is attractive to organizations engaged in vessel classification, delegates also must be ready and willing to respond to the needs of smaller vessels that are not intended to be classed.

(2) *Competition resulting from further delegation.* One comment suggests that competition would encourage measurement organizations to focus on cost, rather than quality of services. However, quality does not arise from the absence of competition but from Coast Guard oversight and control. It is the responsibility of the Coast Guard to ensure that the measurement laws and regulations are being observed and applied correctly and consistently by its delegates. If competition produces lower fees, as suggested by the comment, this result should be considered a benefit of the delegation program.

One comment suggests that competition would result in an increase, rather than decrease, in costs to clients but offers no justification for this position. There is no indication that costs will increase with further delegation. In fact, the greater availability of service provided by further delegation should reduce costs.

Two comments stated that more delegates would mean more appeals to the Commandant by vessel owners displeased with the decisions of measurement organizations. Actually, the number of appeals under the Coast Guard's current delegation program is lower than it was before delegation. Through close cooperation with, and equal dissemination of its interpretations and policies to, all delegates, the Coast Guard intends to maintain consistency and avert the need for appeal.

One comment states, without further elaboration, that competition will cause delays in vessel construction. The infrequent delays caused by measurement during construction typically result from changes needed to arrive at a desired tonnage and are not the product of delegation. Delays, if any, in finding an available admeasurer should be reduced by increasing the number of eligible admeasurers through further delegation.

Two comments suggest that the vessel population will be too small to realize noticeable benefits from competition. However, it is not the number of vessels but the number of organizations competing for their business that produces the benefits of competition. Even if the population is small, the intensity of competition for those few vessels should increase as the number of delegates increases. In any event, measurement and remeasurement requirements will increase significantly over the next few years. This is because all vessels 79 feet and longer engaged in international voyages that are not measured under the Tonnage Convention system will have to be measured under that system by 1994. Also, Coast Guard regulations presently under development (CGD–87–015(b)) will require that a vessel be measured under the Convention system but permits the vessel to be measured also under a regulatory system at the owner's choosing. Additional delegates will be able to handle these increasing demands.

One comment contends that competition would result in destructive

bidding by vessel owners and encourage measurement organizations to sacrifice quality. Quality, however, is controlled by the Coast Guard, not the marketplace. The fact that owners may request bids from more than one organization is a beneficial element of the competitive process.

One comment states that, if the goal of this rulemaking is to "assure optimum responsiveness to the public and enhance competition in the marketplace," such a goal is not within the purview of government and is, therefore, outside the scope of this rulemaking. The goal of this rulemaking is to determine whether authority should be further delegated and, if so, to devise criteria for eligibility of delegates. Any impact further delegation may have, including its effect on responsiveness and competition, must be evaluated by the Coast Guard. These impacts are potential by-products of further delegation, not goals of this rulemaking.

Finally, some comments suggest that Congress intended for ABS, because of its special relationship with the Coast Guard, to have the exclusive authority to measure U.S. vessels. Public Law 99-509, which codified the loadline, as well as the tonnage measurement, legislation, provides delegation of loadline activities expressly "to the American Bureau of Shipping or other similarly qualified organizations" (46 U.S.C. 5107). However, the same legislation, with respect to tonnage measurement, avoids specific reference to ABS and simply authorizes delegation "to a qualified person" (46 U.S.C. 14103). "Qualified person," as defined in the legislative history (House Report No. 99-396), refers to ABS only as an example of an organization competent enough to qualify for a delegation. Though the Coast Guard has already delegated measurement authority to ABS, neither the act nor the legislative history indicates that ABS is the only qualified organization. ABS is referenced in the legislative history only as a guide to the Coast Guard in exercising its authority to delegate.

(3) *Increased Coast Guard costs.* Two comments contend that more delegates would require more oversight by the Coast Guard and result either in an increase in Coast Guard operating costs or a decrease in the quality of its oversight. As a result of its decision to delegate measurement functions, the Coast Guard significantly reduced operating costs by closing field offices, eliminating positions, and consolidating functions within its headquarters office. Unlike a general delegation to the private sector involving extensive and complex safety-related activities which requires intensive oversight and increases governmental costs, this delegation is limited solely to ministerial functions, the rules of which are well-defined in regulation, and which results in less intensive oversight on the behalf of the Coast Guard. Under this delegation program, no additional resources are required. This should ensure that long-term oversight costs will remain virtually the same regardless of the number of delegates, because oversight costs are keyed to the number of measurement transactions, not the number of delegates.

(4) *Threat to national security by delegation to foreign organizations.* Several comments express concern that delegation to a foreign-based organization could lead to a transfer of advanced maritime and military technology and information on our vessels, especially during time of war or political unrest. Considering that U.S. vessels are designed, built, and outfitted in many parts of the world, that some are classed by ABS-employed foreign nationals, that equipment and propulsion systems are advertised and marketed worldwide, and that vessel characteristics and construction techniques are discussed in global publications, there is already a wide dissemination of maritime technology and information. Dissemination of information on U.S. combatant vessels would have national security implications, but measurement of those vessels is not subject to delegation. Nevertheless, should a national security problem arise in relation to a delegate, the Coast Guard could terminate the delegation immediately.

(5) *Conflict of interest.* Several comments concern paragraph (d)(3), which, as proposed, would prohibit an organization from measuring and certifying a vessel if one of its employees or contractors acted as tonnage consultant on that vessel. They note that such a provision would force vessel owners unnecessarily to use more than one organization. One comment points out that the proposal is too broad and contends that the real conflict of interest concern arises when the same person, rather than organization, acts as both consultant and tonnage measurer. As this is the approach that was orginally intended, and as it conforms to that observed under the Memorandum of Agreement with ABS, paragraph (d)(3) is amended accordingly. The new provision prohibits an organization "from using an employee or contractor to measure and certify the tonnage of a vessel if that individual is acting or has acted as tonnage consultant for the same vessel". Under this amendment, the organization may use any of its other employees or contractors who had not acted as consultant on that vessel.

Several comments object to any prohibition whatsoever on the individual consultant/tonnage measurer. They state that prohibitions would reduce the number of much needed consultants and restrict the use of naval architects and former Coast Guard admeasurers, many of whom have years of much-needed experience in interpreting the tonnage measurement regulations. Though there is no intent on the part of the Coast Guard to limit the work of a tonnage consultant, the Coast Guard recognizes that, if it is going to delegate at all, it must take measures to avoid conflicts of interest. Otherwise, any delegation would be reasonably suspect. Therefore, the prohibition provision is retained.

(6) *Reciprocity.* ABS, in its comments, states that the regulations should require that the parent nation of a qualified organization provide for a similar delegation to ABS of that nation's authority to measure and certify its own vessels. If the nation fails to act, U.S. subsidiaries of that nation's organizations should not be eligible for delegation. Two other commenters, who support this rulemaking, also support the principal of reciprocity. The Coast Guard did not propose reciprocity in this rulemaking because it believes that it is not directly related to the criteria to establish qualifications of organizations that measure vessels. Because reciprocity was not identified as an issue in the Notice of Proposed Rulemaking, and received limited comment, the Coast Guard is not including a requirement for reciprocity in this final rule. The Coast Guard, nevertheless, will monitor this issue to determine whether future rulemaking may be warranted.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

This rule is administrative in nature and establishes the criteria for the transfer of services from the Coast Guard to qualified private organizations without substantive change. Traditionally, the formal measurement functions being delegated were provided free of charge by the Coast Guard.

Public Law 99–509 now authorizes the Coast Guard to charge a fee for these services based upon actual costs to the Government or, if it chooses, to delegate to the private sector the authority to provide these services. Instead of handling these services itself and charging a fee, the Coast Guard has determined that it is in the best interests of the Government and the public to delegate this function to the private sector.

Based on fees charged by the current delegate, a typical cost for formal measurement and certification is approximately $700 for a vessel measuring less than 1,000 gross tons and $7,500 for a vessel measuring 50,000 gross tons. Tonnage measurement is usually a one-time expenditure and its costs represent a small proportion of the value of a vessel. These fees may be affected by further delegation.

The cost of preparing an application for delegation will vary from applicant to applicant but, in general, the information needed to complete an application is readily available within the applicant organization. The costs, therefore, for application preparation and information gathering are estimated to be less than $2,600 per application.

Regulatory Flexibility Act

This rule provides for the delegation of tonnage measurement by publishing qualifications that organizations must meet in order to be delegated this authority. No new application costs, burdens, or procedures will be imposed upon vessel owners. Organizations requesting measurement authority will be required to submit basic information to the Coast Guard relating to their capability to perform measurement services for the marine industry. Because eligible organizations have to provide worldwide services, they tend to be large corporations.

Because the impact of this rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section number and the corresponding OMB approval number is § 69.01–20—OMB Control No. 2115–0567.

Federalism Implications

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concludes that, under the categorical exclusion provision in section 2.B.2.1. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environment Impact Statement, or a Finding of No Significant Impact for this rule is not required. This rule is an administrative and procedural regulation which clearly has no environmental impacts.

List of Subjects in 46 CFR Part 69

Measurement standards, Vessels.

For the reasons set forth in the preamble, the Coast Guard is amending 46 CFR Part 69 as follows:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation to Part 69 continues to read as follows:

Authority: 46 U.S.C. 14102, 14103; 49 CFR 1.46; § 69.01–21 issued under 44 U.S.C. 3507, 49 CFR 1.45.

2. Section 69.01–20 is added to read as follows:

§ 69.01–20 Delegation of authority.

(a) Under 46 U.S.C. 14103 and 49 CFR 1.46, the Coast Guard is authorized to delegate to a "qualified person" the authority to measure vessels and to issue appropriate certificates of measurement for U.S. vessels that are required or eligible to be documented as vessels of the United States.

(b) Authority to perform formal tonnage measurement and certification of U.S. commercial, recreational, and public non-combatant vessels may be delegated to an organization that—

(1) Is a full member of the International Association of Classification Societies (IACS);

(2) Is incorporated under the laws of the United States, a State of the United States, or the District of Columbia;

(3) Is capable of providing all formal U.S. tonnage measurement services for vessels domestically and internationally;

(4) Maintains a tonnage measurement staff that has practical experience in measuring U.S. vessels under Coast Guard regulations and under the International Convention on Tonnage Measurement of Ships, 1969; and

(5) Enters into a Memorandum of Agreement, as described in paragraph (d) of this section.

(c) Applications for delegation of authority under this section must be forwarded to the Commandant, U.S. Coast Guard (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and include the following information on the organization:

(1) Its name and address.

(2) Its organizational rules and structure.

(3) The location of its offices that are available to provide formal measurement services under Coast Guard regulations or under the International Convention on Tonnage Measurement of Ships, 1969.

(4) The name, qualifications, experience, and job title of each full-time or part-time employee or independent contractor specifically designated by the organization to provide formal measurement services under Coast Guard regulations or under the International Convention on Tonnage Measurement of Ships, 1969.

(5) Its tonnage measurement training procedures.

(d) If, after reviewing the application, the Coast Guard determines that the organization is qualified to measure and certify U.S. vessels on behalf of the Coast Guard, the organization must enter into a Memorandum of Agreement with the Coast Guard which—

(1) Defines the procedures for administering and implementing the tonnage measurement and certification processes, including the roles and responsibilities of each party;

(2) Outlines the Coast Guard's oversight role;

(3) Prohibits the organization from using an employee or contractor of the organization to measure and certify the tonnage of a vessel if that employee or contractor is acting or has acted as a tonnage consultant for that same vessel; and

(4) Requires the organization to—

(i) Accept all requests to perform delegated services without discrimination and without regard to the vessel's location, unless prohibited from doing so under the laws of the jurisdiction in which the vessel is located or of the United States;

(ii) Physically inspect each vessel before issuing a tonnage certificate;

(iii) Provide the Coast Guard with current schedules of fees and related charges;

(iv) Maintain a tonnage measurement file for each U.S. vessel that the organization measures and permit access to the file by any person authorized by the Commandant;

(v) Permit observer status representation by the Coast Guard at all formal discussions that may take place between the organization and other vessel tonnage measurement organizations pertaining to tonnage measurement of U.S. vessels or to the systems under which U.S. vessels are measured;

(vi) Comply with and apply all laws and regulations relating to tonnage measurement of U.S. vessels within the scope of authority delegated; and

(vii) Comply with all other provisions, if any, of the Memorandum of Agreement.

(e) Upon delegation of authority, the organization is listed in § 69.01–11(a), Measurement sources.

J.W. Kime,

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

April 29, 1988.

[FR Doc. 88–12666 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Parts 77, 96 and 195

[CGD 87–013]

Anchor Requirements for Certain Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Coast Guard regulations in Subchapters H—Passenger Vessels, I—Cargo and Miscellaneous Vessels, and U—Oceanographic Research Vessels require vessels to be fitted with anchors and chains in general agreement with the current standards established by the American Bureau of Shipping (ABS). The 1973 ABS Rules for Building and Classing Steel Vessels Less Than 200 Feet in Length included standards for anchors and chains that allowed a reduction in equipment required for ferries, supply vessels, and tugs. The Coast Guard accepted these reduced standards. In 1983, ABS revised its standards for anchors and chains and the optional reduced standards for ferries, supply vessels, and tugs were removed. The purpose of this rulemaking is to include the reduced anchor standards in 46 CFR Subchapters H, I, and U for vessels of less than 200 feet in length with equipment numbers less than 150 as defined in ABS rules.

DATES: These regulations are effective July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Penn, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–2997.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the Coast Guard published a proposed rule (53 FR 4435) concerning this amendment. Interested persons were given until April 1, 1988 to submit comments. No comments were received and the final rules are being published in the same form as proposed.

Regulatory Background

The 1973 ABS Rules for Steel Vessels Under 61 Meters (200 Feet) in length contained standards (in Section 22, Equipment) for the number and sizing of anchors and chain. Subsection 22.7 relaxed these standards for certain vessels under 61 meters (200 feet) in length, including ferries, tugs, and supply vessels having an equipment number, based on the vessel's dimensions, of less than 150. The Coast Guard adopted these standards, including the reduced standards. In 1975 and 1978, ABS adopted the reduced standards in Rules for Aluminum and Reinforced Plastic Hulled Vessels and they were also accepted by the Coast Guard.

In 1983, a revised edition of ABS Rules for Building and Classing Steel Vessels Less Than 61 Meters (200 Feet) in Length was published. The revised rules did not contain the reduced standards. However, full compliance with the revised standards was made optional for vessels which do not require equipment classification. The current ABS rules for aluminum and reinforced plastic hulled vessels continue to allow the reduced standards.

In practice, both ABS and the Coast Guard continue to require anchors and accept those meeting the reduced standards in the 1973 rules. The purpose of this rulemaking is to include the reduced standards for anchors and chains in Title 46, CFR. The rules also incorporate the reduced standards in the 1975 and 1978 ABS rules that apply to aluminum and reinforces plastic hulled vessels.

Appropriate changes to regulations for anchors in Subchapters D—Tank Vessels, I–A, Mobile Offshore Drilling Units, and proposed Subchapter L—Offshore Supply Vessels, have already been made in separate regulatory projects. No changes are necessary in Subchapters T—Small Passenger Vessels, and R—Nautical School Ships, because they were not affected by the 1983 changes in the ABS Rules.

Drafting Information

The principal persons involved in drafting this Final rule are Mr. Allen W. Penn, Project Manager, and Mr. William R. Register, Project Counsel, Office of Chief Counsel.

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 Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the regulations has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulations simply continue in effect relaxed anchor equipment standards which have been applied since 1973. There is no economic impact on existing vessels because the regulations provide for acceptance of current arrangements and equipment on these vessels. There is no significant impact on new vessels since the practice is to equip vessels to meet the relaxed standards and thus minimize costs where compliance with more comprehensive standards is unnecessary.

Regulatory Flexibility Act

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.

Paperwork Reduction Act

The regulations do not contain any information collection or record keeping requirements.

Environmental assessment

The Coast Guard has considered the environmental impact of the regulations and determined that the impact will be minimal.

Federalism Assessment

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

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 195

Marine safety, Navigation (water), Oceanographic vessels.

In accordance with the foregoing, Title 46 of the Code of Federal Regulations is amended as follows:

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

1. The authority citation for Part 77 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

2. By adding new paragraphs (b) and (c) to § 77.07–05 to read as follows:

* * * * *

§ 77.07–5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

3. The authority citation for Part 96 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

4. By adding new paragraphs (b), (c) and (d) to § 96.07–05 to read as follows:

* * * * *

§ 96.07–5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Tugs, under 200 feet (61 meters) in length, shall have at least one anchor of one-half the tabular weight listed in the applicable standards.

(d) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

5. The authority citation for Part 195 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

6. By adding new paragraphs (b) and (c) to § 195.07–05 to read as follows:

* * * * *

§ 195.07–5 Ocean, coastwise, or Great Lakes service.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, the following requirements and alternatives also apply:

(1) The American Bureau of Shipping rules relating to anchor equipment are mandatory, not a guide.

(2) Vessels under 200 feet (61 meters) in length and with an American Bureau of Shipping equipment number of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard, or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard provided both anchors are in a position that allows for ready use at all times and the windlass is capable of heaving in either anchor.

(c) Standards of other recognized classification societies may be used, in lieu of those established by the American Bureau of Shipping, upon approval by the Commandant.

Dated: May 10, 1988.

P.C. Lauridsen,

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

[FR Doc. 88–12665 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–231; RM–5705]

Radio Broadcasting Services; La Salle, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257B1 for Channel 257A at La Salle, Illinois, and modifies the license for Station WAJK–FM at the request of the licensee, La Salle County Broadcasting, Inc., to provide for a first wide coverage area station. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–231, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Illinois by

adding Channel 257B1 at La Salle and removing Channel 257A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12674 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-355; RM-5860]

Radio Broadcasting Services; Macomb, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274B1 for Channel 276A at Macomb, Illinois and modifies the license for Station WJEQ(FM) at the request of the licensee, McDonough Broadcasting, Inc., to provide for a first wide coverage area station. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-355, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended for Illinois by adding Channel 274B1 and removing Channel 276A at Macomb.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12677 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-298; RM-5754]

Radio Broadcasting Services; Garden City, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275A to Garden City, Indiana, as that community's first local FM service, in response to a petition filed by Martin L. Hensley. With this action, the proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications on Channel 275A at Garden City, Indiana, will open on July 12, 1988, and close on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-298, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding Garden City, Channel 275A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12673 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-379; RM-5870]

Radio Broadcasting Services; Crystal Falls, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 264C1 for Channel 264C at Crystal Falls, Michigan, in response to a petition filed by Munising Radio, Inc. Petitioner filed comments in response to the *Notice*. No other comments were received. There is a site restriction approximately 1 kilometer southwest of the community. The coordinates used for this allotment are 46-04-58 and 88-20-41. Concurrence of the Canadian government has been obtained for the allotment of Channel 264C1 at Crystal Falls. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988; The window period for filing applications will open on July 12, 1988, and close on August 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-379, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 264C and adding Channel 264C1 at Crystal Falls.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12672 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-335; RM-5634 and 5897]

Radio Broadcasting Services; Steelville and Hermann, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 227C2 for Channel 244A at Steelville, Missouri, in response to a petition filed by Twenty-One Sound Communications, Inc. In accordance with § 1.420(g) of the Commission's Rules, we have also authorized the modification of the license for Station KNSX-FM, Steelville, to specify operation on Channel 227C2 in lieu of Channel 244A, since there were no other expressions of interest for the channel. Channel 227C2 is being allocated to Steelville at the current site of Station KNSX-FM. The *Notice* also requested comments on petition filed by Kenneth W. Kuenzie requesting the allotment of FM Channel 227A to Hermann. In response to the *Notice*, Kenneth W. Kuenzie filed comments withdrawing his interest in the proposal for Hermann. No supporting comments were received for the allotment of a channel at Hermann. With this action, this proceeding is terminated.

DATE: Effective July 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-335, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 244A and adding Channel 227C2 at Steelville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12671 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-587; RM-6111]

Radio Broadcasting Services; Byng, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don Carmichael, allots Channel 261C2 to Byng, Oklahoma, as the community's first local FM service. Channel 261C2 can be allotted to Byng in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to Station KTCS-FM, Fort Smith, Arkansas. The coordinates for this allotment are North Latitude 34-52-13 and West Longitude 96-43-28. With this action, this proceeding is terminated.

DATES: Effective July 11, 1988. The window period for filing applications will open on July 12, 1988, and close on August 11, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-587, adopted April 25, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding the following entry, Byng, Channel 261C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12678 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Federal Acquisition Regulation Supplement; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: Adoption of interim rule as final rule, and, interim rule with request for comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved final revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180. These statutes (a) establish a goal for DoD of awarding 5 percent of contract dollars to Small Disadvantaged Business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs) during fiscal years 1987-1989, provided the contract price does not exceed fair market cost by more than 10 percent, and (b) require DoD to issue regulations addressing such areas as ensuring that current levels of awards under Sections 8(a) and 15(a) of the Small Business Act are maintained; increasing subcontract awards to SDBs, HBCUs and MIs; and requiring SDBs, HBCUs and MIs to maintain their status, as such, at time of contract award.

As a result of comments received following publication of an interim rule in the **Federal Register** on February 19, 1988 (53 FR 5114), changes have been made to the interim coverage as indicated below. The primary areas of

change concern application of the evaluation preference procedure; subcontracting plans and goals; eligibility of SDBs for award; presumption of SDB status; protest procedures; and HBCU/MI definition and certification procedures.

DATES: *Effective Dates:* The final rule is effective July 15, 1988. The final rule is effective for all solicitations issued on or after July 15, 1988. The interim rule (as identified in amendatory item numbers 26, 27, and 41 below; amending DFARS 219.7000, 219.7002, and 252.219–7008) is effective June 6, 1988. The interim rule is effective for all solicitations issued on or after June 6, 1988; pending solicitations shall be amended if the date for bid opening or date set for receipt of proposals is after June 6, 1988, unless the Chief of the Contracting Office determines that it is in the best interests of the Government not to amend the solicitation.

Comment Date: Comments are solicited only with respect to the changes made by the interim rule. Comments must be received on or before July 6, 1988 to ensure their consideration in formulating a final rule. Please cite DAR Case 87–33 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062; telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1207 of Pub. L. 99–661 established an objective that five percent of total combined DoD obligations (i.e., procurement; research, development, test and evaluation; construction; and operation and maintenance) for contracts and subcontracts awarded during FY 1987 through FY 1989 be entered into with SDB concerns, HBCUs, and MIs. To facilitate attainment of that goal, the statute permits DoD to use less than full and open competitive procedures, provided contract prices do not exceed fair market price by more than 10 percent.

As a partial implementation of Section 1207, DoD issued an interim rule and request for comment on May 4, 1987 (52 FR 16263) under DAR Case 87–33. The scope of that rule addressed procedures to achieve the goal as it pertains to SDBs; other aspects of Section 1207 concerning HBCUs and MIs were to be addressed in subsequent issuances.

Over 600 public comments were received in response to that rulemaking. While those comments were being reviewed and rule changes drafted, Section 806 of Pub. L. 100–180 was enacted. Section 806 established procedures and guidelines which required significant revisions to the rule as published on May 4, 1987. Accordingly, on February 19, 1988, the DAR Council published a second comprehensive interim rule and request for comment (53 FR 5114) implementing Section 806 of Pub. L. 100–180, incorporating revisions to the DFARS made as a result of comments received, and establishing new procedures for contracting with HBCUs and MIs. Because of the substantive nature of the revisions, a second opportunity for public comment was afforded pursuant to 41 U.S.C. 418b. Additionally, at the time of publication, an Initial Regulatory Flexibility Analysis was prepared and forwarded to the Chief Counsel for Advocacy of the U.S. Small Business Administration and made available for public comment pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604. That analysis incorporated public comments received as a result of the May 4, 1987 rulemaking.

Over 80 written comments were received in response to the interim rule published on February 19, 1988. These comments were reviewed in detail and given full consideration in preparation of a final rule and a Final Regulatory Flexibility Analysis.

As a result of comments received on the interim rule, and in keeping with the language in section 806 that current levels in the number and dollar value of contracts awarded under section 15(a) of the Small Business Act be maintained, the Under Secretary of Defense (Acquisition) has decided that the 10% evaluation preference should not be applied to total small business set-asides. Accordingly, Subpart 219.70 has been revised, and the clause at 252.219–7008 has been removed, on an interim basis, to eliminate the application of the evaluation preference to total small business set-asides. Comments are invited.

Other major revisions to the interim rule issued February 19, 1988 are as indicated below (with a parenthetical reference to revised coverage); the coverage in the final rule has been revised to:

- Reflect the country of origin of persons within designated disadvantaged groups, consistent with applicable U.S. Small Business Administration (SBA) Regulations (219.301–70(b)(2); 252.219–7005(b)).
- Establish a presumption of both social and economic disadvantage for persons within certain designated groups, consistent with Section 8(d) of the Small Business Act (219.301–70(b)(2)).
- Require the contracting officer to challenge the eligibility, for further determination by SBA, of a concern whose ownership is not within certain disadvantaged groups (designated by SBA pursuant to Section 8(d) of the Small Business Act) if the concern is also neither (1) currently enrolled in the 8(a) program, nor (2) determined to be both socially and economically disadvantaged by SBA within the six-month period immediately preceding submission of the concern's offer (219.301–70(b)(3), 252.219–7005 (b) and (c)).
- Modify procedures governing protests to the SBA of the disadvantaged status of offerors, to be consistent with procedures adopted by the SBA for this purpose (219.302(S–70)).
- Amend the definition of eligible MIs, to reflect the amendment made by Section 806(d)(2) of Pub. L. 100–180, and to ensure consistency with regulations promulgated by the U.S. Department of Education (226.7002, 252.226–7001).
- Require a self-certification of eligibility from HBCUs and MIs (226.7006, 226.7009, 235.016, 252.226–7001).
- Exempt subcontracting plans for commercial products submitted pursuant to FAR 52.219–9(g) from requirements to establish a composit goal of SDBs/HBCUs/MIs and from incentive provisions contained in the coverage (219.704, 219.705–4, 252.219–7000, 252.219–7009).
- Clarify the establishment of a composite goal for SDBs, HBCUs and MIs (219.704(a)(S–70)).
- Apply the subcontracting limitations of Section 15(o)(1) of the Small Business Act to HBCUs and MIs, in accordance with Section 806(b)(12) of Pub. L. 100–180 (226.7004(a), 252.226–7000).
- Clarify that the composite goal for SDBs, HBCUs and MIs relates to subcontracting dollars (not total contract price) and amend the formula for calculation of incentive fee accordingly (219.705–4, 252.219–7009).

B. Regulatory Flexibility Act

As noted above, an Initial Regulatory Flexibility Analysis in connection with this rulemaking was previously

furnished to the Chief Counsel for Advocacy of the U.S. Small Business Administration on February 17, 1988, in accordance with 5 U.S.C. 603. Additionally, a Final Regulatory Flexibility Analysis has been prepared with respect to regulatory coverage made final by this issuance. That Analysis will be supplemented to incorporate public comments received with respect to the interim rule and request for comment contained in this Notice, and will be furnished upon completion to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Final Regulatory Flexibility Analysis upon its completion should contact Mr. Charles W. Lloyd, Executive Secretary, DAR Council, at the address listed above.

C. Paperwork Reduction Act

Neither the final nor interim rules impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and OMB approval of the final rule is not required pursuant to 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 205, 206, 219, 226, 235, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, without change.

PART 205—PUBLICIZING CONTRACT ACTIONS

3. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following change:

205.207 [Amended]

4. Section 205.207(d)(S–73) is amended by removing in the parenthetical phrase in the third sentence of the statement the words ", e.g., 100% small business set-aside with evaluation preference for SDBs, etc.".

PART 206—COMPETITION REQUIREMENTS

5. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final with the following changes:

206.270 [Amended]

6. Section 206.270 is amended by substituting at the end of the first sentence after the acronym "MIs," the words "pursuant to the procedures in 226.7004 and 235.016(a)(S–70), to compete." in lieu of the words "as defined under the procedures in 226.7004 and 236.016–70, to compete.".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final (except as specifically noted below), with the following changes:

219.102–70 [Amended]

8. Section 219.102–70 is amended by substituting between the word "exceeded" and the word "during" the words "the applicable limitation in FAR 19.102" in lieu of the words "$7 million".

219.202–5 [Amended]

9. Section 219.202–5 is amended by adding at the end of paragraph (b)(1), between the reference "(219.502–72)" and the comma the words "or an HBCU/MI set-aside (226.7004)"; by adding in the second sentence of paragraph (b) between the reference "(219.502–72)" and the comma the words "or an HBCU/MI set-aside under 226.7004"; by changing the title of the report in paragraph (b) to read "Premium Paid on Small Disadvantaged Business (SDB) and Historically Black Colleges and Universities and Minority Institutions (HBCUs/MIs) Awards $25,000, and Over." in lieu of the title "Premium Paid on Small Disadvantaged Business (SDB) Awards Over $25,000."; by substituting in item 2 of the report in paragraph (b) the words "Identify the type of SDB or HBCU/MI preference" in lieu of the words "Type of SDB preference"; by removing in item 3.b. of the report in paragraph (b) the phrase "— unrestricted"; by removing item 3.c. of the report in paragraph (b) and redesignating the existing item 3.d. to 3.c.; by adding to item 3 of the report in paragraph (b) an item reading "d. Total or partial HBCU/MI set-aside" and a line opposite the added item 3.d. in the column under "(check one)"; and by adding in the first sentence of paragraph (c) between the word "report" and the word "shall" the words in parentheses "(RCS No. ACQ(AR)1778)".

10. Section 219.301–70 is amended by revising paragraph (b) to read as follows:

219.301–70 Eligibility for award.

* * * * *

(b)(1) Except as provided in paragraph (b)(3) below, the contracting officer shall accept an offeror's representation and certification under the provision at 252.219–7005 that it is an SDB unless another offeror or the SBA challenges the concern's SDB status, or the contracting officer has reason to question that status.

(2) The contracting officer may presume that socially and economically disadvantaged individuals include Black Americans, (U.S. Citizens), Hispanic Americans (U.S. Citizens whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (U.S. Citizens with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan)), Subcontinent Asian (Asian Indian) Americans (U.S. Citizens with origins from India, Pakistan, Bangladesh, or Sri Lanka), and any other individual/concern currently certified for participation in the Section 8(a) program.

(3) The contracting officer may not presume and shall question the SDB status of any apparent successful offeror whose ownership is based on any category other than those in paragraph (b)(2) above, unless the offeror has represented and certified under the provision at 252.219–7005 that, within the six months preceding submission of its offer, it has been determined by the Small Business Administration to be socially and economically disadvantaged and that no circumstances have changed to vary that determination.

(4) Challenges of and questions concerning the social or economic status of an offeror shall be processed in accordance with 219.302(S–70). Challenges of and questions concerning the size of an SDB shall be processed in accordance with FAR 19.302.

11. Section 219.302 is amended by substituting in the title of paragraph (S–70) the words "the Disadvantaged Status of an Offeror" in lieu of the words "an SDB Representation"; by adding in the first sentence of paragraph (S–70)(1) a

period and the words "An offeror may protest an SDB representation" between the acronym "SDB" and the word "by"; by adding a sentence at the end of paragraph (S–70)(1) to read "The SBA may protest an SDB representation by filing a protest with its Director of the Office of Program Eligibility and notifying the contracting officer of the filing."; by changing the period to a comma at the end of the first sentence of paragraph (S–70)(2) and adding the words "or after the receipt from the contracting officer of notification of the identity of the apparently successful SDB offeror in negotiated acquisitions."; by placing a period in the last sentence of paragraph (S–70)(2) after the reference "FAR 15.1001" and removing the remainder of the sentence; by adding a sentence at the end of paragraph (S–70)(2) to read "An SBA protest is always considered timely."; by revising paragraph (S–70)(4); by substituting in the first sentence of paragraph (S–70)(5) between the acronym "SBA" and the word "will" the words "Director, Office of Program Eligibility," in lieu of the words "Regional Administrator"; by removing at the end of paragraph (S–70)(7)(i) the words "by an SBA Regional Administrator"; by revising paragraph (S–70)(7)(ii) to read "the concern whose disadvantaged status was protested"; by substituting in paragraph (S–70)(7)(iii) the words "contracting officer" in lieu of the words "SBA Associate Administrator for Minority Small Business and Capital Ownership Development"; by adding in the second sentence of paragraph (S–70)(7) between the word "Minority" and the word "Business" the word "Small"; by substituting at the end of the second sentence of paragraph (S–70)(7) the words "Director of the Office of Program Eligibility" in lieu of the words "Regional Administrator"; by substituting in the third sentence of paragraph (S–70)(7) between the word "its" and the word "on" the word "decision" in lieu of the word "ruling"; and by substituting in the last sentence of paragraph (S–70)(7) between the acronym "SBA" and the word "received" the word "decisions" in lieu of the word "rulings", to read as follows:

219.302 Protesting a small business representation.

(S–70) * * *

(4) Upon receipt of a protest concerning social or economic disadvantaged status of an SDB, the contracting officer shall withhold award and forward the protest to the Small Business Administration (SBA) Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street, N.W., Washington, D.C. 20416. Award shall not be withheld (i) when the contracting officer determines in writing that an award must be made to protect the public interest, or (ii) if the SDB certifies in accordance with 252.219–7005 that within the six months preceding submission of its offer it has been determined by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination. In the event of a protest which is not timely, the contracting officer shall notify the protestor that its protest cannot be considered. However, the contracting officer or the SBA may question the SDB status of an apparently successful offeror at any time either before or after award.

* * * * *

12. Section 219.501 is amended by adding in the first sentence of paragraph (c) between the word "for" and the word "small" the words "small or"; by revising the second sentence of paragraph (c); by adding in paragraph (c) a sentence preceding the last sentence to read "Disagreements on a small disadvantaged business set-aside shall be resolved under 219.502–72(d)."; by substituting in paragraph (d) between the word "the" and the word "and" the acronym "SADBUS" in lieu of the words "small business specialists"; by adding at the end of paragraph (g)(S–71) a sentence in parentheses to read "(But see 219.502–72(b)(2).)"; by adding after the first sentence of paragraph (g)(S–73) a sentence in parentheses to read "(But see 219.502–72(b)(3).)", to read as follows:

219.501 General.

* * * * *

(c) * * * Prior to the issuance of solicitations or contract modifications (except those that exercise an option), the SADBUS shall review any determination by a contracting officer not to set aside for SDBs acquisitions in excess of $5,000 for additional supplies and services which meet the criteria of 219.502–72(c). In addition, the SADBUS shall review acquisitions in excess of $5,000 for additional supplies and services—

(1) Which have not been set aside under FAR 19.502, or

(2) For which a small business-small purchase set-aside has been dissolved.

* * * * *

219.502–3 [Amended]

13. Section 219.502–3 is amended by adding in paragraph (S–70)(1)(ii) between the word "price" and the word "by" the words in parentheses "(determined in accordance with FAR 19.806–2)"; and by substituting at the end of the second sentence of paragraph (S–70)(2) the reference "252.219–7010" in lieu of the reference "252.219–7009".

219.502–72 [Amended]

14. Section 219.502–72 is amended by substituting in the parenthetical sentence at the end of paragraph (a)(3) the reference "19.502–2" in lieu of the reference "35.007"; by substituting in the reference at the end of paragraph (b)(2) "(S–71)" in lieu of "(71)"; by adding in paragraph (c)(1) between the word "procurement" and the word "and" the words "of similar supplies or services"; and by adding in paragraph (c)(1)(i) between the word "list" and the semicolon the words "for similar supplies or services".

15. Section 219.505–70 is added to read as follows:

219.505–70 Rejecting SDB set-asides.

The procedures in FAR 19.505 and 219.505 do not apply to SDB set-asides (see 219.502–72(d)).

219.506 [Amended]

16. Section 219.506 is amended by adding in paragraph (b) between the acronym "SADBUS" and the word "will" the words "on small business set-asides"; and by adding a sentence at the end of the section to read "Disagreements between the contracting officer and the SADBUS on SDB set-asides will be resolved in accordance with the procedures in 219.502–72(d).

219.508 [Amended]

17. Section 219.508 is amended by changing in paragraph (S–71)(1) the designation of the clause to read "252.219–7006" in lieu of "52.219–7006".

219.602–3 [Amended]

18. Section 219.602–3 is amended by changing the reference at the end of the first sentence of paragraph (b)(2) to read "219.201(S–71)(1)" in lieu of "219.201(71)(1)".

219.702–70 [Amended]

19. Section 219.702–70 is amended by substituting in the last sentence between the word "at" and the word "Incentive" the reference "252.219–7009" in lieu of the reference "252.2129–7009".

219.703 [Amended]

20. Section 219.703 is amended by substituting in the first sentence of paragraph (a) between the acronym "SBA" and the word "has" the words "Office of Hearings and Appeals" in lieu of the words "Size Appeals Board"; and

by substituting at the beginning of the second sentence of paragraph (b) (S–70) the words "A list of HBCUs is" in lieu of the words "Lists of HBCUs and MIs are".

21. Section 219.704 is amended by adding paragraph (a); and by adding in paragraph (a)(S–70) before the period at the end of the second sentence the words "in addition to anticipated use of SDB concerns", to read as follows:

219.704 Subcontracting plan requirements.

(a) Subcontracting plans for commercial items, as defined in FAR 52.219–9 and submitted pursuant to paragraph (g) of that clause, are exempt from the requirements of (a)(3) and (a)(S–70) below.

* * * * *

219.705–4 [Amended]

22. Section 219.705–4 is amended by adding in the first sentence of the introductory text between the word "percent" and the word "must" the words "of the total planned subcontracting dollars"; by adding at the end of the introductory text a sentence reading "This requirement does not apply to subcontracting plans for commercial products submitted in accordance with FAR 52.219–9(g) where an annual plan has already been approved."; and by adding a sentence at the end of paragraph (S–70) to read "But see 219.704(a)."

219.708 [Amended]

23. Section 219.708 is amended by changing in the last sentence of paragraph (c)(1) the FAR reference to read "52.219–10" in lieu of "252.219–10".

219.7000 [Amended]

24. Section 219.7000 is amended by changing in the first sentence of paragraph (a) the reference in parentheses to read "219.201" in lieu of "19.201".

219.7001 [Amended]

25. Section 219.7001 is amended by adding a sentence between the third and fourth sentences to read "However, SDB offerors may request that the evaluation preference not be applied (see 252.219–7007(b))."

219.7000 [Amended]

26. Section 219.7000(a) is amended, on an interim basis, by removing the word "and" at the end of paragraph (a)(5); by changing the period to a semi-colon and inserting the word "and" at the end of paragraph (a)(6); by adding a new paragraph (a)(7) to read "(7) Total small business set-asides."; and by removing in the first sentence of paragraph (b) the phrase "(1) through (6)".

219.7002 [Amended]

27. Section 219.7002 is amended, on the interim basis, by removing paragraphs (a) and (b) and inserting in lieu thereof the following text: "When the evaluation preference as described in 219.7000 is used, the contracting officer shall insert the clause at 252.219–7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns.".

PART 226—OTHER SOCIOECONOMIC PROGRAMS

28. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following changes:

226.7002 [Amended]

29. Section 226.7002 is amended by substituting in the first sentence of the definition "Minority Institutions (MIs)" following the word "institutions" the words "meeting the requirements prescribed by the Secretary of Education at 34 CFR 607.2." in lieu of the words "determined by the Secretary of Education to meet the requirements of 34 CFR Part 637."

226.7003 [Amended]

30. Section 226.7003 is amended by adding a sentence in parentheses before the last sentence to read "(For reporting requirements see 219.202–5.)".

226.7004 [Amended]

31. Section 226.7004 is amended by adding at the end of paragraph (a)(1) between the acronyms HBCUs/MIs and the comma the words "who can comply with the limitations on subcontracting in the clause at 252.226–7000(d); and by adding at the end of paragraph (a)(3) between the word "sources" and the period the words "for R&D acquisitions".

32. Section 226.7006 is amended by designating the existing paragraph as paragraph (a); by substituting at the beginning of the second sentence of the designated paragraph (a) the words "A list of HBCUs is" in lieu of the words "Lists of HBCUs and MIs are"; and by adding paragraph (b) to read as follows:

226.7006 Eligibility of offeror.

* * * * *

(b) The contracting officer shall accept an offeror's certification under the provision at 252.226–7001 that it is an HBCU/MI unless another offeror challenges the offeror's status or the contracting officer has reason to question that status.

33. Section 226.7009 is revised to read as follows:

226.7009 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for total HBCU/MI set asides (see 226.7004):

(a) 252.226–7000, Notice of Total Set-Aside for Historically Black Colleges and Universities/Minority Institutions.

(b) 252.226–7001, Historically Black Colleges and Universities/Minority Insitutions Certification.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

34. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final, with the following change:

235.016 [Amended]

35. Section 235.016 is amended by adding at the end of paragraph (a)(S–70) a sentence to read "Prior to award, the contracting officer shall obtain a certification from the successful offeror as to its status as an HBCU/MI (see 252.226–7001)."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7000 [Amended]

36. The interim rule published on February 19, 1988 (53 FR 5114) is adopted as final (except as specifically noted below), with the following changes:

37. Section 251.219–7000 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; by substituting in the first sentence of paragraph (a) of the clause the words "Except for plans submitted under paragraph (g) of" in lieu of the words "Wherever in"; by adding in the first sentence of paragraph (a) of the clause between the reference "FAR 52.219–9," and the word "the" the word "whenever"; by adding in the first sentence of paragraph (a) of the clause between the word "used" and the comma the words "in that FAR clause"; by substituting at the beginning of the last sentence of paragraph (a) of the clause the words "A list" in lieu of the words "Lists"; by substituting in the last sentence of paragraph (a) of the clause between the acronym "HBCUs" and the word "published" the word "is" in lieu of the words "and MIs are"; and by substituting in the last sentence of paragraph (a) of the clause between the word "and" and the word "available" the word "is" is lieu of the word "are".

38. Section 252.219–7005 is amended by changing the date of the provision to read "JUN 1988" in lieu of "FEB 1988"; and by revising paragraphs (b) and (c) of the provision to read as follows:

252.219–7005 Small disadvantaged business concern representation (DoD FAR Supplement deviation).

* * * * *

(b) *Representation.* The Offeror represents that its qualifying ownership falls within at least one of the following categories (check the applicable categories:

___ Subcontinent Asian (Asian-Indian) American (US Citizen with origins from India, Pakistan, Bangladesh, or Sri Lanka)
___ Asian-Pacific American (US Citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan)
___ Black American (US Citizen)
___ Hispanic American (US Citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal)
___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)
___ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C 637(a))
___ Other (In addition to (c)(1), offeror must complete (c)(2) below:

(c) *Certification.*

(1) The Offeror represents and certifies, as part of its offer, that it is
___, is not
___ a small disadvantaged business concern.

(2) (Complete only if item (b) above is checked "Other") The Offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) has
___, has not
___ made a determination concerning the Offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was
_____ and the Offeror certifies that it was
___, was not
___ found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

* * * * *

252.219–7006 [Amended]

39. Section 252.219–7006 is amended by adding the date "(FEB 1988)" to ALTERNATE I following the text of the clause.

252.219–7007 [Amended]

40. Section 252.219–7007 is amended by removing in the section title the parenthetical "(unrestricted)"; by removing in the title of the clause the parenthetical "(UNRESTRICTED)"; by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; and by removing at the end of paragraph (a) of the clause the parenthetical "(Date)".

252.219–7008 [Amended]

41. Section 252.219–7008 is amended, on an interim basis, by removing the text and marking the section "Reserved."

42. Section 252.219–70009 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; by revising paragraphs (b)(1) and (b)(2); and by adding paragraph (e) to read as follows:

252.219–7009 Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions.

* * * * *

(b) * * *

(1) Where the SDB/HBCU/MI goal in this contract is less than five percent (5%) of the total planned subcontracting dollars and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of the total actual subcontracting dollars to SDBs/HBCUs/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the total actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and five percent (5%) of total actual subcontracting dollars.

(2) Where the SDB/HBCU/MI goal in this contract is equal to or greater than five percent (5%) of total planned subcontracting dollars and the Contractor both exceeds its SDB/HBCU/MI goal and awards more than five percent (5%) of total actual subcontracting dollars to SDBs/HBCUs/MIs in performing this contract, the Contractor will receive ten percent (10%) of the difference between the total actual dollar amount of subcontracts awarded to SDBs/HBCUs/MIs and the SDB/HBCU/MI goal amount.

* * * * *

(e) This clause is not effective if this contract is awarded based on a subcontracting plan submitted and approved under FAR 52.219–9, paragraph (g).

* * * * *

252.219–7010 [Amended]

43. Section 252.219–7010 is amended by changing the date of the clause to read "JUN 1988" in lieu of "FEB 1988"; and by substituting in paragraph (c)(2) the words "twenty-five thousand dollars ($25,000)" in lieu of the words "ten thousand dollars ($10,000)".

44. Section 252.226–7000 is amended by changing the date of the clause to read "JUN 1988" in lieu to "FEB 1988"; and by revising paragraph (d) of the clause to read as follows:

252.226–7000 Notice of total set-aside for Historically Black Colleges and Universities and Minority Institutions.

* * * * *

(d) *Agreement.* An HBCU/MI submitting an offer in its own name agrees that at least fifty percent (50%) of the cost of contract performance incurred for personnel shall be expended for employees of the HBCU/MI.

(End of clause)

45. Section 252.226–7001 is added to read as follows:

252.226–7001 Historically Black Colleges and Universities/Minority Institutions Certification.

As prescribed in 226.7009, insert the following clause:

Historically Black Colleges and Universities/Minority Institutions Certification (JUN 1988)

(a) *Definitions.*

(1) "Historically Black Colleges and Universities (HBCUs)" means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2.

(2) "Minority Institutions (MIs)" means institutions meeting the requirements prescribed by the Secretary of Education at 34 CFR Section 607.2. The term also includes any nonprofit research institution that was an integral part of an Historically Black College or University before November 14, 1986.

(b) *Certification.* The Offeror represents and certifies, as part of its offer, that it is ☐ a Historically Black College or University ☐ a Minority Institution as defined in paragraph (a) above (check applicable box).

Notification. The Offeror agrees to notify the Contracting Officer before award of any changes in its status as a Historically Black College or University or a Minority Institution.

(End of clause)

[FR Doc. 88–12622 Filed 6–3–88; 8:45 am]
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48 CFR Parts 209 and 252

Federal Acquisition Regulation Supplement; Intermediate-Range Nuclear Forces (INF) Treaty

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved an amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit the denial of contract or subcontract awards in excess of $25,000 to Defense contractors

subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty solely or in part because of the presence of Soviet inspectors at the defense contractor's facility unless that decision is reviewed by the Senior Procurement Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition.

DATE: June 3, 1988. The interim rule is effective for contracts resulting from solicitations issued on or after June 3, 1988. Comments received by July 2, 1988 in response to this Notice will be considered in formulating the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense has directed that contractors or subcontractors who are subject to on-site inspection by the Soviets in accordance with the terms of the Intermediate-Range Nuclear Forces (INF) Treaty, must be treated fairly and equitably in the award of contracts or subcontracts.

B. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because only a very small number of companies will be affected. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

C. Paperwork Reduction Act

The interim rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and OMB approval is not required pursuant to 5 CFR Part 1320.

D. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary to ensure that contractors impacted by the INF Treaty are treated fairly and equitably in the award of contracts and subcontracts.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 209 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.103 is amended by adding paragraph (S–71), to read as follows:

209.103 Policy.

* * * * *

(S–71) *Acquisitions from defense contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) treaty.* Contractors and subcontractors subject to on-site inspection under the INF Treaty shall not be denied contract or subcontract awards solely or in part because of the presence of Soviet inspectors at the contractors' facilities unless this decision is reviewed by the Senior Procurement Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition. Contracting officers shall insert the contract clause at 252.209–7001 in all solicitations and contracts in excess of the dollar threshold identified in FAR 13.000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.209–7001 is added to read as follows:

252.209–7001 Acquisitions from defense contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103(S–71), insert the following clause:

Acquisitions from Defense Contractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (June 1988)

(a) The Contractor shall not deny subcontract awards under this contract to defense contractors subject to on-site inspection under the INF Treaty solely or in part because of the presence of Soviet inspectors of the Defense Contractor's facility unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, with appropriate changes to identify properly the contracting parties, including this paragraph (b), in all solicitations and contracts in excess of the dollar threshold identified at Federal Acquisition Regulation (FAR) 13.000.

(End of clause.)

[FR Doc. 88–12620 Filed –88; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Patents, Data and Copyrights

AGENCY: Department of Defense (DoD).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule issuing changes to the DoD Federal Acquisition Regulation Supplement (DFARS) with respect to Patents, Data, and Copyrights, published in the **Federal Register** on April 1, 1988 (53 FR 10780). This action is necessary to make corrections to the coverage in the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department is correcting 48 CFR Parts 227 and 252 as follows:

PART 227—PATENTS, DATA, AND COPYRIGHTS

1. Subpart 227.4, consisting of sections 227.481 through 227.481–2, is correctly revised to read as follows:

227.481 Acquisition of rights in computer software.

227.481–1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the

performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government; (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software: *Provided, however,* That the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.481–2 Procedures.

(a) *Deviations.* All requests for deviations from this section 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR Section 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimun rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restriction on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account when determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software

clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings (notice, legends, identifications, etc.), concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or Improperly Marked Computer Software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates the the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.227–7013 [Corrected]

2. Section 252.227–7013 is corrected by substituting in the introductory text between the word "at" and the word "insert" the references "227.473–1(e), 227.479(d), and 227.481–2(b)(2)," in lieu of the references "227.472–3(e) and 227.479(d),".

[FR Doc. 88–12621 Filed 6–3–88; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

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

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 3 to the Fishery Management Plan for Pacific Coast Groundfish (FMP). The amendment addresses issues of habitat and vessel access and is intended to conform with changes in the Magnuson Fishery Conservation and Management Act, which were implemented in 1986.

EFFECTIVE DATE: June 3, 1988.

ADDRESSES: Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director (Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Pacific Fishery Management Council (Council), and approved by the Secretary of Commerce (Secretary) on January 4, 1982. Since then, the FMP has been amended twice with implementing regulations at 50 CFR Part 663.

A 1986 amendment (Pub. L. 99–659) to the Magnuson Act requires that any FMP amendment occurring after January 1, 1987, must (1) include readily available information regarding the significance of habitat to the fishery and assessment of the effects that changes to that habitat may have upon the fishery; and (2) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels.

Under that Magnuson Act amendment, Amendment 3 to the FMP includes (1) an expanded description of habitat to be appended to the FMP; and (2) a description of current procedures for considering temporary access by vessels denied harvest opportunity by

unsafe weather or ocean conditions for incorporation in the FMP. No regulatory changes are needed to meet the Magnuson Act requirement.

The Council submitted Amendment 3 for review by the Secretary on February 1, 1988. The Secretary filed a Notice of Availability (53 FR 3225, February 4, 1988), announcing a public comment period until March 31, 1988. One comment was received from the U.S. Coast Guard. *Comment:* The U.S. Coast Guard stated its preference for an option which would have codified the Council's current practice of considering vessel safety/access issues and consulting with the U.S. Coast Guard. *Response:* Although the Council did not choose this option, NOAA believes that the concerns of the U.S. Coast Guard are adequately addressed under current practices, codifying such procedures is not necessary and the Council will continue to seek advice of the U.S. Coast Guard on vessel safety/access considerations.

Because Amendment 3 has no implementing regulations, determinations under the Regulatory Flexibility Act and Executive Order 12291 are not required. The Paperwork Reduction Act does not apply since neither an information collection nor a recordkeeping requirement is included in the amendment.

NOAA determined that the amendment is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. None of the States commented that this amendment was inconsistent with its coastal zone management program.

An environmental assessment prepared by the Council concluded that the environmental impacts are positive and slight, and that none would significantly affect the quality of the human environment. The Assistnt Administrator for Fisheries, NOAA, has made a finding of no significant impact under the National Environmental Policy Act.

The Secretary approved Amendment 3 on May 5, 1988, and determined that it is consistent with the Magnuson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of Amendment 3 to the FMP.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: May 31, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-12564 Filed 6-3-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 108
Monday, June 6, 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 68

United States Standards for Lentils

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is proposing to revise the United States Standards for Lentils to include a U.S. No. 3 Lentil grade designation. The new grade level is being established to bring the U.S. lentil standards in line with standards used by major lentil exporters in the world market.

DATE: Comments must be submitted on or before June 21, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. Telex users may respond as follows: To: Lewis Lebakken Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, 20250 during regular business hours (7 CFR 1.27(b)).

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

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule 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 because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Proposed Action

The American Dry Pea and Lentil Association (ADPLA), which represents the majority of those persons using the United States lentil standards, has proposed that an additional grade be added to the current lentil standards. Currently, U.S. competitors in the lentil market are effectively selling on the world market, a quality lentil slightly below the current U.S. No. 2 grade. The Canadians, for example, label this quality as a Number 3 Canada Lentil. Under the U.S. standards, the same quality is labeled U.S. Sample grade. In order to effectively compete in the world market, ADPLA has requested that FGIS establish a U.S. No. 3 Lentil grade. ADPLA has recommended that the maximum amount of defective lentils total, heat damaged lentils and skinned lentils be set at 5.0 percent, 1.0 percent and 10.0 percent respectively. Skinned lentils result from handling and heat-damaged lentils may occur through drying at too high of a temperature or during storage. All other limits would remain the same as the limits for U.S. No. 2 lentils.

The ADPLA requested that the change be effective by August 1, 1988, so that the grade designation can be used to market the 1988 lentil crop. Accordingly, a 15 day comment period is deemed adequate in order to have new standards, if adopted, in effect at the beginning of the crop year to facilitate the marketing of lentils.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Lentils.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CETIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

Subpart H—United States Standards for Lentils

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.607 Grades and grade requirements for dockage-free lentils, is revised and an undesignated center heading is added preceding the section, to read as follows:

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Grades, Grade Requirements, and Grade Designations

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609.)

Grade	Maximum limits of—						Minimum requirements—color
	Defective lentils			Foreign material		Skinned lentils (percent)	
	Total (percent)	Weevil damaged lentils (percent)	Heat damaged lentils (percent)	Total (percent)	Stones (percent)		
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good.
U.S. No. 2	3.5	0.8	0.5	0.5	0.2	7.0	Fair.
U.S. No. 3	5.0	0.8	1.0	0.5	0.2	10.0	Fair.

U.S. Sample Grade: U.S. Sample grade shall be lentils which—

(a) Do not meet the requirements for the grades U.S. 1, 2, or 3; or

(b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or

(c) Are materially weathered, heating or distinctly low quality.

Date: May 3, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-12496 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-EN-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 618 and 620

Organization; Personnel Administration; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed Rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), publishes for comment proposed amendments to Parts 611, 612, 618, and 620 to implement changes made necessary as a result of enactment of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233. The proposed amendments to Part 611 and 618 are conforming changes which implement the statutory amendments that eliminated the Farm Credit District boards. Other proposed amendments to Part 611 would add regulations regarding eligibility of candidates for bank and association director positions; standards for the election process; mergers of banks; stockholder reconsideration of previously approved mergers; contents of disclosure statements in connection with transfers of Federal land bank lending authorities to Federal land bank associations; other procedures and provisions for disclosure requirements relating to mergers and reorganizations. Finally, regulations are proposed for addition to Part 620 regarding disclosure requirements for candidates for Bank directors.

DATE: Written comments are due on or before July 6, 1988.

ADDRESSES: Submit comments (in triplicate) in writing to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4475,

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The 1987 Act established new authorities and requirements relating to the organization of Farm Credit System (System) institutions. The 1987 Act: (1) Requires the merger or consolidation of the Federal land banks and Federal intermediate credit banks in each district; (2) requires a stockholder vote on the merger or consolidation of Federal land bank associations and production credit associations that share substantially the same geographical territory; (3) mandates stockholder votes on a proposal to consolidate the banks for cooperatives, and on a proposal to consolidate the twelve Farm Credit districts into no less than six banks; (4) provides for the petitioning by association stockholders to reconsider association mergers completed between December 23, 1985 and January 6, 1988, or to seek a transfer of territory to an adjoining district; (5) permits the merger or consolidation of banks in a district into one bank.

The 1987 Act requires the FCA to issue regulations to implement the new or amended reorganization authorities contained in the Act. To prepare for the issuance of proposed regulations, the FCA published an Advance Notice of Proposed Rulemaking (ANPRM) on February 16, 1988, (53 FR 4416) requesting comment on the implementation of the new reorganization authorities of System institutions and on the election of individuals to the boards of directors of the newly established or authorized System institutions. The comment period closed March 1, 1988.

Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of the 37 Farm Credit banks, several individual Farm Credit banks, a number of production credit associations and Federal land bank associations, a west coast growers' cooperative, and the counsel for the Special Committee on Bank for Cooperatives Structure (established in accordance with section 413 of the 1987 Act). All of the comments were analyzed and taken into consideration in the development of the proposed regulations.

I. Election of Directors and Candidate Disclosure Statements

The FCA received comments from the FCCA and three Farm Credit banks and associations regarding the need for regulations addressing the elections of the board of directors of a consolidated bank for cooperatives and the board of directors of an Agricultural Credit Bank, created by merger of a Farm Credit Bank and a bank for cooperatives. A majority of the respondents indicated that regulations governing the nomination and elections of boards of directors were not needed.

The 1987 Act deleted Farm Credit Act of 1971, as amended (1971 Act) sections 5.1 through 5.6 which governed the nomination and election of Farm Credit District Boards in connection with the creation of a separate board for each bank. The deletion of these sections also eliminated the FCA's responsibility and authority to conduct polls for the nomination and election of individuals to district and association boards of directors. The 1987 Act provided that

policies governing the nomination and election of directors should be detailed in the bylaws of the institutions, which would be subject to the FCA's regulation. In addition, new sections 7.1 and 3.21 require the FCA to regulate the conduct of elections for the boards of Agricultural Credit Banks, formed by the merger of a Farm Credit Bank and bank for cooperatives, and elections for the board of a consolidated bank for cooperatives.

In accordance with these general and specific authorities, the FCA has proposed regulations that would establish fundamental eligibility requirements for membership on all bank and association boards based on safety and soundness considerations, and require each bank and association to adopt policies and procedures to ensure impartiality, confidentiality, and security in the election of directors.

The proposed regulation at 12 CFR 611.310 is based in part on provisions previously contained in sections 5.1 to 5.6 of the 1971 Act and would provide for a one-year period between service by any person as director and employee of any bank or association in order to maintain clear and separate accountability of the policy and management functions and require the termination of service of a bank or association director when continued service is clearly incompatible with the integrity and reputation of the institution.

The proposed regulation at 12 CFR 611.320 would incorporate the provisions of 12 CFR 612.2200 which prohibit participation in director elections by bank and association employees and would provide for equal access to bank or association property, facilities, and resources to all declared candidates, if such access is provided to one candidate. Also, the regulation would provide for distribution or mailing of candidate biographical information in a standard format.

New section 4.20 of the 1971 Act prohibits the use of signed ballots in elections for directors of System institutions. The proposed regulation at 12 CFR 611.330 would address this new prohibition by requiring bank and association policies and procedures to protect the confidentiality of stockholders' identity and votes. The proposed regulation contains an exception to this general requirement to enable institutions to identify the voting strength of a ballot or proxy when that type of voting is provided for in the bylaws or required in the Act. These records would be available for review by the FCA through its examination authorities.

Proposed regulations at 12 CFR 620.30, 620.31, 620.32 establish disclosure requirements for bank director candidates consistent with the disclosure requirements for association director candidates. To accommodate the differences between bank and association election scheduling, the proposed regulations for banks do not require these disclosures to be provided in connection with an annual meeting, as is the case for associations. The proposed regulations would require banks to adopt policies and procedures to assure that a disclosure statement is prepared by each candidate for bank director and require such statements to be mailed with the balloting materials.

II. Transfers of Lending Authorities

New section 7.6 of the 1971 Act provides for the transfer of lending authorities from a Federal land bank (or a merged bank having a Federal land bank as one of its constituents) to the Federal land bank associations in its district. This section also contains a provision which provides for the automatic transfer of direct lending authority from a Federal land bank to any association in the district created by the merger of a Federal land bank association and a production credit association.

The FCA received comments from the FCCA and seven Farm Credit banks and associations regarding the transfer of lending authorities. Six of the respondents indicated that a transfer should not be approved if the need for financial assistance was thereby increased. Several commentators expressed a concern that the flexibility for staggered or phased-in transfers should be maintained and that technical assistance agreements between the bank and associations should be allowed. A majority of respondents indicated that regulations are needed to ensure the safe and sound delivery of credit to the member-borrowers of the banks and associations involved in assignments or transfers of lending authorities.

The proposed regulations at 12 CFR 611.500 through 611.525 would establish the manner in which the statutorily required approvals of stockholders, affiliated banks, and the FCA are obtained in connection with a transfer of lending authority. The regulations specify the procedures and disclosures requirements for transfers of lending authorities that are similar to the regulations for other association disclosures requiring stockholder vote. To preserve the totality of circumstances involved in any proposed transfer, the regulations do not contain specific eligibility criteria for approval, such as minimum capital ratios. The regulations provide for an administrative review by the FCA, which would evaluate the proposed assignment or transfer from a safety and soundness standpoint. Under the regulations FCA could deny a request for cause provided that the reasons for denial are fully explained.

III. Special Reconsideration of Mergers

The FCA received comments from the FCCA and six banks and associations regarding new section 7.9 of the 1971 Act which provides for the reconsideration and possible dissolution of mergers that occurred after December 23, 1985, but before January 5, 1988. Half of the respondents stated that there was a need for regulations that protected the rights and interests of the stockholders of each association involved in any reorganization.

A majority of the respondents believed that the FCA should not approve a reorganization which resulted in associations that would be clearly nonviable or would require additional financial assistance from the System. Other commentators supported the need for regulations to ensure the safety and soundness of any institution that may result from a reorganization and that would require the institution to meet minimum capital adequacy standards. Several respondents stated that full disclosure similar to that required for association mergers, should be required in the petition process so that stockholders would have a balanced presentation of the relevant information. One respondent suggested that the regulations should require institutions to prepare financial statements that demonstrate how the association would have performed if the merger had not taken place. Another respondent believed that the association board should have the right to include its opinion on the reorganization in the disclosure materials. Several parties commented that the FCA should establish procedures that would minimize the potentially disruptive impact that multiple votes on different petitions could have on the association and its member-borrowers during this process. One respondent stated that the territorial rights of an association choosing to withdraw should be limited to those it held before the merger, whereas a second respondent believed that the regulations should be flexible on this point so that the desired restructuring could occur with only one, rather than multiple, stockholder votes. Two respondents expressed the need for

regulatory guidance on the distribution of assets and liabilities on a fair and equitable basis should an association be restructured.

The proposed regulations at 12 CFR 611.1190 through 611.1198 set forth the procedures for petitions, disclosures, and stockholder votes during the one-year reconsideration period. The regulations are not applicable to any mergers or consolidations implemented prior to December 23, 1985, or after January 5, 1988.

To minimize the disruptive effect that repeated or multiple petitions could have on the association and stockholders and ensure that a reorganization achieves the results intended by the stockholders, the regulations provide for a petition process which expands the options available to stockholders and directors. Stockholders may petition to either withdraw from the existing association or to reorganize the entire association into two or more separate associations which may or may not have territory similar to that held by predecessor associations. The regulations also authorize an association board of directors to initiate, by board resolution, a complete reorganization of an association and submit it to stockholders for approval.

The proposed regulations specify the types of disclosures that must be provided in an information statement prior to a vote on a petition or board resolution. If the reorganization involves the entire association, an affirmative vote of the majority of the association's stockholders is needed before the reorganization can occur. The disclosure requirements are similar to those for association mergers and include a plan of reorganization for any association created by withdrawal or reorganization as well as pro forma financial statements for the same. The information statement must also include a discussion of the likelihood that the associations involved would need financial assistance during their first three years of operations.

The proposed regulations provide for the verification of signatures on the petition by the association and require that the petitions or board resolutions and the accompanying disclosure materials be submitted to the FCA for approval. The FCA could deny approval of a petition or board resolution provided that the reasons for denial are fully explained.

IV. Merger and Reorganization Proposals Required by the 1987 Act

The FCA received comments from the FCCA and one Farm Credit district regarding section 412 of the 1987 Act which provides for the establishment of the Special Committee for the consolidation of Farm Credit districts. The FCA Board has addressed these regulations in a separate **Federal Register** document which contains interim rules relating to the Special Committee.

The proposed regulations at 12 CFR 611.1145 set forth requirements governing the development of proposals for the merger of certain Federal land bank associations and production credit associations and timetables for the submission of merger proposals to the affiliated banks and to the FCA. The proposed regulations clarify the meaning of "substantially the same" as used in section 411 of the 1987 Act by requiring merger proposals for the creation of agricultural credit associations to be developed in instances in which 90 percent or more of the chartered territory of a production credit association overlaps with 90 percent or more of the chartered territory of a Federal land bank association. The proposed regulations provide that the merger proposals shall be submitted to the affiliated banks no later than 60 days following the creation of the Farm Credit Bank and to the FCA no more than 30 days later. In addition, the proposed regulations specify that merger proposals must comply with the provisions of Subpart G of Part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

V. Other Changes to Current Merger Regulations.

The FCA Board adopted other proposed regulations and amendments to current regulations that implement the provisions of sections 7.0 and 7.12 of the 1971 Act which provide for the merger of banks operating under the same or different titles of the 1971 Act. The proposed amendments at 12 CFR 611.1000 and 611.1010 establish the general authority for changes to bank charters and the procedures for amending bank charters. Proposed regulations at § 611.1020 set forth the requirements for mergers and consolidations of banks and incorporate the requirements of §§ 611.1122 and 611.1123 relating to mergers of associations, that are applicable to bank mergers. Proposed regulations at § 611.1030 would provide for association representation on the board of directors of an Agricultural Credit Bank created by the consolidation of a Farm Credit Bank and a bank for cooperatives.

The proposed amendments to §§ 611.1122(g) and 611.1123(a) implement the provisions of section 7.9 of the 1971 Act, by requiring a delay in the implementation of any voluntary bank or association merger which provides the stockholders with the opportunity to reconsider their approval. Upon the filing of a reconsideration petition by 15 percent or more of the stockholders of any one bank or association that is a party to a merger, there would be a new stockholder vote on the merger.

Section 433 of the 1987 Act permits the stockholders of a Federal land bank association or production credit association whose chartered territory adjoins the territory of another district to petition the FCA to incorporate the petitioning association into the adjoining district. The FCA has decided not to promulgate regulations governing this process because the statutory provisions are clear and the FCA's existing regulations at 12 CFR 611.1124 adequately address the requirements for transfers of territory.

List of Subjects in 12 CFR Parts 611, 612, 618, and 620

Accounting, Agriculture, Archives and records, Banks, banking, Conflict of interests, Insurance, Organizations and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, Parts 611, 612, 618, and Part 620 of Chapter VI, Title 12, of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2031, 2071, 2091, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart A—[Removed and Reserved]

2. Part 611, Subpart A is removed and reserved.

3. Part 611, Subpart C, is added to read as follows:

Subpart C—Election of Directors

Sec.

611.310 Eligibility for membership on bank association boards and subsequent employment.

611.320 Impartiality in the election of bank and associated directors.

Sec.
611.330 Confidentiality in the election of bank and association directors.
611.340 Security in the election of bank and associated directors.

Subpart C—Election of Directors

§ 611.310 Eligibility for membership on bank and associated boards and subsequent employment.

(a) No person shall be eligible for membership on a bank or association board who is or has been, within one year next preceding the date the term of office begins, a salaried officer or employee of any bank or association in the System.

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud.

(c) No bank or association director shall, within one year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of any bank or association for which he or she served as a director.

§ 611.320 Impartiality in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure the elections of board members are conducted in an impartial manner.

(b) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members of a bank, association, or service organization board, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

(c) No property, facilities, or resources of any System institution shall be used by any candidate for nomination or election or any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates.

(d) No director, employee, or agent shall, for the purpose of furthering the interests of any candidates for nomination or election, furnish or make use of System records that are not made available for use by all declared candidates.

(e) No bank or association shall distribute or mail directly or at the expense of the bank or association, any campaign materials for director candidates. Banks and associations shall request biographical information from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

§ 611.330 Confidentiality in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure confidentiality in the election of board members.

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used ro identify how an individual stockholder's vote is cast. Institutions may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. Institutions may also use signed proxy statements or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope. Where the identity of the voting stockholders is necessary to determine the voting strengths of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent party.

(c) When a bank or association receives a ballot by mail or at a meeting, the vote of such stockholder shall be final. When proxy voting is permitted, a stockholder voting by proxy may revoke the proxy prior to balloting at the stockholders meeting.

(d) Ballots, proxy ballots, election records, and information about how or whether individual stockholders have voted shall be held in confidence and not be disclosed to any person except as required by the Farm Credit Administration.

§ 611.340 Security in the election of bank and association directors.

(a) Each bank and association shall adopt policies and procedures that assure the security of ballots, proxy ballots, and records in the election of board members.

(b) Bank and association procedures shall assure that ballots and proxy ballots are provided only to stockholders who are eligible to vote.

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. Ballots, proxy ballots, and election records shall be retained until the end of the term of office for the election and promptly destroyed thereafter.

(d) The validity of ballots, including proxy ballots, and vote totals for each nominee or candidate shall be verified by the banks and associations before public announcement of election results. No information about vote totals shall be released before public announcement of election results.

4. Part 611, Subpart D is amended by revising the heading and redesignating existing § 611.1020 in Subpart F as new § 611.400 in this Subpart D to read as follows:

Subpart D—Rules for Compensation of Board Members

§ 611.400 Compensation of bank board members.

* * * * *

5. Part 611, Subpart E is revised to read as follows:

Subpart E—Transfer of Authorities

Sec.
611.500 General.
611.501 Procedures.
611.505 Farm Credit Administration review.
611.510 Stockholder vote.
611.515 Information statement.
611.520 Plan of transfer.
611.525 Stockholder reconsideration.

Subpart E—Transfer of Authorities

§ 611.500 General.

(a) Each Farm Credit Bank or Agricultural Credit Bank created by the merger of a Farm Credit Bank and bank for cooperatives is authorized, in accordance with section 7.6 of the Act, to transfer certain authorities to Federal land bank associations. The regulations in this subpart set forth the procedures and voting and approval requirements applicable to such transfers.

§ 611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to transfer authorities may adopt appropriate resolutions proposing such transfer and providing for the

submission of such a proposal to their respective stockholders for a vote.

(b) The resolutions accompanied by the following information shall be submitted to the Farm Credit Administration for review and approval:

(1) Any proposed amendments to the charters of the institutions;

(2) A copy of the transfer plan as required under § 611.520 of this part;

(3) An information statement that complies with the requirements of § 611.515;

(4) The proposed bylaws of the bank and the association, as applicable; and

(5) Any additional information the boards of directors wish to submit in support of the request or that the Farm Credit Administration requests.

§ 611.505 Farm Credit Administration review.

(a) Upon receipt of the board of directors resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the bank and the association who shall notify their respective boards of directors.

(c) Upon approval of the proposed transfer of authorities by the stockholders as provided in § 611.510, the secretary of the bank and the secretary of the association shall forward to the Farm Credit Administration a certified copy of their respective stockholders' vote.

(d) Each institution shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. The transfer shall not take effect until 30 days after such notification is mailed to stockholders provided that no petition is filed with the Farm Credit Administration to reconsider the approval. The transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the institutions involved.

§ 611.510 Stockholder vote.

(a) Upon approval of a resolution by the Farm Credit Administration, the bank and the association shall call a meeting of its voting stockholders. The meeting shall be called on written notice sent after receipt of the Farm Credit Administration approval and shall notify each stockholder that the resolution has been filed and the meeting shall be held in accordance with the institutions' bylaws. The stockholders meeting shall be held within 60 days of receipt of the approval from the Farm Credit Administration.

(b) The notice of meeting to consider and act upon the directors' resolution shall be accompanied by an information statement that complies with the requirements of § 611.515.

§ 611.515 Information statement.

(a) An information statement shall be prepared for each bank and association involved which discloses certain information regarding the proposed transfer of authorities and the effect of the proposal on the bank and the association.

(b) The information statement for each institution involved shall contain the following materials as applicable to the institution:

(1) A statement either on the first page of the materials or on the notice of the stockholders meeting, in capital letters and boldface type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the plan under § 611.520 and the effect of the transaction on the institution, its stockholders, and the territority to be served.

(3) A statement enumerating the advantages and disadvantages of the proposed transfer including changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws following the transfer that differ materially from the charter or bylaws currently existing.

(5) A brief statement by the board of directors of the institution setting forth the board's opinion on the advisibility of the transfer.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the bank or the association, as applicable, for the preceding two fiscal years.

(ii) A balance sheet and income statement of the bank or the association, as applicable, showing its financial condition before the transfer and a pro forma balance sheet and income statement for the bank or association, as applicable, showing its financial condition after the transfer which meet the following conditions:

(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

(B) If the request is made within 90 days afer the end of the fiscal year, the institution's financial statements shall be as of the most recent fiscal yearend.

(C) If the request is made within 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the institution's financial statement shall be as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, describing the assets being transferred and including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the bank or the association, as applicable, during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the bank or the association if the transfer were approved.

(8) A statement as to whether the bank or the association, as applicable, would require financial assistance during the first 3 years of operation, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of the association's interest rate and fee program, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of the bank or the association.

(12) A statement of any other material fact or circumstances that a stockholder would need in order to make an informed and responsive decision, or

that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of transfer provided for in § 611.520 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a transfer under this subpart.

§ 611.520 Plan of transfer.

The transfer of authorities and assets under this subpart shall occur pursuant to a written plan. There shall be a written plan for the bank and the association which shall include the following:

(a) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the bank and the association and the impact of the transfer on the value of that equity.

(b) A provision for the distribution of assets, liabilities, and authorities to the association and a description of the basis upon which the distribution is to be made.

(c) A description of how the association would obtain loan funds after the transfer.

(d) A statement on how the expenses connected with the transfer are to be borne by the affected parties.

(e) A statement of any conditions which must be satisfied prior to the effective date of the transfer, including but not limited to approval by stockholders and approval by the Farm Credit Administration.

(f) A statement that prior to the effective date of the transfer the board of directors of the bank or the association may rescind its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(1) The information disclosed to stockholders contained material errors or omissions;

(2) Material misrepresentations were made to stockholders regarding the impact of the transfer;

(3) Fraudulent activities were used to obtain the stockholders' approval; or,

(4) An event occurred between the time of the vote and the transfer that would have a significant adverse impact on the future viability of the association.

(g) A designation of those persons who have authority to carry out the plan of transfer, including the authority to execute any documents necessary to perfect title, on behalf of the bank and the association.

§ 611.525 Stockholder reconsideration.

(a) Stockholders have the right to reconsider the approval of the transfer provided that a petition signed by 15 percent of the stockholders of either institution involved in the transfer is filed with the Farm Credit Administration within 30 days of the date of notification of the final results of the stockholder vote required under § 611.505(d) and such petition is approved by the Farm Credit Administration.

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of the institution involved in the transfer votes against the transfer, the transfer is not approved.

6. Part 611, Subpart F is revised to read as follows:

Subpart F—Bank Mergers, Consolidations and Charter Amendments

Sec.

611.1000 General authority.
611.1010 Bank charter amendment procedures.
611.1020 Requirements for mergers or consolidations of banks.
611.1030 Board of directors of an Agricultural Credit Bank.
611.1040 Creation of new associations.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

§ 611.1000 General authority.

(a) An amendment to a bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of a bank as may be requested by that bank and approved by the Farm Credit Administration pursuant to § 611.1010 of this part.

(c) The Farm Credit Administration may make changes in the charter of a bank as may be necessary or expedient to implement the provisions of the Act.

§ 611.1010 Bank charter amendment procedures.

(a) A bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other bank or banks operating under Titles I and III of the Act;

(2) A transfer of territory with any other bank operating under the same title of the Act;

(3) A change to its name or location.

(b) Upon approval of an appropriate resolution by the bank board, the certified resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary approval.

(c) The Farm Credit Administration shall review the material submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of Farm Credit Administration will be preliminary only, will final approval subject to an affirmative vote of a majority of the bank's stockholders.

(d) Following receipt of the Farm Credit Administration's written preliminary approval, the proposal shall be submitted for approval by a majority vote of the associations or cooperatives that are stockholders of the requesting bank.

(e) Upon approval by the stockholders of the bank in paragraph (d) of this section, the request for final approval and issuance of the appropriate charter or amendments to charter for the banks involved shall be submitted to the Farm Credit Administration.

§ 611.1020 Requirements for mergers or consolidations of banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a bank may merge or consolidate with one or more banks operating under the same or different titles of the Act.

(b) Where two or more banks plan to merge or consolidate, the banks shall jointly submit to the Farm Credit Administration the documents itemized in §§ 611.1122(a)–(e) and 661.1123 for the merger of associations.

(c) No bank director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to any stockholder of the bank in connection with a bank merger or consolidation.

(d) Upon approval of a proposed bank merger or consolidation by the stockholders of each constituent bank, the following documents shall be

submitted from the constituent banks to the Farm Credit Administration for final approval and issuance of the appropriate charters or amendments to charter:

(1) A certified copy of the stockholders' resolution, on which the stockholders cast their votes, from each constituent bank;

(2) A certification of the stockholder vote from the corporate secretary of each bank or from an independent third party;

(3) An Agreement of Merger or Consolidation duly executed by those authorized to sign on behalf of each constituent bank.

(4) Two signed copies of the Articles of Association for the new bank entity.

§ 611.1030 Board of directors of an Agricultural Credit Bank.

Each Agricultural Credit Bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution. In electing such directors each association shall be entitled to cast a number of votes equal to the number of its voting stockholders.

§ 611.1040 Creation of new associations.

Any application for the issuance of a charter to a new production credit association or Federal land bank association shall meet the requirements of sections 2.0 or 2.10, respectively, of the Act. Any application for the issuance of a charter to an agricultural credit association which has the authorities of a production credit association and a Federal land bank association, shall meet the requirements of section 2.0 of the Act.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

7. Section 611.1122 is amended by redesignating paragraphs (e)(11) through (e)(16) as paragraphs (e)(17) through (e)(22); and adding new paragraphs (e)(11) through (e)(16); and by revising paragraph (g) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(e) * * *

(11) A management discussion and analysis of the financial condition and results of operation for the past two fiscal years for each constituent institution. Substitution of the management discussion and analysis of each institution's most recent annual report shall satisfy this requirement.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) Three-year financial projections of each constituent institution individually and combined for the continuing or new institution.

(15) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(16) A statement on the proposed institution's relationship with a independent public accountant, including any change that may occur as a result of the merger or consolidation.

* * * * *

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. Each constituent association shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. The merger shall not take effect until 30 days after such notification is mailed to stockholders provided that no petition is filed with the Farm Credit Administration to reconsider the approval. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the affiliated bank.

* * * * *

Section 611.1123 is amended by redesignating paragraph (a)(9) as paragraph (a)(11) and adding new paragraphs (a)(9) through (a)(10); and by adding paragraph (c) to read as follows:

§ 611.1123 Merger or consolidation agreements.

(a)* * *

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations and shall be approved by the institution's stockholders before incorporation into the institution's bylaws.

(10) Provision for the employee benefits plan, its subsequent continuation or adaption by the board of directors of the proposed institution following the merger or consolidation.

* * * * *

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders of one or more of the constituent institutions is filed with the Farm Credit Administration within 30 days of the date of notification of the final results of the stockholder vote required under § 611.1122(g); and such petition is approved by the Farm Credit Administration.

(1) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the merger.

(2) If a majority of stockholders of any one of the constituent institutions that is a party to the merger vote against the merger, the merger is not approved.

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

9. Section 611.1145 is added to read as follows:

§ 611.1145 Required consideration of proposals to merge production credit associations and Federal land bank associations.

(a) In accordance with section 411 of the Agricultural Credit Act of 1987 certain Federal land bank associations and production credit associations are required to develop proposals for the merger of such associations into agricultural credit associations.

(b) The merger proposals for the creation of agricultural credit associations shall be developed in those instances in which 90 percent or more of the chartered territory of a production credit association overlaps with 90 percent or more of the chartered territory of a Federal land bank association.

(c) Merger proposals shall be developed by the associations involved and submitted to the affiliated Farm Credit Bank for approval not later than 60 days following the creation of the Farm Credit Bank. Following review and approval by the affiliated Farm Credit

Bank, the associations shall submit the merger proposal to the Farm Credit Administration for approval not later than 90 days after the creation of the Farm Credit Bank.

(d) Each merger proposal shall comply with and be subject to all of the provisions of Subpart G of Part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

(e) Each merger proposal submitted to the stockholders for a vote shall have an effective date not later than 6 months after the creation of the affiliated Farm Credit Bank.

10. Subpart O is added to read as follows:

Subpart O—Special Reconsideration of Mergers

Sec.

611.1190 General.
611.1191 Petitions and resolutions.
611.1192 Requirements for petitions.
611.1193 Filing date—additional materials.
611.1194 Farm Credit Administration review.
611.1195 Stockholder vote.
611.1196 Notice of meeting.
611.1197 Information statement.
611.1198 Plan of reorganization.

Subpart O—Special Reconsideration of Mergers

§ 611.1190 General.

The regulations in this Supbart O implement the provisions of Agricultural Credit Act of 1987 relating to special reconsideration of voluntary mergers and consolidations that occurred after December 23, 1985 and prior to January 6, 1988. The regulations establish the procedures for petitions, disclosures, and stockholder votes for reconsideration of such mergers and consolidations and, if approved by stockholders, for the establishment of separate associations. The regulations shall apply to any request to reorganize an association that was created by merger or consolidation and become effective during the period, December 24, 1985 to January 5, 1988. For the purposes of this part, the term "Merger" includes a merger or consolidation. The regulations in this subpart are applicable only to those associations that were created by the merger of two or more associations after December 23, 1985 and before January 6, 1988.

§ 611.1191 Petitions and resolutions.

(a) The voting stockholders of an association who were stockholders of a predecessor association may seek to have the stockholders reconsider their association's participation in such merger by filing a petition for reconsideration with the Farm Credit Administration. The purpose of the petition shall be either:

The withdrawal of one or more predecessor associations from the existing association or

(2) The general reorganization into two or more separate associations of the existing association that was formed by the merger of three or more predecessor associations.

(b) The board of directors of an association may adopt a resolution proposing the general reorganization of the association into two or more separate associations and the submission of such proposal to the stockholders for a vote.

§ 611.1192 Requirements for petitions.

(a) In order for a petition to be acted upon, the petition must be signed by 15 percent or more of the voting stockholders of the existing association who were stockholders of each of the predecessor associations that seeks to withdraw from the existing association, or 5 percent of the total number of voting stockholders of the existing association if the petition seeks to reorganize the existing association that was formed by the merger of three or more associations.

(b) Each petition shall include the signature, printed name and the full address of each voting stockholder on the petition. If the petition proposes the withdrawal of one or more predecessor associations, the association shall certify that the signatures on the petition are the signatures of persons who were voting stockholders of such predecessor associations and that such persons continue to have their farming operations in the territory that was served by the predecessor association. If the petition proposes the reorganization of the entire association, the association shall certify that the signatures are from voting stockholders of the association.

(c) The petition shall describe the manner in which the existing association will be reorganized and the territory in which each proposed separate association would operate.

(d) The certification process shall be completed and the petition forwarded to the Farm Credit Administration within 5 working days of the date of its receipt by the association.

(e) No petition will be considered by the Farm Credit Administration if filed later than (*one year after the effective date of this section*).

§ 611.1193 Filing date—Additional materials.

(a) A certified copy of a petition or resolution, together with the additional materials provided for in this section, shall be forwarded by the association to the Farm Credit Administration. The filing date of a petition or resolution shall be the date the petition or resolution and additional materials are received by the FCA.

(b) Each petition or resolution shall be accompanied by the following materials:

(1) The proposed charter for each of the separate associations and the proposed effective date of the withdrawal or reorganization;

(2) A statement of the reasons for the proposed reorganization of the existing association or the proposed withdrawal of one or more associations from the existing association.

(3) A copy of the reorganization plan as required under § 611.1198 of this part;

(4) An information statement that complies with the requirements of § 611.1197 and that is prepared in accordance with § 611.1196.

(5) Any additional information that the petitioning stockholders or the board of directors wishes to submit in support of its request or that the Farm Credit Administration requests.

§ 611.1194 Farm Credit Administration review.

(a) Upon receipt of the petition or resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the association who shall notify the board of directors and the stockholders of such denial.

(c) Upon approval of the proposed withdrawal or reorganization by the stockholders as provided for in § 611.1195, the secretary of the association shall forward to the Farm Credit Administration a certification of the stockholder vote and a signed copy of the Articles of Association.

(d) On receipt of the certification and Articles of Association as required in paragraph (c) of this section, the Farm Credit Administration shall issue charters or amended charters as are necessary to reflect the territory to be served by the resulting associations.

§ 611.1195 Stockholder vote.

(a) Upon approval of a petition or resolution by the Farm Credit Administration, the association shall call a meeting of its voting stockholders. The meeting shall be called on written notice sent after receipt of the Farm Credit Administration's approval which

shall notify each stockholder that a petition or resolution has been filed and that a meeting will be held in accordance with the association's bylaws. The stockholders' meeting shall be scheduled for a date which is no later than 60 days after the filing date.

(b) In the case of a petition to withdraw from the existing association, ballots shall be sent to each stockholder of the existing association who would be a stockholder of one of the separate associations. The petition, as it applies to each such separate association, shall be approved if agreed to by a majority of the stockholders who would be served by the separate association.

(c) Approval of the resolution or petition to reorganize the entire association into two or more associations shall require the affirmative vote of a majority of the voting stockholders of the existing association.

§ 611.1196 Notice of meeting.

(a) The notice of meeting to consider and act upon the petition shall be accompanied by an information statement that complies with the requirements of § 611.1197 which shall be prepared by the existing association with the cooperation and assistance of the petitioning stockholders or, at their discretion, by the petitioning stockholders.

(b) The notice of meeting to consider and act upon a resolution to reorganize the association shall be accompanied by an information statement that complies with the requirements of § 611.1197 prepared by the existing association.

§ 611.1197 Information statement.

(a) An information statement shall be prepared which discloses certain information regarding the existing association and (1) each association that is proposed to be withdrawn from the existing association, or (2) each association that would result from the total reorganization of the existing association.

(b) The information statement shall contain the following materials:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIEF UPON.

(2) A description of the material provisions of the reorganization plan and the effect of the reorganization on each proposed association, their stockholders, and the territory to be served.

(3) A statement enumerating the advantages and disadvantages of the proposed reorganization including changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws of the proposed association that differ materially from the charter or bylaws of the existing association.

(5) A brief statement by the board of directors of the existing association setting forth the board's opinion on the advisability of the separation or reorganization.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the existing association for the preceding two fiscal years.

(ii) A balance sheet and income statement of the existing association showing its financial condition before the separation or reorganization and the pro forma balance sheet and income statement of each proposed association showing its financial condition which meet the following conditions:

(A) The financial statements of the existing and each proposed association (collectively, "constituent financial statements") shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the existing association, and operating results since the end of the last fiscal year through the end of the most recent quarter of the existing association.

(B) If the request is made within 90 days after the end of the fiscal year, the constituent financial statements shall be based on the most recent fiscal yearend financial statements of the existing association.

(C) If the request is made within 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, including data relating to nonperforming loans and related assets, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the types and dollar amount of any financial assistance that has been provided to the existing association during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the existing and proposed associations if the withdrawal or reorganization were approved.

(8) A statement as to whether the proposed association would require financial assistance during the first 3 years of its operation as a new association, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and to the proposed associations, and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation on each proposed association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of each proposed association as of its effective date.

(12) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of reorganization provided for in § 611.1198 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a reorganization under this subpart.

§ 611.1198 Plan of reorganization.

(a) The withdrawal of an association or other reorganization under this subpart shall occur pursuant to a written plan. There shall be a written plan of reorganization for each association to be withdrawn from an existing association or each association to be created by the complete reorganization of an existing association.

(b) A written plan shall include, but not be limited to, all of the following provisions:

(1) The proposed Articles of Association which shall contain the following:

(i) The proposed name and headquarters of the association.

(ii) The territory to be served by the association.

(iii) The purposes for which the association is being formed.

(iv) The powers and authorities to be exercised by the association in carrying out its functions under Title II of the Act.

(v) A statement which shall provide that the corporate existence of the association shall commence upon issuance of its charter by the Farm Credit Administration and shall continue until dissolved in accordance with the law.

(vi) The signatures of those persons who choose to establish the association and a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(2) As an attachment to the Articles of Association, the proposed bylaws of the new association.

(3) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the existing association who would be served by the proposed association.

(4) A statement on the formula for the retirement and transfer of stock, participation certificates and equities held by stockholders of the existing association who would become stockholders of the proposed association, and the issuance of an equivalent amount of stock, participation certificates and equities by the proposed association to its stockholders.

(5) A provision for the distribution of assets and liabilities of the existing association and a description of the basis upon which the distribution is to be made to the proposed association.

(6) A statement on how the expenses connected with the reorganization are to be borne by the affected parties.

(7) The names of the persons who will serve as the initial board of directors until the first annual meeting of stockholders following the reorganization. Any director of an existing association who is eligible to serve as a director of the proposed association may be designated as a member of the initial board of directors for a period not to exceed his or her current term, after which he or she must stand for reelection.

(8) A statement of any conditions which must be satisfied prior to the effective date of the proposed reorganization, including but not limited to approval by stockholders and issuance of a charter by the Farm Credit Administration.

(9) A statement that prior to the effective date of the reorganization, the petitioning stockholders may withdraw their petition or the board of directors of the existing association may rescind its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the reorganization;

(iii) Fraudulent activities were used to obtain the stockholders' approval; or

(iv) An event occurred between the time of the vote and the reorganization that would have a significant adverse impact on the future viability of the proposed association.

(10) A designation of those persons who have authority to carry out the plan of reorganization, including the authority to execute any documents necessary to perfect title, on behalf of the proposed association.

PART 612—PERSONNEL ADMINISTRATION

11. The authority citation for Part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart B—Standards of Conduct for Directors, Officers and Employees

§ 612.2200 [Removed and Reserved]

12. In Subpart B section 612.2200 is removed and reserved.

PART 618—GENERAL PROVISIONS

13. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 1.12, 2.5, 3.7, 4.13A, 4.29, 5.9, 5.17; 12 U.S.C. 2020, 2076, 2128, 2200, 2218, 2243, 2252.

Subparts D and E [Removed and Reserved]

14. Subparts D and E are removed and reserved.

PART 620—DISCLOSURE TO SHAREHOLDERS

15. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17; 12 U.S.C. 2252; sec. 424 of Pub. L. 100-233.

16. Subpart D is added to read as follows:

Subpart D—Bank Director Disclosure Requirements

Sec.

620.30 Disclosure statement for bank director candidates.
620.31 Contents of disclosure statements.
620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

Subpart D—Bank Director Disclosure Requirements

§ 620.30 Disclosure statement for bank director candidates.

Each bank shall adopt policies and procedures that assure that a disclosure statement is prepared by each candidate for election to the bank board. The banks shall provide a form providing for the information required and distribute or mail copies of completed and signed disclosure statements to stockholders with the election ballots. No person may be a candidate for bank director who does not make the disclosure required by this subpart.

§ 620.31 Contents of disclosure statements.

Disclosure statements shall include the following information:

(a) A statement of the institution's policies, if any, on loans to and transactions with directions of the bank.

(b) Candidate's name, residential address, business address if any, citizenship, business experience during the last 5 years including principal occupation and employment during the last 5 years, a list of any business entities on whose board of directors the candidate serves and state the principal business in which the entities are engaged, and any information pertinent to the creation of a nepotistic relationship upon election to the bank board.

(c) Transactions other than loans. The disclosure statement should describe briefly any transaction or series of transactions other than loans that occurred since the last annual meeting between the bank and the candidate, any member of the immediate family of such person, or any organization with which such person is affiliated, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be

given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(d) Loans to director candidates.

(1) To the extent applicable, state that the bank has had loans outstanding during the last full fiscal year to date to the candidate, his or her immediate family members, and any organizations with which such persons are affiliated that:

(i) Were made in the ordinary course of business;

(ii) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(2) To the extent applicable, state that no loan to a candidate, or to any organization affiliated with the candidate, or to any immediate family member who resides in the same household as the candidate or in whose loan or business operation the candidate has a material financial or legal interest, involved more than the normal risk of collectibility; provided that no such statement need be made with respect to any director who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(3) If the conditions stated in paragraphs (d) (1) and (2) of this section do not apply to the loan(s) of the candidates or organizations specified therein with respect to such loans, state:

(i) The name of the candidate to whom the loan was made or to whose relative or affiliated organization the loan was made;

(ii) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year;

(iii) The nature of the loan(s);

(iv) The amount outstanding as of the latest practicable date;

(v) The reasons the loan does not comply with the criteria contained in this section;

(vi) If the loan does not comply with this section, the rate of interest payable on the loan and the repayment terms;

(vii) If the loan does not comply with this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

(e) Involvement in certain legal proceedings. The disclosure statement should describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of the candidate:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of the candidate, or any partnership in which the candidate was a general partner at or within 2 years before the time of such filing;

(2) The candidate was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) The candidate was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limited the candidate from engaging in any type of business practice.

§ 620.32 Prohibition against incomplete, inaccurate, or misleading disclosure.

No employee or director or candidate for director of the bank shall make any disclosure to stockholders with respect to an election that is incomplete, inaccurate, or misleading. When any such person makes disclosure, that, in the judgement of the Farm Credit Administration is incomplete, inaccurate, or misleading, whether or not such disclosure is made pursuant to this subpart, the Farm Credit Administration may direct such institution or person to make such additional or corrective disclosure as is necessary to provide stockholders with full and fair disclosure.

Dated: May 31, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12698 Filed 6-3-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Part 618

General Provisions; Member Insurance

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, publishes for comment proposed amendments to Part 618, Subpart B, relating to the authority of Farm Credit System (System) institutions to sell credit-related forms of insurance to their members-borrowers. The proposed amendments implement section 422 of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) which amends section 4.29 of the Farm Credit Act of 1971 (Act), 12 U.S.C. 2218. The proposed regulation requires all System banks to approve the programs of more than two insurers for each type of insurance offered in the district, and requires the board of directors of the bank or association to select and offer at least two approved insurers for each type of insurance made available. Insurance programs offered by System banks or associations as of January 6, 1988, that do not meet the requirements of section 4.29 may only be offered until July 1, 1988. The FCA invites comment on the proposed amendments.

DATES: Comments should be received on or before July 6, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: The FCA Board proposes to amend 12 CFR 618.8030 to conform this regulation to changes made by the 1987 Act. Section 618.8030 was promulgated pursuant to section 4.29 of the Act, which authorizes the FCA to issue regulations governing the sale of specified types of insurance by System banks and associations. Section 4.29 sets forth specific criteria to be included in these regulations.

Section 422 of the 1987 Act amends section 4.29 by expanding the specific responsibilities of System institutions in providing insurance services. Specifically, it requires System institutions to provide members or

borrowers the option, without coercion, to accept or reject the insurance offered by these institutions. It also requires banks to approve the programs of more than two insurers for each type of insurance offered in the district and requires the board of directors of the bank or association to select and offer at least two of the approved programs. Section 422 requires that insurers selected to provide insurance programs must meet reasonable financial and quality of service standards and must be licensed under State law. Finally, section 422 requires that any insurance program offered by any System bank or association as of January 6, 1988, that does not meet the requirements of the amended section 4.29, is to be discontinued after July 1, 1988.

Accordingly, the FCA Board proposes to amend § 618.8030 to incorporate these requirements. Section 618.8030(a) is proposed to be amended by adding a sentence that states that members or borrowers shall have the option to accept or reject insurance without coercion. Section 618.8030(b)(2) is proposed to be amended by adding a new paragraph (i) to include the requirement that insurers selected to offer programs must meet financial and quality of service standards and must be licensed under State law for the State(s) in which the insurance is offered.

The FCA Board proposes to delete the present § 618.8030(b)(7), which requires at least two insurers to be approved for each type of insurance offered in the district and applies this requirement only to Federal intermediate credit banks. In its place, the FCA Board proposes to amend § 618.8030(b)(6) to add the requirement that each bank shall approve the programs of more than two insurers for each type of insurance offered in a district. If a program is not offered in all of the states in the district, the bank shall approve the programs of such additional insurers as are necessary to insure that the bank or each association has more than two approved programs from which to select and offer to its members and borrowers. The FCA Board also proposes to amend § 618.8030(b)(2) to state that the banks and associations are to select and offer at least two of the approved programs. Insurance programs offered by System banks and associations as of January 6, 1988, that do not meet these requirements are grandfathered only until July 1, 1988.

Finally, the existing § 618.8030(b) requires FCA to approve district policies for the sale of insurance services. The FCA Board proposes to delete this prior approval requirement to conform this regulation to amendments to the Act that establish FCA as an arms-length regulator.

List of Subjects in 12 CFR Part 618

Agriculture, Archives, and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, Part 618 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 618—GENERAL PROVISIONS

1. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 4.12, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2183, 2218, 2243, 2244, and 2252.

Subpart B—Member Insurance

2. Section 618.8030 is amended by removing paragraph (b)(7); by redesignating paragraphs (b)(8) through (b)(13) as paragraphs (b)(7) through (b)(12); and revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and (b)(6) to read as follows:

§ 618.8030 Authorization.

(a) Banks and associations may sell to any Farm Credit System member or borrower, on an optional basis, credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors. The sale of other insurance necessary to protect a member's farm or aquatic unit is permitted, but limited to hail and multiple-peril crop insurance, title insurance, and insurance necessary to protect the facilities and equipment of aquatic borrowers. A member or borrower shall have the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance.

(b) District board policies governing the provision of member insurance programs shall be established within the following general guidelines:

(1) There must be a debtor-creditor relationship with a Farm Credit System institution for a member to be eligible for authorized member insurance services. Coverage may continue after the loan has been repaid provided the member can reasonably be expected to borrow again with 2 years, and provided such continuation of insurance is not contrary to State law. For hail and multiple-peril crop insurance only, eligibility extends to landlords of tenants and tenants of landlords having a debtor-creditor relationship. The member/borrower shall have the option, without coercion from the bank or association, to accept or reject such insurance.

(2) Member insurance services may be offered only if:

(i) The insurance program has been approved by the bank or association from among eligible programs made available to it by insurers—

(A) Meeting reasonable financial and quality of service standards; and

(B) Licensed under State law to do business in the State(s) in which the insurance is offered;

(ii) The bank or association has the capacity to render authorized insurance services;

(iii) There exists the probability that the services will generate sufficient revenue to cover all costs;

(iv) Rendering the insurance service will not have an adverse effect on the credit or other operations of the bank or association; and

(v) In making insurance available through approved insurers, the board directors of the bank or association selects and offers at least two approved insurers for each type of insurance made available to the members and borrowers.

* * * * *

(6) In making insurance available through private insurers, each bank shall approve the programs of more than two insurers for each type of insurance offered in the district. If a program is not offered in all of the states in the district, the bank shall approve the programs of such additional insurers as are necessary to insure that the bank or each association is provided more than two approved programs from which to select and offer to its members and borrowers. The banks may provide comparative information relating to costs and quality of approved programs and financial conditions of approved companies.

* * * * *

Date: May 31, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-12699 Filed 6-3-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R-88-1379; FR-2421]

Computer Automation of Required Data for Certification and Recertification and Subsidy Billing Procedures for Certain Multifamily Subsidized Projects

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

ACTION: Proposed rule.

SUMMARY: This rule would require owners of certain HUD-administered multifamily subsidized projects to automate the submission of certain data to HUD. This rule would apply to multifamily projects under the following programs: Section 236 Interest Reduction and Rental Assistance Payments, Section 8 Housing Assistance Payments Program (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. This rule does not apply to the Section 8 Existing Housing Program or the Moderate Rehabilitation Program, nor does it apply where State housing finance and development agencies and other Public Housing Agencies are contract administrators.

DATES: Comments must be submitted on or before July 21, 1988.

ADDRESSES: Interested parties are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW., Room 6182, Washington, DC 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In 1983 and 1985, legislative changes were made which significantly changed and complicated tenant rent calculations. Therefore, HUD has encouraged automation of the following forms: (1) Form HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; (2) Form HUD-50059 a through e and k, Computation of Tenant Payment/Rent; (3) Form HUD-52670, Housing Owner's Certification and Application for Housing Assistance Payments; and (4) Form HUD-52670A, Schedule of Tenant Assistance Payments Due. These forms are used in the following subsidy programs: Section 8 Housing Assistance Payments Programs (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 236 Interest Reduction and Rental Assistance Payments, Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. Automation is desirable because these forms have become a burden both to project owners and managers and to HUD. Owners and managers have the time consuming task of completing the calculations and computations which are prone to error, and when errors are found, retroactive changes and subsidy adjustments are required. The burden to HUD results from insufficient HUD staff to perform the time consuming task of reviewing 100 percent of the forms to verify the accuracy and completeness of the information.

The primary goal of this regulation is to allow HUD, as contract administrator, to accumulate and check, through automation, the Form HUD-50059, and subsidy billing submissions. However, under the requirements of this proposed rule, HUD would require owners to automate the transmission of data only when doing so would be cost effective. Therefore, exceptions to this rule would be permitted where, as determined by HUD, and based on information submitted by the owner, it can be shown that it would not be cost effective to automate. As a result of the foregoing, the Department is soliciting comments from the public, regarding the appropriate criteria for waiving the data automation requirements. In the final rule, the Department will publish the criteria under which it will consider granting waivers to the data automation requirements on a case-by-base basis. Project owners would have to have the required data for compliance with this rule within 180 days of the effective date of his rule. The costs of automating the transmission of data—including the purchasing and maintaining of computer hardware or software, or both, or the cost of contracting for such services, associated with front line activities regarding certification, recertification and subsidy billing—would be considered project operating costs to be paid out of project income and would be considered project operating costs when processing rent increases.

On January 11, 1988, at 53 FR 645, the Department published a Notice advising software vendors, project owners, and other interested individuals of the availability of specifications and formats for use in automating the forms. These specifications contain the minimum standards that must be met. Individuals interested in receiving a copy of these standards may request them by writing to James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6182, Washington, DC 20410.

Other Matters

A 45-day comment period is being afforded this rule so that the Department may have the benefit of public comments. However, a longer comment period would seriously delay implementation of this system. The Department and the industry are committed to a timetable that requires the Department to begin training pre-selected Field Offices and pilot testing the vendor's software and the new system no later than June 1988. The system is scheduled to be fully operational by January 1989. The industry is aware of the intent of the proposed rule and has been working with the Department to develop the minimum standards for the software package. A Notice of the availability of the Department's standards was published in the **Federal Register** on January 11, 1988 (53 FR 645). The Department's timetable for implementation of this system is also an initiative under OMB's Productivity Improvement Program. Substantively, this rule would make no changes in the data requirements of the projects or project owners, nor would it affect the current or prospective tenants. It would merely change the way in which the data is transmitted. The forms used currently are a burden to HUD and the project owners and managers, and HUD's Inspector General would like to see the system fully operational by January 1989 in order to reduce the number of errors associated with the current system.

National Environmental Policy Act. A Finding of No significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321-4347). The Finding is available for public inspection during regular business hours in the Office of

the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

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

Regulatory Flexibility Act. As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because this rule would make no changes in the data requirements of projects or project owners but merely would change the way in which the data is transmitted to HUD. Costs associated with implementation of the automated system would be considered project operating costs. At any rate, exceptions to the rule would be permitted where automation would not be cost effective to the owner and to HUD.

Semiannual Agenda. This rule is listed as item number 913 in the Department's April 25, 1988, Semiannual Regulatory Agenda (53 FR 13854), published in accordance with Executive order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 208

Computer technology: automatic data processing, data processing, electronic data processing, Subsidies: grant programs, rent subsidies.

Accordingly, the Department proposes to add to Title 24, Chapter II, Subchapter B of the Code of Federal Regulations a new Part 208 to read as follows:

PART 208—COMPUTER AUTOMATION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATION, SUBSIDY BILLING PROCEDURES FOR CERTAIN MULTIFAMILY SUBSIDIZED PROJECTS

Sec.

208.101 Purpose.
208.104 Applicability
208.108 Requirements.
208.112 Cost.

Authority: Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 208.101 Purpose.

The purpose of this part is to require owners of HUD-administered multifamily subsidized projects under the programs listed in § 208.104 to automate the transmission of data required by HUD Forms and Worksheets for Certification and Recertification of Compliance with HUD's Tenant Eligibility and Rent Procedures, and the Computation of Tenant Payment/Rent (Form HUD-50059, 50059a through e and k) and the Monthly Subsidy Billing Forms (HUD 52670 and 52670A, Part 1), as applicable.

§ 208.104 Applicability.

(a) This part applies to those multifamily projects having subsidy contracts, either insured or non-insured, where HUD is the subsidy contract administrator, under Section 236 Interest Reduction and Rental Assistance Payments, Section 8 Housing Assistance Payments Programs (including, but not limited to, Loans for Housing for the Elderly or Handicapped (Sections 202/8)), Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements. This rule does not apply to the Section 8 Existing Housing Program or the Moderate Rehabilitation Program, nor does it apply when State housing finance and development agencies and other Public Housing Agencies are contract administrators.

(b) Exceptions to this part will be permitted where, as determined by HUD, based on information submitted by the owner, it can be shown that it would not be cost effective to automate.

§ 208.108 Requirements.

(a) Project owners of applicable projects, as listed in § 208.104, shall have made arrangements to transmit data for certification, recertification and subsidy bill procedures in an automated mode by (insert 180 days from effective date of final rule.).

(b) Automation shall consist of the submission of the automated data in accordance with the minimum standards prescribed by HUD and in lieu of the hard copy forms.

§ 208.112 Cost.

(a) The costs of automating the transmission of data—including the purchasing and maintaining of computer hardware or software, or both, or the cost of contracting for such services, associated with the front line activities regarding certification, and recertification and subsidy billing—will be considered project operating costs to be paid out of project income and will be considered as project operating costs for purposes of processing and approving requests for HUD approval of rent increases.

(b) The purchase of software by a project owner or manager shall include a contractual agreement by the software contract vendor to provide maintenance and training contracts as a part of the software package. The maintenance contract must include the vendor's commitment to make any changes in its software package resulting from changes or revisions in the legislation, regulations, or handbooks.

Date: May 26, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-12711 Filed 6-3-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-983-86]

Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: This document provides proposed regulations relating to the definition of a qualified business unit (QBU). In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the definition of a QBU. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and request for a public hearing must be delivered or mailed by August 5, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-983-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Chip Collins of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel,

Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention: CC:LR:T (INTL-983-86) (202-634-5406), 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** add new §§ 1.989 (a)-OT and 1.989 (a)-1T to Part 1 of Title 26 of the Code of Federal Regulations. Section 989 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2090). Final regulations are by this document proposed on the basis of these temporary regulations. For the text of the temporary regulations, see FR Doc. 88-12558 [T.D. 8206]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations. The regulations reserve the application of the QBU definition to partnerships, trusts, and estates. The Service is especially interested in receiving comments on the application of the QBU definition to these entities.

Non-applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that 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).

Drafting Information

The principal author of these proposed regulations is P. Ann Fisher 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 the Treasury Department participated in developing the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. 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**.

List of Subjects in 26 CFR 1.861-1—1.997-1

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

Proposal of Regulations

The temporary regulations, FR Doc. 88-12558 [T.D. 8206] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-12559 Filed 6-3-88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL-964-86]

Transition Rules for Certain Qualified Business Units Using a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

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

SUMMARY: This document provides proposed Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.*, qualified business units (QBUs), whose functional currency is other than the dollar and who used a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to these transition rules. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by August 5, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-964-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. 20224 Attention: CC:LR:T (INTL-964-86) (202-634-5406, 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** add new §§ 1.989 (c)-OT and 1.989 (c)-1T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed on the basis of the temporary regulations. Section 989 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2090). For the text of the temporary regulations, see FR DOC. 8-12560 [T.D. 8207]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that 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).

Drafting Information

The principal author of these proposed regulations is David Rosenberg 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 the Treasury Department participated in developing

the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. 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.**

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

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

Proposal of Regulations

The temporary regulations, FR DOC. 88–12560 [T.D. 8207] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 989 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–12561 Filed 6–3–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–88–04]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to amend the southwestern boundary of Anchorage 5 in San Francisco Bay by extending it 450 yards to the west. This would increase the anchorage area in the deeper waters needed by larger vessels, while still providing an ample northbound shipping channel.

DATES: Comments must be received on or before July 21, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm 702, 400 Oceangate, Long Beach, CA 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 701, 400 Oceangate, Long Beach, CA 90822–5399. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael J. Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822–5399. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD11–88–04), the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. 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.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer; Lieutenant Commander James Spitzer, project officer; and Lieutenant G.R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Anchorage No. 5 is frequently used by vessels returning from upriver ports to refuel before continuing to sea, and by laden tank ships awaiting berth availability. The vessel's deep drafts generally require that they be anchored at the southern portion of the anchorage. The shape and limited area of the anchorage currently make it difficult to anchor without extending beyond the limits of the anchorage into either Southampton Shoal Channel or the Northbound San Francisco Bay Traffic Lane. The proposed change would increase Anchorage No. 5 by 450 yards in width at the southern tip, and decrease the eastern side of the northbound traffic lane by 250 yards. This change would leave a 550 yards wide northbound traffic lane.

Economic Assessment and Certification

These proposed regulations are considerd to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The increase of area in Anchorage 5 will not impede transiting vessels.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR 110

Anchorage grounds

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1–05–1(g).

2. Section 110.224 is amended by revising paragraph (e)(2) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(2) Anchorage No. 5, Southampton Shoal. In San Francisco Bay at Southampton Shoal bounded by a line connecting the following coordinates:

Latitude	*Longitude*
37°55'48" N	122°25'52" W; to
37°55'50" N	122°26'32" W; to
37°54'49" N	122°26'39" W; to
37°54'03" N	122°26'06" W; to
37°53'25" N	122°25'30" W; to
37°53'23" N	122°25'09" W; to
37°55'19" N	122°25'33" W; to
37°55'42" N	122°25'45" W; thence back to
37°55'48" N	122°25'52" W

* * * * *

Dated: May 16, 1988.

A.B. Beran,

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

[FR Doc. 88–12669 Filed 6–3–88; 8:45 am]

BILLING CODE 491–014–M

33 CFR Part 165

[CGD11-88-02]

Regulated Navigation Area; Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard has determined that the Regulated Navigation Area at Isthmus Cove, Catalina Island, California is no longer justified. For this reason, the Coast Guard is proposing to delete the Regulated Navigation Area at Isthmus Cove.

DATES: Comments must be received on or before July 21, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm. 701, 400 Oceangate, Long Beach, CA 90822-5399. The comments and other materials referenced in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 702, 400 Oceangate, Long Beach, CA 90822-5399. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399. Phone number: (213) 499-5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD11-88-02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. 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 detemined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer, and Lieutenant Commander A.E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation: In 1984, the Coast Guard was asked by the Catalina Marine Science Center to establish a no anchorage area at Isthmus Cove, Catalina Island. This area was to be used by the Science Center to cultivate marine wildlife on the seabed. The Regulated Navigation Area became effective on August 5, 1985.

In reviewing the regulation, it was found that it was not directly related to navigation or vessel operations. As a result of this review, the Coast Guard has determined that the Regulated Navigation Area at Isthmus Cove, Catalina Island is no longer justified and should be deleted.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will have minor impact because the deletion of the Regulated Navigation Area will increase the area available for vessels to anchor.

Since the impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33 Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

§ 165.1110 [Removed]

2. Section 165.1110 is removed.

Dated: May 16, 1988.

A.B. Beran,

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

[FR Doc. 88-12668 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals Regulations and Rules of Practice; Status of Legal Interns, Law Students and Paralegals

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposes to revise and clarify existing procedures and requirements regarding representation. The existing regulation now only refers to attorney "designation" and "revocation or change of representation by an attorney." The proposed change will include "attorneys employed by recognized organization," legal interns, law students and paralegals. It has also been determined that there should be guidelines controlling requests for a change in hearing date. The revisions are designed to improve the VA's ability to assure high quality representation of appellants.

DATES: Comments must be received by July 7, 1988. Comments will be available for public inspection until July 20, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or ojections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for inspection only in the Veterans Services Unit, room 132, of the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, Special (Legal) Assistant to the Chairman, Board of Veterans Appeals, (202) 233-2978.

SUPPLEMENTARY INFORMATION: Proposed amendments to existing regulations include the establishment of new criteria for representation. A new information provision would also be added. The provision would include permitting recognized organizations to use legal interns, alw students, or paralegals provided they are under the supervision of an attorney or an attorney/accredited representative who is employed by the service organization.

Provisions pertaining to a change in hearing dates would be supplemented by a requirement that more than one change of hearing date by an appellant or representative is justified.

The Administrator hereby certifies that these proposed rules will not, if promulgated, 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), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

The VA has also determined that these rules are nonmajor in accordance with Executive Order 12291, Federal Regulation. They will not have an adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: May 11, 1988.

Thomas K. Turnage,

Administrator.

PART 19—[AMENDED]

38 CFR Part 19, APPEALS, is proposed to be amended as follows:

1. In § 19.152, paragraph (b) and the cross-reference are revised, and paragraph (c) is added so that the added and revised material read as follows:

§ 19.152 Rule 52; Attorneys.

* * * * *

(b) *Attorneys employed by recognized organization.* A recognized organization (Rule 51, § 19.151 of this part) may employ an attorney to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellent must be obtained and the attorney will be the recognized representative (Rule 55, § 19.155(a) of this part) of the appellant. An attorney employed by a recognized organization may, with the written consent of the appellant, use legal interns, law students, and paralegals to assist in the appeal.

(Authority: 38 U.S.C. 3401)

(c) *Revocation or change of representatives by an attorney.* An appellant may revoke a declaration of representative by an attorney at any time, irrespective of whether another representative is concurrently designated. The revocation is effective when notice of such is received by the Veterans Administration.

(Authority: 38 U.S.C. 3404)

Cross-References: Requirements for accreditation of representatives, agents, and attorneys. See § 14.629(c). Powers of attorney. See § 14.631. Legal interns, law students and paralegals. See Rule 56, § 19.156.

2. In § 19.156 paragraphs (b) and (c) are revised to read as follows:

§ 19.156 Rule 59; Scheduling and notice of hearing.

* * * * *

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing. The appellant or the representative has a period of 60 days from the date of the letter of notification in which to request a different date for the hearing. Only one request for a change of the date of the hearing will be granted during the 60-day period, and this will be stated in the letter to the appellant and/or the representative at the time a response is given in regards to scheduling a hearing. Consideration will also be given to the interests of other parties if a constested claim is involved. Thereafter, the date of the hearing will become fixed and cannot be changed, except as provided in paragraph (c) of this section. Failure by the appellant or the representative to appear at the hearing as scheduled will result in the case being fowarded to a Section of the Board for continuation of the appellate process.

(Authority: 38 U.S.C. 4002)

(c) *Extension of time.* After a hearing date has become fixed, an extension of time for appearance at a hearing may be granted for good cause shown, with due consideration of the interests of other parties if a contested claim is involved. The request for extension should be in writing and must be filed with the Chief of the Hearing Section. Ordinarily, hearings will not be postponed more than 30 days. Examples of good cause include the following: illness of the appellant and/or representative, difficulty in obtaining records, and unavailability of a witness.

(Authority: 38 U.S.C. 4002, 4005A)

[FR Doc. 88–12613 Filed 6–3–88; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 84–060]

Licensing of Pilots; Manning of Vessels-Pilots

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is changing its original proposal (50 FR 26117) of June 24, 1985, to amend the regulations concerning the Licensing of Pilots and the Manning of Vessels-Pilots. This proposal would: (1) Delineate when certain inspected vessels are required to be under the direction and control of a pilot, (2) describe first class pilotage areas where local pilotage expertise is warranted, (3) allow licensed individuals to serve as pilot in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control, and (4) permit individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, to obtain without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot, and ⅔ of the required number of round trips must have been on towing vessel combinations greater than 1,600 gross tons.

These changes are necessary to eliminate confusion over where and on what vessels pilotage expertise over and about that held by licensed masters, mates, and operators is warranted. They will also provide relief to tank barge operators who have demonstrated experience in performing this function.

DATES: Comments must be received on or before September 6, 1988.

ADDRESSES: Comments must be mailed to Commandant (G–CMC/21) (CGD 84–060), U.S. Coast Guard, Wasington, DC 20593–0001. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, Comments may be delivered to and will be available for inspection or coping at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard

Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. John Hartke, Merchant Vessel Personnel Division (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0214.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the docket number (CDG 84–606), the name and address of the person submitting the comments, and the specific section of th e proposal to which each comment is addressed. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planning, but they 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. As background, an original notice of proposed rulemaking was published in 1980. That proposal was modified and republished as a supplemental notice in 1983. The comment period was subsequently extended twice, and the final rule was published June 24, 1985. Since some of the issues, those identified in the summary of this proposal, were not within the scope of the previous rulemaking, a separate notice of proposed rulemaking addressing those issues was published simultaneously with the final rule. The comment period was originally scheduled to end on September 23, 1985. However, a Notice of Extension of Comment Period (50 FR 38557), published in the **Federal Register** on September 23, 1985, extended the comment period to December 22, 1985.

The Coast Guard received 172 written comments, and two public meetings were held, one meeting in New York, hosted by the Maritime Association Port of New York, on Novermber 12, 1985, and the second was a Towing Safety Advisory Committee Subcommittee on Personnel Manning and Licensing meeting held at Coast Guard Headquarters in Washington, DC., on December 12, 1985.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. John J. Hartke, Project Manger, Merchant Vessel Personnel Division, and, Commander Ronald C. Zabel and Commander Gerald A. Gallion, Project Attorneys, Office of Chief Counsel.

Discussion of the Proposed Regulations

Some of the matters contained in the proposals for the rulemaking have been disposed of. Two of these; (1) increasing the tonnage authorization of licensed officers to serve as pilot on self-propelled coastwise seagoing vessels subject to inspection from 1,000 gross tons to 1,600 gross tons, and (2) requiring pilots on Great Lakes Vessels received no negative comments and were included in the Interim Final Rule published on October 16, 1987 (52 FR 38614).

The proposal regarding the requirement that first class pilots must have experience on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of more than 50,000 gross tons is withdrawn. The comments received were almost universally negative, indicating that the proposal is unworkable because, in most ports, there are not enough larger vessels to provide the proposed number of round trips for a sufficient number of pilots to quality to handle the larger vessels. Additionally, commenters questioned the need for this particular proposal. The Coast Guard agrees with those comments and that specific proposal is withdrawn. The Coast Guard Guard presently has sufficient authority regarding the limitations on licenses as contained in 46 CFR 10.701.

Pilotage Requirements

In response to the written and oral comments received on the remaining items in the proposal, the Coast Guard is now proposing significant changes to that Notice of Proposed Rulemaking.

In this action the following changes to the prior notice are proposed: (1) Instead of specifically defining "pilotage waters" and "coastwise seagoing vessel", this proposal would accomplish the same purpose by delineating when certain inspected vessels are required to be under the direction and control of a pilot. These provisions will address inspected mechanically propelled vessels and seagoing tank barges inspected under 46 U.S.C. Chapter 37, (2) In conjunction with this, the proposal describes first class pilotage areas where additional local piloting expertise is warranted, and (3) Individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, may receive, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot.

In the June 24, 1985 notice of proposed rulemaking we proposed to define pilotage waters as the navigable waters shoreward of the 10 fathom line, with exceptions for when that line is inside the headlands or beyond the territorial sea. There was very little support for, and considerable opposition to, use of the 10 fathom line. A number of commenters characterized it as a squiggly line and stated that you cannot determine whether or not you are actually in pilotage waters.

46 U.S.C. 8502 requires that certain inspected vessels be under the direction and control of a pilot when "not on the high seas." The clear implication of this language is that pilots are required for those vessels on all the navigable waters of the United States, which includes the territorial seas and internal waters. Limiting the scope of the applicability of the statute by defining pilotage waters as some lesser area is, on the surface, inappropriate. However, there are many large portions of our coastline where there are no navigational risks to vessels proceeding along the coast within the territorial seas. In view of this, the Coast Guard has a long history of only licensing individuals as pilots for a portion of the navigable waters of the United States, primarily harbor areas, high traffic areas, rivers, and the Great Lakes. Conversely, there are some areas outside the territorial seas of the United States, such as Block Island Sound, where pilots have been traditionally required.

46 U.S.C. 8502 is not the Coast Guard's only authority to require an individual with pilotage expertise to be in control of the vessel. Under the Coast Guard's authority to set manning levels on inspected vessels in 46 U.S.C. 8101, and authority to increase the number of licensed individuals required on a vessel in 46 U.S.C. 8301, the Coast Guard may require pilots on inspected vessels when deemed appropriate. In this action the Coast Guard is proposing a rule that would eliminate any conflict or confusion over where an individual holding a license or endorsement as pilot is required, when a licensed

individual with specific local experience is required, and where just the expertise of a licensed master, mate or operator is sufficient.

In the June 24, 1985 notice of proposed rulemaking we proposed to define "coastwise seagoing vessel" as a vessel that at any time is authorized by its Certificate of Inspection to proceed beyond the headlands. A number of commenters stated that they were opposed to the proposed definition because a vessel with Lakes, Bays and Sounds routes on its Certificate of Inspection can proceed beyond the headlands which would then make Lakes, Bays and Sounds vessels coastwise seagoing vessels for pilotage purposes. Some commenters suggested that the definition of coastwise seagoing vessel be tied to the particular voyage that the vessel happens to be on at that time rather than tie it to the route authorized by its Certificate of Inspection. It seems clear that the language of the statute (46 U.S.C. 8502 (a)) is meant to identify a type or class of vessel rather than a vessel's voyage.

Instead of defining "coastwise seagoing vessel" and using the phrase "vessels operating exclusively on pilotage waters of the United States" as originally proposed, this proposal simply applies pilotage requirements to vessels based on the waters on which the vessels are certificated to operate. The Coast Guard believes that this approach will avoid confusion and ease administration of the rule. There are only two categories in this proposal, as the requirement for pilots on vessels operating on the Great Lakes is contained in the Interim Final Rule on the Licensing of Maritime Personnel (CGD 81–059) published in the **Federal Register** October 16, 1987 (52 FR 38655). These categories are: (1) Inspected, mechanically propelled vessels and tank barges subject to inspection under 46 U.S.C. Chapter 37, that are authorized by their certificate of inspection to proceed beyond the Boundary Line specified in 46 CFR Part 7, and (2) inspected, mechanically propelled vessels that are not authorized by their certificate of inspection to proceed beyond the Boundary Line specified in 46 CFR Part 7.

The pilotage requirements proposed for these vessels vary depending on the gross tonnage of the vessel and the specific waters the vessel is being operated on. This proposal is not intended to make a significant change in the areas where pilots have been traditionally required. Rather, it is intended that our regulations recognize the broad statutory requirement for pilots for certain vessels on the navigable waters and provide an appropriate means of satisfying the statutory requirements. In this proposal, the existing manning regulations in 46 CFR 15.812 would continue to apply to areas that have been traditionally covered by first class pilot route endorsements. For areas of the navigable waters of the United States that are not covered by first class pilot endorsements, this proposal would allow the master, mate or operator of a vessel to serve as pilot for that vessel. However, the statutory requirements of being 21 years of age and, for those individuals serving as pilot on vessels greater than 1,600 gross tons, having an annual physical exam would apply. The statutory requirement to maintain adequate knowledge of the waters to be navigated would be met by requiring the individual to have served on that route within the previous 60 months.

Officers in Charge, Marine Inspection, would locally delineate those waters within their zone where additional pilotage expertise is warranted and the qualifications that are necessary for serving as pilot on those waters. This delineation of recognized pilotage routes and the qualifications for them would also facilitate the understanding by individuals authorized to serve as pilots under 46 CFR 15.812 of where they are required and qualified. At the outset, these waters are intended to encompass the areas where pilots have traditionally been required.

While this proposal may appear to impose additional pilot requirements for certian vessels operating in the navigable waters, it is actually a reduction because it makes it easier for a member of the crew to act as the pilot required by law. 46 U.S.C. 8502 requires coastwise, seagoing, inspected, mechanically propelled vessels and inspected, seagoing, tank barges to be under the direction and control of a pilot when not on the high seas. For mechanically propelled vessels of over 1,600 gross tons, and tank barges over 10,000 gross tons, there is currently one class of pilot that is licensed to perform this function. This proposal would add another class of pilot that could perform this function on waters not traditionally covered by first class pilotage endorsements.

The statutory requirements for performing this function differ from those for master, mate and operator licenses primarily in that they require the individual to be 21 years of age, to obtain an annual physical exam, and to maintain adequate knowledge of the waters to be navigated. The Coast Guard is not required to publish regulations to implement the pilotage requirements of 46 U.S.C. 8502. However, without these regulations the statutory requirements are difficult to comply with fully.

Examination Requirements

In the previous notice the Coast Guard proposed the following alternative to the chart sketch for a first class pilot's license: An applicant for an original license, extension of route or endorsement may, upon request, take a written test concerning the route and waters applied for in lieu of the required chart sketching. Licenses, extensions or endorsements obtained by taking the substitute written test would be restricted to "tug and barge only" and have a tonnage limitation based on the largest combined gross tonnage of the vessels on which the applicant has the required round trip experience, up to a maximum of 30,000 gross tons. The intention of the proposal was to allow those who have demonstrated their abilities to pilot tug and barge combinations in various ports, through having done it many times, to obtain an endorsement as first class pilot without completing the chart sketch. This is in keeping with the Coast Guard's traditional practice of providing a "grandfather" clause applicable to those who have been performing an activity that became the subject of a regulatory action.

The comments received regarding that proposal were non-supportive, and additionally, the Coast Guard would have to develop an alternative written test to the chart sketch, as such a test does not presently exist. Many of the comments questioned whether a written test fully discerning of the candidates ability and comparable to the chart sketch could, in fact, even be developed.

The Coast Guard is therefore withdrawing that proposal and is replacing it with the proposal that individuals with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, may obtain, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule). The applicant is required to have the same number of round trips that the

respective OCMIs require of other applicants for an endorsement as first class pilot, and ⅔ of the required number of round trips must have been on towing vessel combinations greater than 1,600 gross tons.

This proposal requires applicants from the towing industry to have experience and round trips equal to other applicants for an endorsement as first class pilot. The elimination of the written examination, including the chart sketch, is the only lessening of the general requirements. Applicants obtaining an endorsement under these provisions will be restricted to tug and barge combinations. This provision would allow those persons who have been performing the task of operating relatively large tug and barge combinations in the past to obtain the necessary endorsements to continue to serve in the same capacity. It is, in effect, a grandfather provision that allows those already engaged in the trade to continue without having to obtain another license. This method of obtaining an endorsement would be available only for service and round trips obtained prior to (the effective date of the final rule).

Prince William Sound Pilotage

46 U.S.C. 8502(g) states that the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel is not required to be under the direction and control of a pilot licensed under 46 U.S.C. 7101. The Coast Guard is proposing the following exceptions to the pilotage requirements: (1) Vessels are excluded from pilotage requirements when entering or departing Prince William Sound, Alaska, via Hinchinbrook Entrance, and;

(a) Proceeding directly to or from the established Valdez/Whittier pilot station at Rocky Point (Latitude 60°57.1′ N., Longitude 146°46.0′ W), or

(b) Proceeding directly to or from the established Cordova pilot station at Sheep Point (Latitude 60°37.0′ N., Longitude 146°00.0′ W), or

(c) Proceeding directly to or from a designated anchorage described in 33 CFR Part 110.

This proposal regarding pilotage requirements for Prince William Sound has been changed from the prior notice based on the written comments we received, and no longer includes matters not appropriate to the requirement of 46 U.S.C. 8502(g).

Information Collection

This proposed rule contains no new information collection requirements. The information collection requirements for the issuance of marine licenses have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*) and have been approved by OMB. The OMB approval numbers are listed in 46 CFR 10.107.

Evaluation

Based on the comments received, the proposals contained in the notice of proposed rulemaking of June 24, 1985 (50 FR 26117) have been changed and are republished in this supplemental notice.

These proposed regulations are considered to be non-major under Executive Order 12291, and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this supplemental proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. The principle cost is associated with the basic annual physical examination required to qualify as a pilot, and the magnitude of this cost would be proportionate to the number of individuals qualified. The proposals concerning when and on which vessels a pilot is required do not significantly change the present practice, therefore, there will be little or no impact associated with these proposals.

The proposal to permit individuals with 5 years experience on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, to obtain, without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations only, for those routes over which they have made the required number of round trips prior to (the effective date of the final rule), would accommodate the more experienced operators and would not compromise safety. It would be available to allow those individuals currently qualified by their experience to obtain a limited license. The applicant would be required to have the same number of round trips that the respective OCMIs require of other applicants for an endorsement as first class pilot.

Federalism

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

List of Subjects

46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

In consideration of the foregoing it is proposed that Part 10 and Part 15 of Title 46 of the Code of Federal Regulations be amended as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101; 43 U.S.C. 1333(d); 49 CFR 1.46(b) and (z).

2. Section 10.707 is amended by revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 10.707 Examination requirements.

* * * * *

(b) An applicant for an extension of route or an endorsement as first class pilot, except as provided for in paragraph (c) of this section, is required to pass those portions of the examination described in Subpart I of this part that concern the specific route for which endorsement is sought.

(c) An applicant for an endorsement as first class pilot for a particular route, restricted to tug and barge combinations only, is not required to pass an examination, provided the applicant has 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, for those routes over which the applicant has made the required number of round trips prior to (the effective date of the final rule). For an applicant exempt from examination under this paragraph, the minimum number of round trips to be required is contained in § 10.705 (c).

PART 15—MANNING REQUIREMENTS

3. The authority citation for Part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198; 49 CFR 1.46(b).

Section 15.812 is amended by revising paragraphs (a) introductory text, (a)(1), (c) introductory text, (c)(2), (d), and (e) introductory text, by redesignating paragraph (g) as paragraph (f), and by adding paragraphs (a)(3), (b), (c)(3), and (g) to read as follows:

§ 15.812 Pilots.

(a) The following vessels, not sailing on register, when underway on the navigable waters of the United States, except as provided in paragraph (g) of this section, and such other waters identified as first class pilotage waters, must be under the direction and control of an individual qualified to serve as pilot under paragraph (c) of this section as appropriate:

(1) Vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and tank barges subject to inspection under 46 U.S.C. Chapter 37, that are authorized by their Certificates of Inspection to proceed beyond the Boundary Line established in Part 7 of this chapter.

* * * * *

(3) Vessels in exces of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificates of Inspection to proceed beyond the Boundary Line established in Part 7 of this chapter, and that are not underway on the Great Lakes.

(b) First class pilotage waters are designated by the Officer in Charge, Marine Inspection (OCMI) for those waters within the OCMI's zone, where, in the OCMI's direction, local expertise is necessary. The waters determined to be first class pilotage waters within a particular Marine Inspection Zone and the specific requirements for qualifying to serve as pilot on those waters may be obtained from the OCMI concerned.

(c) The following individuals are qualified to serve as a pilot:

* * * * *

(2) For a vessel underway on those navigable waters of the United States not designated as first class pilotage waters, an individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel within the restrictions of his or her license provided he or she:

(i) Has reached the age of 21 years;

(ii) Complies with the currency of knowledge provisions of 46 CFR 10.713 of this chapter; and,

(iii) Has a current physical examination in accordance with the provisions of 46 CFR 10.709; or,

(3) For a vessel underway on the navigable waters of the United States designated as first class pilotage waters or other waters designated as first class pilotage waters, an individual qualifying under paragraph (c)(2) of this section, subject to the limitations of paragraphs (d) and (e) of this section.

(d) A licensed individual qualifying under paragraph (c)(3) of this section may serve as pilot of a vessel of not more than 1,600 gross tons propelled by machinery, described in paragraphs (a)(1) or (a)(2) of this section, provided the individual has four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. One of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(e) A licensed individual qualifying under paragraph (c)(3) of this section may serve as pilot of tank barges totaling not more than 10,000 gross tons, described in paragraphs (a)(1) or (a)(2) of this section, provided the individual:

* * * * *

(g) Vessels are excluded from pilotage requirements when entering or departing Prince William Sound, Alaska, via Hinchinbrook Entrance, and;

(1) Proceeding directly to or from the established Valdez/Whittier pilot station at Rocky Point (Latitude 60°57.1' N., Longitude 146°46.0' W.), or

(2) Proceeding directly to or from the established Cordova pilot station at Sheep Point (Latitude 60°37.0' N., Longitude 146°00.0' W.), or

(3) Proceeding directly to or from a designated anchorage described in 33 CFR Part 110.

Dated: March 29, 1988.

J.W. Kime,

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

[FR Doc. 88-12664 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-218, RM-6232]

Radio Broadcasting Services; Statesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 261C2 for Channel 261A at Statesboro, Georgia, and to modify the Class A license for Station WMCD(FM) accordingly, in response to a petition filed by the license, Radio Statesboro, Inc. Coordinates for the proposal are 32-27-21 and 81-46-29.

DATES: Comments must be filed on or before July 18, 1988, and reply comments on or before May 26, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Edward W. Hummers, Jr., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Attorney for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No 88-218, adopted April 19, 1988, and released May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve chanel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-12679 Filed 6-3-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-215, RM-6176]

Radio Broadcasting Services; Campbellsville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Michael Harding, which proposes to allot Channel 260A to Campbellsville, Kentucky, as a second FM service. City reference coordinates for Channel 260A at Campbellsville are 37–20–36 and 85–20–24.

DATES: Comments must be filed on or before July 18, 1988, and reply comments on or before August 2, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven C. Schaffer, Schwartz, Woods and Miller, 1325 Eighteenth Street NW., Suite 206, The Palladium, Washington, DC 20036 (Attorney for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–215, adopted April 18, 1988, and released. May 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–12680 Filed 6–3–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Glazing Materials; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Custom Window Tinting Services. The petitioner requests two amendments to Federal Motor Vehicle Safety Standard 205, *Glazing materials.* First, petitioner asks NHTSA to change the abrasion resistance requirements for glass-plastic glazing materials and second, to allow the use of glass-plastic glazing materials in passenger cars to the same extent as is currently allowed in multipurpose passenger vehicles. NHTSA dismisses the first part of the petition as moot. In addition, to the extent the second part of the petition requests that glass-plastic glazing, as a type of glazing, be allowed in cars also is moot. To the extent the second part of the petition requests that the light transmittance requirements for windows in cars be the same as those in multipurpose passenger vehicles, the second part is denied for lack of supporting data, as detailed in the supplementary information portion of this notice.

FOR FURTHER INFORMATION: Dr. Richard Strombotne, Chief, Crashworthiness Division, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2264.

SUPPLEMENTARY INFORMATION:

The Petition

On September 30, 1986, Mr. Gerald S. Lakas, President of Custom Window Tinting Services (Custom Window or petitioner) petitioned NHTSA to make changes to its Federal Motor Vehicle Safety Standard 205, *Glazing materials.* The petition contains two requests, both dealing with what petitioner terms "plastic laminated glazing". The term "glazing laminates" usually is reserved for after market glazing material and refers to glazing that has a plastic film affixed to it by after market installers. Since installation of the plastic film on the inside of a piece of glass converts the glazing into glass-plastic glazing material, the agency will use the term glass-plastic glazing in this notice to describe the glazing referred to by the petitioner. (Glass-plastic glazing is defined in Standard 205 as a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.)

Abrasion resistance requirements. Petitioner's first request is that the agency revise its abrasion resistance requirements for glass-plastic glazing in motor vehicles. In support of this change, Custom Window asserts that glass-plastic glazing materials cannot be certified as complying with the abrasion resistance requirements in Standard 205, either installed as original or after market equipment. Custom Window bases its statements on abrasion resistance testing it has conducted. Petitioner further requests that the agency's current abrasion testing requirements be revised to simulate the real life activity of a piece of automotive glazing.

Same requirements for glass-plastic glazing in passenger cars and MPV's. Petitioner's second request is that the agency authorize the use of glass-plastic glazing in passenger cars "within the same boundaries and guidelines that currently apply" to multipurpose passenger vehicles (MPV's). The agency believes that the phrase "within the same boundaries and guidelines" implies two requests: first, that glass-plastic glazing be allowed to be used in passenger cars everywhere it is allowed in MPV's, and second, that the light transmittance requirements for windows in passenger cars be the same as the light transmittance requirements for windows in MPV's.

In support of its second request, petitioner states its belief that glass-plastic glazing would decrease significantly the number of lacerative injuries when automobiles are involved in accidents. It further states that glazing requirements for passenger cars and MPV's should be the same, since vehicle usages and driver types are the same for both. Petitioner asserts that there is no safety justification for different glazing requirements for the different vehicle types.

Agency Response to Petition

The agency dismisses in part and denies in part the Custom Window Tinting petition. The standard has already been amended to modify the abrasion resistance requirements for glass-plastic glazing and to authorize the use of glass-plastic glazing in all windows of a motor vehicle and, accordingly, the agency dismisses the portions of the petition relating to these issues as moot. Petitioner's request that windows in passenger cars be subject to the same light transmittance requirements as those for windows in MPV's is denied. The aency's reasons for taking these actions follow.

Moot portions of the petition. On November 16, 1983 (48 FR 52061) the agency authorized the use of a new type of glazing, glass-plastic, in motor vehicles. In this rulemaking, the agency designated glass-plastic glazing AS–14, adopted performance requirements for the glazing, and authorized its use anywhere in a motor vehicle. In authorizing this use, the agency amended the previous abrasion resistance requirement test (found in Test 17 of the American National Standards Institute's Z26.1, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, January 26, 1977, as supplemented by Z26.1a, July 3, 1980) to provide for a haze of 4 percent after 100 cycles of the Taber abraser. Petitioner stated his abrasion resistance tests referenced in the petition were not the same test procedure as the agency's Taber abraser tests (Docket PRM–205–17A). Additionally, petitioner stated he was unaware of the 1983 amendment (48 FR 52061) permitting glass-plastic glazing. The agency believes that, as amended, types of glazing are available to the petitioner that will meet the new abrasion resistance requirements adopted by the agency in 1983.

Petitioner also requested that glass-plastic be allowed to be used anywhere in a car that it is authorized in an MPV. The 1983 rulemaking authorizing the use of AS–14 also makes this portion of petitioner's request moot, since glass-plastic glazing which meets the testing requiremenrs for AS–14 may be used anywhere in a motor vehicle.

Denied Portion of the Petition. The only portion of the petition not resolved by the agency's 1983 authorization of glass-plastic glazing is its implied request that the light transmittance requirements for cars and MPV's be the same. Standard 205 contains different light transmittance requirements for different window locations in different vehicles types. For example, all windows in a car are considered requisite for driving visibility and must meet the 70 percent light transmittance requirement of Standard 205. On the other hand, Standard 205 provides that only the windshield and front windows to the left and right of the driver of MPV's and trucks meet the 70 percent light transmittance requirement. Petitioner did not submit any data, studies, or other information which supported his claim that cars and MPV's should have comparable requirements.

The fact that some vehicles used by similar groups fall into two different vehicle type categories is not an obstacle to regulating those vehicles in the same fashion, if the agency determined that there was a safety need and that the standard was practicable. In this case, petitioner has not provided any basis for the agency to reconsider its basic requirements concerning light transmittance requirements for vehicle windows. Accordingly, the agency cannot find any basis for a determination that there is a reasonable possibility that the order requested by the petitioner will be issued at the conclusion of a rulemaking proceeding. For these reasons, this portion of the petition is denied. The agency notes, however, that it recently published an Advance Notice of Proposed Rulemaking announcing that it was considering reviewing its definitions of basic vehicle types. (See the October 28, 1987 issue of the **Federal Register**, 52 FR 41475).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles. (Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued: May 31, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–12660 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

49 CFR Part 604

[Docket 88–E]

Charter Service; Information on Public Hearings

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of public hearings.

SUMMARY: On May 25, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the **Federal Register** entitled "Charter Service; Amendment" (53 FR 18964). In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations, were not yet available. This notice provides that information.

DATES: Public hearings are scheduled as follows (local time):

1. June 20, 1988, 9:30 a.m., Washington, DC.
2. June 29, 1988, 9:30 a.m., Kansas City, Missouri.
3. July 15, 1988, 9:30 a.m., Cincinnati, Ohio.
4. July 20, 1988, 9:30 a.m., San Francisco, California.

ADDRESSES: Written comments should be addressed to U.S. Department of Transportation, Urban Mass Transportation Administraton, Office of the Chief Counsel, Docket No. 88–E, 400 7th Street SW., Room 9316, Washington, DC 20590. The locations for the public hearings are as follows:

1. Washington, DC: U.S. Department of Transportation, Room 2230 400 7th St., SW.
2. Kansas City, Missouri: Federal Building, Room 147, 601 E. 12th St.
3. Cincinnati, Ohio: U.S. Post Office & Courthouse Bldg. Room 917, 100 E. 5th St.
4. San Francisco, California: GAS Building, Room 2007, 450 Golden Gate Ave.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, (202) 366–1936 to request to make a statement or inquire about the logistics.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Urban Mass Transportation Administraton (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Charter Service; Amendment" (53 FR 18964). The NPRM proposes to amend the Charter Service rule at 49 CFR Part 604 by adding an exception to the general prohibition on using UMTA-funded equipment and facilities for charter service. The proposed exception would allow the incidental use of those UMTA-funded capital assets in direct charter contracting with non-profit social service agencies that serve elderly and handicapped persons or receive funding under certain U.S. Department of Health and Human Services programs. Such contracts would be permitted only if the social service agency that the UMTA recipient enters into a contract with is: (1) Either a governmental entity; or (2) an organization exempt from taxation

under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code.

At the time the NPRM was published, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations, were not yet available. This notice provides that information. Statements made at the public hearings will be included in UMTA Docket No. 88–E and will be reviewed and evaluated by UMTA in conjunction with the rulemaking proceeding.

It is not necessary to make a statement at a public hearing in order to participate in this rulemaking proceeding. Any individual or organization may submit written comments regarding the NPRM to UMTA Docket No. 88–E instead of, or in addition to making a statement at a public hearing. Additionally, individuals or organizations do not need to make a statement at more than one public hearing.

Written comments must be received by July 25, 1988. Written comments should be sent to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Room 9316, Docket No. 88–E, 400 7th Street SW., Washington, DC 20590. All comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

The NPRM included a number of questions regarding the proposed rule. The questions contained in the NPRM will not be repeated in this notice. UMTA is interested in receiving comments on any aspect of the proposed rule. But, UMTA is particularly interested in receiving factual information on cost and availability of charter service for the targeted populations.

The following procedures are established by UMTA to facilitate the hearings:

Individuals interested in making a statement at the hearing should contact Holly Vandervort at (202) 366–1936, at least 3 days before the hearing is to be held. Individuals will be called to testify in the order their registration is received. UMTA encourages pre-registration, however, witnesses may register to testify on the date of the hearing at each location between 8:30 and 9:15 am.

An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of an organization, is limited to a 10-minute statement at a hearing. The amount of time for testimony may be further limited, in order to accommodate all witnesses wishing to testify.

Hearings will begin at 9:30 am. Hearings may be extended in order to accommodate the number of witnesses.

UMTA requests that individuals testifying at a hearing provide 3 copies of their prepared written statement, to UMTA officials at the hearing. Individuals testifying are welcome to submit additional material as well. All statements and material received at a hearing will become part of the official rulemaking Docket No. 88–E.

The hearings officer may make statements to clarify issues or facilitate discussion during the hearing. Any statements the hearing officer makes during a hearing are not intended to be, and should not be construed as, a position of UMTA with respect to the rulemaking proceeding.

The hearings will be recorded by a court reporter. A transcript of the hearings will be included in the official rulemaking Docket 88–E. Any person interested in purchasing a copy of a transcript of a hearing should contact the court reporter directly.

The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual making a statement at a hearing will not be subject to cross-examination by any other participant. However, the hearing officer may ask questions in order to clarify statements made at the hearing.

Issued on: June 1, 1988.

Edward J. Babbitt,

Chief Counsel.

[FR Doc. 88–12695 Filed 6–3–88; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Ch. VI

Mandatory Carriage of Observers on Domestic Fishing Vessels

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

ACTION: Advance notice of proposed policy and request for comments.

SUMMARY: The Marine Fisheries Advisory Committee (MAFAC) to the Administrator of NOAA has drafted a Policy for Requiring Observers to be Carried on Domestic Fishing Vessels. This policy is proposed in response to requests to NMFS from Regional Fishery Management Councils (Councils) and the fishing industry for a domestic fishing monitoring and data gathering system which will allow timely and effective fishery management. This observer system will provide the same fishery management data as the mandatory foreign fishing observer program, and will replace that data as foreign fishing in the Exclusive Economic Zone (EEZ) is replaced by domestic fisheries. The effect will be to provide guidelines to the Councils and NMFS for the mandatory placement of observers on a random sample of domestic fishing vessels, in accordance with research designs developed under the aegis of the Magnuson Fishery Conservation and Management Act (MFCMA) and approved by the Secretary of Commerce. Comments are invited from the public on the proposed policy.

DATE: Comments will be accepted until July 18, 1988.

ADDRESS: Send comments to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235. Copies of the policy document are available upon request from the Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Peter H. Fricke, 202/673–5263.

SUPPLEMENTARY INFORMATION: The rapid change from a mixed foreign and domestic fishery in the EEZ to a wholly domestic fishery managed under the MFCMA is resulting in the loss of information on fisheries performance and of scientific data formerly collected from the mandatory foreign fishing observer program. Further, the development of sophisticated fishery management plans (FMPS) for the domestic fisheries has accelerated the need for more accurate and timely fisheries monitoring and research data. Consequently, the Councils and NMFS are proposing the use of observers on domestic fishing vessels to collect these essential data needed to effectively manage the fisheries of the EEZ.

The Policy for Requiring Observers to be Carried on Domestic Fishing Vessels was prepared under the aegis of the MFCMA. The policy proposes guidelines and measures related to the mandatory placement of NMFS employees or Federally authorized observers on certain United States fishing vessels. The policy focuses on the use of mandatory domestic fishery observer programs to collect fishing catch and effort data and monitor fishing practices

in accordance with data-collection plans developed in conjunction with an FMP or other MFCMA fishery management action. The policy does not govern the conduct of any voluntary scientific sampling programs that are carried out jointly by NMFS and United States fishermen for scientific and other research purposes.

MAFAC has proposed that any observer program should be Federally funded on the principle that the management of national natural resources, such as the marine fisheries, should be paid for by the U.S. taxpayer. However, NMFS believes that mandatory domestic fishery observer programs should be paid for by the fishermen and fishing entities deriving direct economic and social benefits from the use of a national natural resource, and not be a burden upon the U.S. taxpayer.

MAFAC also proposes that NMFS actively seek legislation to transfer liability for the carriage of observers from the owners and operators of fishing vessels to the Federal Government. In the period prior to the enactment of legislation, MAFAC has proposed that the Federal government pay any insurance coverage differentials incurred by vessel owners and operators selected to carry observers. NMFS disagrees with these proposals and believes that the risks of carrying an observer properly lie with the vessel's owner and operator, and can be insured against with a standard protection and indemnity policy. The costs of such a policy can, NMFS believes, be treated as a legitimate business expense payable by those who obtain direct benefit from the conservation and management of marine fishery resources.

NMFS particularly invites comments and discussion on the proposals for funding the proposed domestic fishery observer program and for the liability for carriage of observers.

(16 U.S.C. 1801 *et seq.*)

Dated: May 31, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-12565 Filed 6-3-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
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Monday, June 6, 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

Animal and Plant Health Inspection Service

[Docket No. 88-078]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Sandoz Crop Protection Corporation to allow the field testing in the State of North Carolina of genetically engineered tobacco plants, designed to be tolerant to sulfonylurea herbicides. The assessment provides a basis for the conclusion that the field testing of those genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-054-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Sandoz Crop Protection Corporation of Des Plaines, Illinois, has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be tolerant to sulfonylurea herbicides. In the course of reviewing the permit application, APHIS assessed the impact of the environment of releasing the tobacco plants under the conditions described in the Sandoz application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environment assessment and finding of no significant impact which is based on data submitted by the Sandoz Crop Protection Corporation, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which has the effect of making tobacco plants tolerant to the effect of sulfonylurea herbicides has been inserted into a tobacco chromosome. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test, the introduced gene cannot spread to any other sexually compatible plant by cross-pollination for the following reasons: (1) No pollen will be produced because upon initiation of flowering the panicle (sexual parts) of each plant, will be removed; and (2) the field test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tobacco plants could successful cross-pollinate.

2. Neither the acetolactate synthase (ALS) gene itself, nor its derived gene product confers on toacco any plant pest characteristic. Traits such as weediness are polygenic and cannot be conferred by adding a single herbicide tolerance gene. The experimental tobacco plants remain sensitive to a wide range of other herbicides which could be used to kill these plants.

3. The tobacco variety from which the ALS gene was obtained is not a plant pest.

4. The ALS gene does not provide the genetically engineered tobacco plants with any measurable selective advantage over nongenetically engineered tobacco plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the ALS gene into a tobacco chromosome has been evaluated for its use in this experiment. The vector, although derived from an original wild-type Ti

plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the phytopathogenic bacterium which was used to deliver the vector encoding the ALS gene into a tobacco plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any genetically engineered tobacco plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. Sulfonylurea herbicides are a new class of herbicides noted for their high herbicidal activity at very low use rates, excellent crop selectivity, and low mammalian toxicity.

9. The size of the enclosed field test plot is small (no more than 35,685 square feet). The plot is located on a private research farm and will have good security. The experimental plot is located away from any major village or road.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12689 Filed 6–3–88; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 88–062]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of California of genetically engineered tomato plants, designed to be tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7769. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–011–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 228992–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to the herbicide glyphosate. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a tomato chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field test, the introduced genes cannot spread to other plants by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible

plants with which the engineered plants might cross-pollinate.

2. Neither the herbicide tolerance gene itself, nor its gene product confers on tomato any plant pest characteristics.

3. The plant from which the herbicide tolerance gene was isolated is not a plant pest.

4. The herbicide tolerance gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease has been removed from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the plant cells, has been shown to be eliminated and no longer associated with the transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the plant genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No horizontal movement mechanism is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the field test plot is very small (70 feet wide by 320 feet long) and is physically isolated from many species of wild plants and animals by a surrounding area of cultivated land. The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12687 Filed 6–3–88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88–075]

Availability of Environmental Assessment and Finding of No Signficant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in the State of Illinois of genetically engineered tomato plants, modified to be tolerant to tobacco mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7472, or write her at this same address. The environmental assessment should be requested under accession number 88–041–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rules set forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation of interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to tobacco mosaic virus. In the course of reviewing the permit applications, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Monsanto application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the tobacco mosaic virus coat (capsid) protein has

been inserted into a tomato chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field test trial, the inserted gene is unlikely to spread to any other plant by cross-pollination, because the field test plot is located at a sufficient distance from any sexually compatible plant with which the genetically engineered tomato plants could cross-pollinate.

2. Tobacco mosaic virus is a plant pathogen; however, neither the tobacco mosaic virus coat (capsid) protein gene itself, nor the derived gene product confers on tomato any plant pathogenic characteristic.

3. The plasmid vector used to transfer the tobacco mosaic virus coat (capsid) protein gene into a tomato chromosome has been evaluated for its use in this experiment. The plasmid vector, although derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the plasmid vector. The plasmid vector has been tested and shown to be not pathogenic to any susceptible plant.

4. The vector agent, the phytopathogenic bacterium that was used to deliver the plasmid vector encoding the tobacco mosaic virus coat (capsid) protein gene into a tomato plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any transformed tomato plant or seed.

5. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences to another organism is not known to be possible. The plasmid vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot is approximately 0.85 acre and will be located on a private farm. Monsanto has taken precautions to provide for the identity and physical security of the field plot. The experimental field is located away from any major road or town.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 31st day of May, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12690 Filed 6–3–88; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 88–083]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that three permit applications for release into the environment of various genetically engineered organisms are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with the regulations in 7 CFR Part 340 which regulate the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 634, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7472.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe are Plant Pests," require a person to obtain a permit prior to introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products which are deemed "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining limited permits for the importation of interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following permit applications for release into the environment, which are being reviewed by the Agency:

Accession No.	Date received	Organism and field test location
88–027–03	1–27–88 [1]	Genetically engineered tobacco containing marker genes, Iowa.
88–091–01	3–31–88	Genetically engineered tobacco containing chitinase genes, Delaware.
88–092–01	4–1–88	Genetically engineered tomatoes for sulfonylurea herbicide resistance, Delaware.

[1] This application was not deemed to be complete until March 30, 1988.

Done at Washington, DC, this 31st day of May 1988.

Larry B. Slagle,

Acting Adminstrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–12688 Filed 6–3–88; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 88–088]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the Sonesta Hotel Portland, 157 High Street, Portland, Maine 04101, on June 20, 1988, from 9 a.m. to noon; June 21 and 22, 1988, from 9 a.m. to 5 p.m.; and June 23, 1988, from 9 a.m. to 2 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5140.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (Committee) makes recommendations to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

The Committee's sessions on June 21, 22, and 23, 1988, will include delegates to the upcoming Biennial Conference of the National Poultry Improvement Plan. These delegates represent state officials and members of the poultry industry from the 47 states cooperating in the National Poultry Improvement Plan. In preparation for the Biennial Conference, the Committee will develop recommendations to be considered by the voting delegates during the Biennial Conference.

Tentative topics to be discussed by the Committee include:

1. Inspecting flocks according to need, instead of inspecting a specified percentage of flocks.
2. Lowering the minimum testing age of poultry to allow flocks to be marketed sooner.
3. Strengthening the "U.S. Sanitation Monitored" program to reduce foodborne diseases.
4. Clarifying the time period during which a state must detect on pollorum infections in order to qualify for a certain state classification.
5. Developing a new program for turkeys to reduce salmonella contamination.
6. Improving procedures to determine the Mycoplasma status of breeding flocks.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments to Dr. Irvin L. Peterson at the address listed in this document, or present them at the time of the meeting. Please refer to Docket Number 88-088 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 848 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 1st day of June, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-12685 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 88-021]

Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee).

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Room 107-A of the Administration Building, 12th Street and Jefferson Drive SW., Washington, DC 20090-6464, from 8:15 a.m. until 4:45 p.m. on June 15, 1988, and from 8:15 a.m. until noon on June 16, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8073.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) is to advise the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

The meeting will be open to the public. Anyone who wants to file a written statement with the Committee about meeting topics may do so either at the time of the meeting, or before the meeting, by sending the statement to Dr. M.A. Mixson at the above address.

Dated: May 31, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-12686 Filed 6-3-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Land and Resource Management Planning

AGENCY: Forest Service, USDA and Bureau of Land Management, Interior.

ACTION: Joint Notification of Land and Resource Management Planning Schedules.

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the USDI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS,** Part A and Part B.

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979 and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the Federal Register, September 30, 1982). Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). These rules require development of Regional Guides and Forest plans. Each plan will include all management planning for resources and be supported by an environmental impact statement.

All drafts and final Regional Guides and Forest plans and associated

environmental impact statement have been or will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Region for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest plan should contact the appropriate Regional Forester or Forest Supervisor.

DATE: Comments on the schedule will be accepted until July 6, 1988.

ADDRESS: Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Joyce P. Parker, Land Management Planning, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–6697.

Dated: May 26, 1988.

George M. Leonard,

Associate Chief.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
R-1 Northern Region			
Federal Building, Missoula, Montana 59807			
Regional Guide		1981	1983
Idaho:			
Clearwater	Orofino 83544	[3] 1985	1987
Idaho Panhandle (National Forests,[4] Coeur D'Alene, Kaniksu, St. Joe)	Coeur D'Alene 83814	[3] 1985	1987
Nezperce	Grangeville 83530	1985	1987
Montana:			
Beaverhead	Dillon 59725	1985	1986
Bitterroot	Hamilton 59840	[3] 1985	1987
Custer	Billings 59103	1985	1987
Deerlodge	Butte 59701	1985	1987
Flathead	Kalispell 59901	[3] 1984	1986
Gallatin	Bozeman 59715	1985	1987
Helena	Helena 59601	[3] 1985	1986
Kootenai	Libby 59923	1985	1987
Lewis and Clark	Great Falls 59403	[3] 1984	1986
Lolo	Missoula 59801	[3] 1985	1986
R-2 Rocky Mountain Region			
11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225			
Regional Guide		1981	1983
Colorado:			
Arapaho-Roosevelt [4]	Ft. Collins 80521	1982	1984
Supplement			1985
Grand Mesa, Uncompahgre, and Gunnison [4]	Delta 81416	1983	1983
Supplement		1988	1989
Pike and San Isabel	Pueblo 81008	1982	1985
Rio Grande	Monte Vista 81144	1983	1985
Routt	Steamboat Springs 80477	1983	1984
San Juan	Durango 81301	1982	1983
Supplement		1988	1989
White River	Glenwood Springs 81601	1983	1984
Nebraska: McKelvie [4]	Chadron 69337	1982	1985
South Dakota: Black Hills	Custer 57730	1982	1983
Wyoming:			
Bighorn	Sheridan 82801	1984	1985
Supplement		1985	1985
Medicine Bow	Laramie 82070	1984	1986
Shoshone	Cody 82414	1984	1986
R-3 Southwestern Region			
517 Gold Ave., SW., Albuquerque, New Mexico 87102			
Regional Guide		1981	1983
Arizona:			
Apache-Sitgreaves	Springerville 85938	1986	1987
Coconino	Flagstaff 86001	1986	1987
Coronado	Tucson 85702	1985	1986
Kaibab	Williams 86046	1987	1988
Prescott	Prescott 86301	1985	1987
Tonto	Phoenix 85034	1985	1985
New Mexico:			
Carson	Taos 87571	1985	1986
Cibola	Albuquerque 87112	1984	1985
Gila	Silver City 88061	1985	1986
Lincoln	Alamogordo 88310	1985	1986
Santa Fe	Santa Fe 87501	1986	1987
R-4 Intermountain Region			
324 25th Street, Ogden, Utah 84401			
Regional Guide		1981	1984

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Idaho:			
Boise	Boise 83706	1988	1989
Caribou	Pocatello 83201	1984	1986
Challis	Challis 83226	1985	1987
Payette	McCall 83638	1985	1988
Salmon	Salmon 83467	1985	[5] 1988
Sawtooth	Twin Falls 83301	1985	1987
Targhee	St. Anthony 83445	1981	1985
Supplement			1985
Nevada:			
Humboldt	Elko 89801	1985	1986
Toiyabe	Reno 89501	1985	1986
Utah:			
Ashley	Vernal 84078	1985	1987
Dixie	Cedar City 84720	1986	1986
Fishlake	Richfield 84701	1985	1986
Manti-LaSal	Price 84501	1985	1987
Uinta	Provo 84601	1982	1985
Supplement			1984
Wasatch-Cache [4]	Salt Lake City 84138	1985	1985
Wyoming: Bridger-Teton [4]	Jackson 83001	1987	1989
R-5 Pacific Southwest			
630 Sansome Street, San Francisco, California 94111			
Regional Guide		1981	1984
California:			
Angeles	Pasadena 91101	1985	1987
Cleveland	San Diego 92188	1985	1986
Eldorado	Placerville 95667	1986	1989
Inyo	Bishop 93514	1987	1988
Klamath	Yreka 96097	1990	1991
Lassen	Susanville 96130	1986	1989
Los Padres	Goleta 93107	1986	1988
Mendocino	Willows 95988	1987	1989
Modoc	Alturas 96101	1987	1989
Plumas	Quincy 95971	1986	1988
San Bernardino	San Bernardino 92408	1986	1988
Sequoia	Porterville 93257	1986	1988
Shasta-Trinity	Redding 96001	1989	1990
Sierra	Fresno 93721	1986	1989
Six Rivers	Eureka 95501	1987	1989
Stanislaus-Calaveras, Big Tree [4]	Sonora 95370	[3] 1989	1990
Tahoe	Nevada City 95959	1986	1989
Lake Tahoe Basin Management Unit	So. Lake Tahoe 95731	1986	1988
R-6 Pacific Northwest Region			
319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208			
Regional Guide		1982	1984
Supplemental EIS		1986	1988
Oregon:			
Deschutes	Bend 97701	1986	1989
Supplement		1988	
Fremont	Lakeview 97630	1988	1989
Malheur	John Day 97845	1987	1989
Mt. Hood	Portland 97233	[5] 1988	1989
Supplement		1988	
Ochoco	Prineville 97754	1986	1989
Rogue River	Medford 97501	[5] 1988	1989
Siskiyou	Grants Pass 97526	1987	1989
Siuslaw	Corvallis 97330	1987	1989
Supplement		1988	
Umatilla	Pendleton 97801	[5] 1988	1989
Umpqua	Roseburg 97470	[5] 1988	1989
Wallowa-Whitman	Baker 97814	1986	1989
Supplement		1988	
Willamette	Eugene 97440	[5] 1988	1989
Winema	Klamath Falls 97601	[5] 1988	1989
Washington:			
Colville	Colville 99114	1987	1988
Gifford Pinchot	Vancouver 98660	1987	1989
Mt. Baker-Snoqualmie [4]	Seattle 98101	[5] 1988	1989
Okanogan	Okanogan 98840	1986	1989
Supplement		1988	
Olympic	Olympia 98501	1987	1989
Supplement		1988	
Wenatchee	Wenatchee 98801	1987	1989

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

	Headquarters location [1]	Fiscal year to be completed	
		DEIS	FEIS [2]
Supplement		1988	
R-8 Southern Region			
1720 Peachtree Road, NW, Altanta, Georgia 30309			
Regional Guide		1982	1984
Alabama: National Forests in Alabama [4] (William B. Bankhead, Conecuh, Talladega, Tuskegee).	Montgomery 36101	1985	1986
Arkansas:			
Ouachita	Hot Springs 79101	1985	1986
Supplement		1988	1989
Ozark-St. Francis [4]	Russellville 72801	1985	1986
Florida: National Forests in Florida [4] (Apalachicola, Ocala, Osceola)	Tallahassee 32301	1985	1986
Georgia: Chattahoochee-Oconee [4]	Gainesville 30501	1984	1985
Kentucky: Daniel Boone	Winchester 40391	1985	1985
Louisiana: Kisatchie	Pineville 71360	1984	1985
Mississippi: National Forests in Mississippi [4] (Bienville, Delta, DeSoto, Holly Springs, Homochitto, Tombigbee).	Jackson 39205	1985	1985
North Carolina:			
National Forests in North Carolina [4]	Asheville 28802		
Nantahala and Pisgah		1985	1987
Uwharrie and Croatan		1985	1986
Puerto Rico:			
Carribbean	Rio Piedras 00928	1985	1986
Supplement		1988	1988
South Carolina:			
Francis Marion & Sumter [4]	Columbia 29202		
Francis Marion		1984	1985
Sumter		1985	1985
Tennessee: Cherokee	Cleveland 37311	1985	1986
Texas: National Forests in Texas [4] (Angelina, Davy Crockett, Sabine, Sam Houston)	Lufkin 75901	1985	1987
Virginia:			
George Washington	Harrisonburg 22801	1985	1986
Supplement		1989	1990
Jefferson	Roanoke 24011	1985	1986
R-9 Eastern Region			
633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203			
Regional Guide		1981	1983
Illinois: Shawnee	Harrisburg 62946	1985	1987
Indiana and Ohio:			
Wayne-Hoosier [4]	Beford 47421		
Wayne		1987	[5] 1988
Hoosier		1984	1985
Michigan:			
Hiawatha	Escanaba 49829	1985	1987
Huron-Manistee [4]	Cadillac 49601	1985	1986
Ottawa	Ironwood 49938	1986	1987
Minnesota:			
Chippewa	Cass Lake 56633	1985	1986
Superior	Duluth 55801	1985	1986
Missouri: Mark Twain	Rolla 65401	1985	1986
New Hampshire and Maine: White Mountain	Laconia, NH 03246	1985	1986
Pennsylvania: Allegheny	Warren 16365	1985	1986
Vermont: Green Mountain	Rutland 05701	1986	1987
West Virginia: Monongahela	Elkins 26241	1985	1986
Wisconsin:			
Chequamegon	Park Falls 54552	1985	1986
Nicolet	Rhinelander 54501	1985	1986
R-10 Alaska Region			
Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802			
Regional Guide		1981	1984
Alaska:			
Chugach	Anchorage 99502	1982	1984
Tongass-Chatham	Sitka 99835	[6] 1989	[6] 1989
Tongass-Ketchikan	Ketchikan 99901	[6] 1989	[6] 1989
Tongass-Stikine	Petersburg 99833	[6] 1989	[6] 1989

[1] Mailing address for each National Forest
[2] DES and FEIS mean Draft and Final Environmental Impact Statement
[3] Supplemental EIS
[4] Two or more separately proclaimed National Forests
[5] Filed with EPA in FY 1988
[6] One EIS will be filed for the Tongass National Forest.

Part B—Bureau of Land Management

Resource management planning for the Bureau of Land Management administered lands in governed by regulations 43 CFR Parts 1601 and 1610. Those regulations (43 CFR 1610.2(b)) require that the Bureau publish a planning schedule advising the public of the status of plans in preparation and projected new starts for the three succeeding fiscal years and calling for public comment on the projected new starts. The schedule below fulfills that requirement. Some plan amendments will be prepared in FY 89, 90, and 91 to address oil and gas issues. Because the number, scope and location of these amendments are not sufficiently settled at this time to request public comment, they are not show below.

The planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule through 1991. Public notice and opportunity for participation in each resource management plan (RMP) shall be provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted until June 6, 1988.

ADDRESS: Comments should be sent to Director (760), Bureau of Land Management, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Forest W. Littrell or Rene' McCray, (202) 653–8824.

Robert F. Burford,

Director.

May 3, 1988.

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State, District, and resources area	Plan name and type (Major resource/ issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
ALASKA:					
Anchorage	Kuskokwim/Lower Yukon RMP (Minerals)			PFA	NOI
	Southern RMP (Recreation, Wildlife)			START	
Arctic	Utility Corridor RMP (Wildlife, Recreation, State Land Selection, Energy-Minerals Transportation)	FEIS			
Glennallen	South Central RMP	START	DEIS	FEIS	
Steese/White Mtn.	Fort Greely RMP (Military Withdrawal, Recreation)	DEIS	FEIS		
	Fort Wainwright RMP (Forestry, Recreation, Military Defense, Minerals)	DEIS	FEIS		
	Fortymile/black River RMP (Placer Gold, Recreation, Wildlife)			START	DEIS
ARIZONA:					
Arizona Strip Districtwide.	Arizona Strip RMP (Realty, Off-Road Vehicles, Recroation, Cultural Resources Mgmt.)		DEIS, FEIS		
Phoenix Kingman	Kingman RMP (Realty, ACEC, Range/ Grazing, Wildlife)	START		DEIS	
Phoenix	Phoenix RMP (Realty, ACEC, Recreation, Range)	DEIS, FEIS			
Lower Gila	Lower Gila South RMP (Military withdrawal)	DEIS	FEIS		
Safford Districtwide	Safford RMP (Recreation, Off-Road Vehicles, ACEC, Range)		DEIS	FEIS	
CALIFORNIA:					
Bakersfield Bishop	Bishop RMP (Range, Realty, Geothermal)	START	DEIS		
California Desert Indio	Southern Metropolitan Area RMP (Realty, Forestry, Recreaton)	START	DEIS	FEIS	
Ukiah Eureka	Arcata RMP (Realty, Forestry)	DEIS	FEIS		
Redding	Redding RMP (Realty, Forestry, Recreation)	START	DEIS	FEIS	
COLORADO:					
Canon City Districtwide	Canon City MFPA (Wilderness)	FEIS			
Royal Gorge	Royal Gorge RMP (Range, Realty, O&G, Recreation)			START	
San Luis	San Luis RMP (Realty, Range, Wildlife)	DEIS	FEIS		
Craig Districtwide	Craig MFPA (Wilderness)	DEIS	PFEIS		
Grand Junction Glenwood Springs.	Glenwood Springs RMPA (Wilderness)	PFEIS			
Grand Junction	Grand Junction RMPA (Wilderness)	PFEIS			
Little Snake	Little Snake RMP (O&G, Range, Coal, Recreation)	FEIS			
Montrose Gunnison	Gunnison Basin RMP (Range, Wildlife, Riparian, Recreation)	START	DEIS	FEIS	
San Juan/San Miguel	San Juan/San Miguel RMPA (Wilderness).	PFEIS			
Uncompahgre	Uncompahgre RMP (Coal, Recreation, Wilderness)	FEIS			
IDAHO:					
Statewide	Plan Amendments (Wilderness—Areas less than 5000 acres	PFEIS			
Idaho Falls Pocatello	Medicine Lodge RMPA (Wilderness)	FEIS			
	Pocatello RMP (Realty, Mineral Leasing)	FEIS			
Boise Bruneau	Jacks Creek MFPA (Wilderness)	PFEIS, FEIS			

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, District, and resources area	Plan name and type (Major resource/ issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
Owyhee	Owyhee/Canyonlands MFPA (Wilderness)	PFEIS			
Coeur Dalene Cottonwood.	Chief Joseph RMP (Realty, Forestry/ Timer)				START
Emerald Empire	Emerald Empire RMP (Realty, Forestry/ Timber)				START
Shoshone Bennett Hills	Bennett Hills RMP (Range, Recreation)		START	DEIS	FEIS
MONTANA:					
Butte Dillon	Centennial MFPA (Wilderness)	PFEIS	FEIS		
Garnet	Garnet RMPA (Wilderness)	FEIS			
Headwaters	Headwaters RMPA (Sleeping Giant Wilderness)	START	DEIS	FEIS	
Lewistown Great Falls	West Hi-Line RMP (O&C, Realty, Off-Road Vehicles, ACEC,)	FEIS			
	Blackleaf EIS (O&G, Wildlife)	DEIS	FEIS		
Judith	Judith/Phillips/Valley RMP (O&G, Realty, Off-Road Vehicle)	START		DEIS	FEIS
Valley	Bitter Creek MFPA (Wilderness)	FEIS			
Miles City big Dry	Missouri Breaks MFPA (Wilderness)	FEIS			
Billings	Billings RMPA (Wilderness)	FEIS			
Powder River	Powder River RMPA (Wilderness)	FEIS			
	Powder River Round I Suppl. (Coal)	DEIS	FEIS		
NEVADA:					
Carson City Walker	Walker RMPA (Wilderness)	FEIS			
Las Vegas Caliente	Caliente MFPA (Wilderness)	FEIS			
	Nellis RMP (Nat'l Defense, Wild Horses, Wildlife)	DEIS	FEIS		
Stateline	Plan Amendments (Wilderness, Areas less than 5,000 acres)	DEIS, PFEIS	FEIS		
Esmeralda	Esmeralda Southern Nye RMP (Wilderness)	FEIS			
Winnemucca Sonoma-Gerlach.	Sonoma-Gerlach MFPA (Non-Energy Realty)				START
NEW MEXICO:					
Statewide	Statewide Wilderness MFPA (Wilderness)	PFEIS			
Las Cruces Las Cruces/Lordsburg.	Las Cruces/Lordsburg RMP (Off-road Vehicles, Lands, Mineral Materials)		START		DEIS, FEIS
Socorro	Socorro RMP (Range, Realty, Off-Road Vehicles, Coal)	DEIS, FEIS			
White Sands	White Sands RMP (MacGregor Amend.; Access, Off-Road Vehicles)	DEIS	FEIS		
Roswell Roswell	Roswell RMP (Mineral Leasing, Off-Road Vehicles)			START	
OREGON:					
Statewide	Oregon Statewide MFPA (Wilderness)	PFEIS			
Burns Andrews	Andrews RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros)		START		DEIS, FEIS
Three Rivers	Three-Rivers RMP (Range/Grazing, Wildlife, Water, Realty)		DEIS, FEIS		
Coos Bay Districtwide	Coos Bay RMP (Forestry, Water, Wildlife, Realty, ACEC)			DEIS, FEIS	
Eugene Districtwide	Eugene RMP (Forestry, Water, ACEC, Realty)			DEIS, FEIS	
Lakeview Districtwide	Lakeview RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros)			START	DEIS
Medford Districtwide	Medford RMP (Forestry, Wildlife, Water, Realty, ACEC)		START	DEIS, FEIS	
OREGON:					
Prineville Central Oregon.	John Day RMPA (Recreatoin, Realty, Water, Wild and Scenic Rivers)	START		DEIS, FEIS	
Central Oregon/Deschutes.	Brothers—LaPine RMP (Forestry, Realty, Water, Off-Road Vehicles)	FEIS			
Roseburg Districtwide	Roseburg RMP (Forestry, Wildlife, Water, Realty, ACEC)			DEIS, FEIS	
Salem Districtwide	Salem RMP (Forestry, Wildlife, Water, Realty)			DEIS, FEIS	
Vale N. Malheur	N. Malheur RMP (Range, Wildlife, water, Realty)		START		DEIS, FEIS
S. Malheur	S. Malheur RMP (Range, Wildlife, Water, Wild Horses and Burros)				START
UTAH:					
Cedar City Dixie	Dixie RMP (O&G, Realty, Recreation, ACEC)	DEIS			
Kanab	Kanab RMP (Recreation, Watershed)			START	
Moab Price River	Price River RMP (O&G, Recreation, Minerals, Wildlife, Watershed)				START
San Juan	San Juan RMP (Livestock, O&G, Recreaton, Lands)	FEIS			

BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, District, and resources area	Plan name and type (Major resource/ issues	Fiscal year 1988	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991
San Rafael	San Rafael RMP (Livestock, O&G, Coal, Recreation)	DEIS, FEIS			
Richfield Henry Mountain.	Henry Mountain RMP (ACEC, Wildlife)		START		
Salt Lake Pony Express	Pony Express RMP (O&G, Range, lands, Minerals)	DEIS, FEIS			
Vernal Diamond Mountain.	Diamond Mountain RMP (Wildlife, O&G)	START			DEIS, FEIS
WYOMING:					
Rawlins Lander	Whiskey Mountain, DuBois, Badlands EIS (Wilderness: Area less than 5000 acres)	PFEIS			
Medicine Bow/Divide	Medicine Bow/Divide RMP (Range, Wildlife, Recreation, O&G)	FEIS			
Rock Springs Pinedale	Green River RMP (O&G, Range, Wild Horses, Archeological)	START		DEIS	FEIS
	Pinedale RMP (Range, O&G, Lands, Forestry)	FEIS			
Worland Cody	Cody RMP (O&G, Range)	DEIS, FEIS			
	Cody RMPA (Wilderness)	PFEIS			
Washakie	Washakie RMP (Range, O&G)	FEIS			
	Washakie RMPA (Wilderness)	PFEIS	FEIS		

Key to Abbreviations:
EIS—Environmental impact statement.
DEIS—Draft environmental impact statement.
FEIS—Final environmental impact statement.
MFPA—Management framework plan amendment.
PFEIS—Preliminary final environmental impact statement (wilderness only).
RMP—Resource management plan.
RMPA—Resource management plan amendment.
O&G—Oil and Gas.

[FR Doc. 88-12652 Filed 6-3-88; 8:45 am]
BILLING CODE 3410-11-M 4310-84-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of applications.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received two applications for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificates should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office fo Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the certificates should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should reference the application number provided in the application summary. Summaries of the applications follow.

Summary of Applications

Applicant: Hammerl-Davis International, Inc. ("HDI"), 100 Park Avenue, 17th Floor, New York, NY 10017, Contact: Andrew J. Hammerl, President, Telephone: 212/692-4720.

Application: 88-00007.

Date Deemed Submitted: May 27, 1988.

Members (in addition to applicant): None.

Export Trade Products

All industrial and consumer products.

Related Services

Export management, including, for example, evaluating product market potential, selecting country markets, consulting, developing and implementing export business plans, and assisting clients in introducing products into new export markets or developing new approaches for existing markets; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

HDI seeks certification for the:

1. Export of individual clients' products worldwide with HDI acting as an agent or representative.

2. Export of individual clients' products worldwide with HDI taking possession of the products.

3. Export of the products of several clients in the same industry on a one-on-one basis.

Applicant: Global Marketing Associates, Inc. (GMA), 109 Barksdale Professional Center, Newark, Delaware 19711, Contact: Ferdinand Wieland, President, Telephone: 302/737–4580.

Application #: 88–00006.

Date Deemed Submitted: May 27, 1988.

Members (in addition to applicant): None.

Export Trade Products

X-ray and electro-medical equipment, surgical and medical instruments, surgical appliances and medical supplies, dental equipment and supplies ("surgical and medical products").

Related Services

Marketing, selling, brokering, consulting, international market research, advertising and sales promotion, product research and design, cooperative bidding, consolidation of shipments, export financing and insurance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Global Marketing Associates, Inc. (GMA) seeks certification to:

1. Enter into agreements with suppliers of surgical and medical products, whereby GMA agrees to act as each supplier's exclusive Export Intermediary for the export of surgical and medical products.

2. Exchange among suppliers of GMA information concerning foreign competitors' prices, production, sales, and other information on the supply and demand for surgical and medical products in the export markets.

3. With its suppliers, set prices and other terms for sales and service contracts for the export of surgical and medical products.

Date: May 31, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–12654 Filed 6–3–88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

[Transmittal No. 06–10–88019–01; Project I.D. No. 06–10–88019–01]

New Orleans Minority Business Development Center (MBDA); Application Announcement

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $282,824 for the project's performance period of October 1, 1988 to September 30, 1989. The MBDC will operate in the New Orleans Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name: New Orleans SMSA	
Federal	$240,400
Non-Federal	[1] 42,424
Total	282,824

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistnce (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to detemine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for receipt of application is July 6, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on June 10, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Bobby T. Jefferson,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development.

Project Name: New Orleans MBDC.

Project Identification Number: 06–10–88019–01.

Project Start and End Dates: 10/01/88 to 09/30/89.

Project Duration: 12 months.

Total Federal Funding (85%): $240,400.

Minimum Non-Federal Share (15%): $42,424.

Total Project Cost (100%): $282,824.

Closing Date for Submission of this Application: July 5, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: New Orleans, Louisiana SMSA.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indain Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:
Financial packages: $4,005,000.
Billable M&TA: $123,000.
Number of Professional Staff: 5.
Procurements: $8,010,000.
M&TA Hours: 2,460.
Number of Clients: 110.

[FR Doc. 88-12780 Filed 6-3-88; 8:45 am]
BILLING CODE 3510-21-M

National Bureau of Standards

[Docket No. 80586-8086]

Continuation of Fire Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing Continuation of Fire Research Grants Program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on February 20, 1981 (46 FR 13250), November 19, 1984 (49 FR 45636) May 6, 1986 (51 FR 16730) and June 5, 1987 (52 FR 21342). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

Closing Date for Applications: Proposals must be received no later than close of business September 30, 1988.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A-110 to:

Center for Fire Research
Attn: Sonya Cherry
National Bureau of Standards
Gaithersburg, Maryland 20899

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975-6854.

Eligibility: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately the same funding level. No increase in funds has taken place. The Fire Research Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the programs and objectives listed below. For clarity of the program objectives, you may contact Dr. Andrew J. Fowell (301) 975-6850.

Program Objectives

(a) Polymer Combustion Research—Chemical and physical processes associated with ignition, flame spread and smoldering of polymeric materials.

(b) Smoke Dynamics Research—Develop scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and modeling general fire phenomena.

(c) Flammability and Toxicity Measurement—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into additive or synergistic acute effects of multiple gaseous toxicants, and development of behavior models for incapacitation. Development of laboratory size tests and measurements that are of use in predicting the performance of combustible items (including heat release rate, toxic gas production, and smoke production in full scale fire).

(d) Fire Performance and Validation—Obtaining and analyzing experimental data from full scale tests for input to model development. Evaluation of mathematical models and methodology for quantitatively assessing the correlation between the models and full-scale test data.

(e) Hazard Analysis—Development and evaluation of mathematical smoke and toxic species transport models for large, complex structures. Methods to calculate hazard development vs. time. Methods to simulate the operation and impact of ventilation systems and components under conditions created by unwanted fires. Some research is carried out into the behavior of persons at risk in fire to calculate how rapidly persons can evacuate the structure or otherwise find refuge.

(f) Fire Growth and Extinction—Research into the physics and chemistry of fire processes such as burning rate, flame spread, fire gas flows, fire suppression, and the development of an understanding of the relationship between these processes as they contribute to compartment fire growth and spread, fire suppression system performance and smoke transport in buildings.

(g) Compartment Fire Modeling Research—The development, improvement and validation of: (1) "benchmark" compartment fire model computer codes, and (2) their submodel algorithm components which describe individual fire compartment processes.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the seven programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the center Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NBS, the Center for Fire Research, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

Rationality—0-20 points.
Qualification of Technical Personnel—0-20 points.
Resources Availability—0-20 points.
Technical Merit of Contribution—0-40 points.

The results of these evaluations are transmitted to the head of the appropriate research unit in the Center for Fire Research who prepares an analysis of comments and makes a recommendation. The Center for Fire Research unit head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The SF-424 mentioned in this notice is subject to the requirements of the

Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Administrative questions pertaining to the grant process may be directed to the Grants Specialist, Sharon Green, National Bureau of Standards, Bldg. 301, Room B–158, Gaithersburg, Maryland 20899, telephone number (301) 975–6328.

Date: May 31, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–12614 Filed 6–3–88; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Policy; Industry Supply Advisory Group; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held on June 13 through 16, 1988, beginning at 1:00 p.m. on June 14 and at 9:30 a.m. on June 15 and 16. The meeting will take place at the office of the IEA, 2, rue Andre Pascal, Paris, France. The purpose of the meeting is to permit attendance by representatives of U.S. company members of ISAG at an ISAG Training Session on June 13 and 14, at a Briefing Session for European National Emergency Sharing Organizations ("NESOs") on June 15, and at a Briefing Session for European Reporting Companies and Reporting Company Affiliates on June 16. The agenda for the sessions on June 13 and June 14 is as follows:

June 13

1. Introduction and Administrative Matters.
2. Emergency Sharing System.
3. Data Base/Allocation Calculation.
4. AST–6.
   (a) Objectives/Scope.
   (b) New Features.
   (c) Timetable.
5. Voluntary Offers.
6. Questions and Answers.

June 14

1. IEA Security Issues—Documents/Physical.
2. Group Meetings.
   (a) Country Supply Group ("CSG") and Supply Analysis Group ("SAG") Voluntary Offer Computer System/Reports.
   (b) Supply Coordination Group ("SCG") Organizational Meeting and Procedures.
3. Group Meetings.
   (a) SCG Voluntary Offer Computer System/Reports.
   (b) SCG—Organizational Meeting and Procedures.
   (c) SAG—Discuss Role and Potential Projects.
4. Information on Paris—Accommodations, etc.
5. Appraisal Report.
6. Legal Issues.
7. Wrap-Up.

It is anticipated that for agenda items 2 and 3 on June 14, ISAG will break up into two or three subgroups.

The agenda for the sessions on June 15 and June 16 is under the control of the IEA. It is expected that the following draft agenda will be followed for the sessions on both June 15 and June 16:

June 15 and 16

1. Overview: Emergency Sharing System.
2. Legal Aspects.
3. Test Background.
4. Test Guide.
   (a) Objectives and Scope.
   (b) New Features.
   (c) Timetable.
   (d) Organization and Responsibilities.
   (e) Data Base and Allocation Calculation.
5. Instructions for Questionnarie A/Questionnaire B Preparation and Submission.
6. ISAG and its Functions.
7. Voluntary Offer Process and Random Non-Implementation Procedure.
8. Appraisal Reports.
9. Question and Answer Session.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the ISAG, their counsel, representatives of the IEA Group of Reporting Companies, their counsel, employees of the IEA, employees of the Department of Energy, Justice, State, and the Federal Trade Commission and the General Accounting Office, representatives of committees of Congress, representatives of the Commission of the European Communities, and invitees of the ISAG or the IEA.

Issued in Washington, DC, May 31, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88–12625 Filed 6–3–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order with Stanco Petroleum, Inc.

AGENCY: Economic Regulatory Administration; Department of Energy.

ACTION: Final action on Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Stanco Petroleum, Inc. (Stanco) executed on March 24, 1988, and published for comment in 53 FR 11548 on April 7, 1988.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 6H–034, RG–33, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–5417.

Copies of the Consent Order may be obtained free of charge by written request to "Stanco Consent Order Request" at the above address or by calling Edward P. Levy at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On April 7, 1988, DOE Published notice in the **Federal Register**, Vol. 53 at page 11548 announcing the execution of a Proposed Consent Order between Stanco and DOE. In compliance with the DOE regulations, that Notice, and a Press Release issued on April 14, 1988,

summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of Stanco's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) concluded that Stanco had overcharged in certain crude oil transactions during the period September 1973 through August 1976. Stanco disputed ERA's audit findings and denied any overcharge liability, but DOE's Office of Hearings and Appeals essentially upheld ERA's conclusions in a Remedial Order issued to Stanco.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Stanco's compliance with and obligations under the Federal petroleum price and allocation regulations.

As consideration, Stanco has agreed to pay $50,000 plus interest, over three and one-half years. An additional payment will be made to DOE for every calendar quarter (during the term of the Consent Order) in which the posted price for crude oil sold by the firm averages $21 or more per barrel. These payments will increase as the posted price increases. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by Stanco pursuant to the Consent Order.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

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

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-12693 Filed 6-3-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC)

Date and time: June 29, 1988—8:30 a.m. -3:00 p.m.

Place: Conference Center, One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, Department of Energy, Washington, DC 20545, Telephone: 301/353-3651.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

June 29, 1988

- Report from HERAC Subcommittee on Biotechnology
- Report from HERAC Subcommittee on Radiation Biology
- Report from HERAC Subcommittee on Nuclear Medicine
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 31, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-12630 Filed 6-3-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-29-NG]

Premier Enterprises, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy; Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 6, 1988, of an application filed by Premier Enterprises, Inc. (Premier), for blanket authorization to import up to 73 Bcf of natural gas from Canada for domestic spot sales over a two-year period beginning on the date of first delivery

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 6, 1988.

FOR FURTHER INFORMATION:

William L. Durbin, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Premier is a corporation organized and existing under the laws of the State of Colorado with its principal place of business in Engelwood, Colorado. The applicant is a marketer of natural gas and contemplates importing the gas from a variety of Canadian suppliers, either for its own account for resale to a range of United States purchasers, including local distribution companies, pipelines and commercial and industrial end-users, or as an agent on behalf of Canadian suppliers or U.S. purchasers. Premier may also secure arrangements for transportation of Canadian gas in the United States. The terms of each agreement would be negotiated between Premier or participating U.S. buyers for which Premier acts as agent or marketer and Canadian producers. Premier intends to use existing transmission systems and will not require the construction of new or separate facilities to import the natural gas. Premier proposes to comply with ERA's reporting requirements.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement, in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 684, February 22, 1984). Parties that may oppose this applicatoin should comment in their response on the issue of competitiveness as set forth in

the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may permit the import of the gas at any existing point of entry and through any existing transmission system.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., July 6, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in the dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Premier's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 26, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–12694 Filed 6–3–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–396–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Pipeline Company

May 31, 1988.

[Docket No. CP88–396–000]

Take notice that on May 16, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP88–396–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tenngasco Corporation (Tenngasco) as agent and on behalf of Tenneco Oil Company. Tennessee explains that service commenced April 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–3297–000. Tennessee further explains that the peak day quantity would be 103,400 dekatherms, the average daily quantity would be 8,000 dekatherms, and that the annual quantity would be 2,920,000 dekatherms. Tennessee explains that it would receive natural gas for Tennagasco's account in the states of Louisiana, Texas, and Offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Tenngasco in the states of Texas and Louisiana.

Comment date: July 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Equitable Resources Exploration, Inc. and Eastern Kentucky Production Company

May 31, 1988.

[Docket No. CI86–245–002, *et al.*]

Take notice that on February 22, 1988, Equitable Resources Exploration, Inc. (EREX) and Eastern Kentucky Production Company (EKPC), c/o Henry E. Reich, Jr., Suite 2900, 330 Grant Street, Pittsburgh, Pennsylvania 15219, filed an application requesting redesignation and amendment of the certificate and rate schedule formerly held by PECO Resources, Inc. and of the terminated small producer certificates formerly held by Union Drilling, Inc. (UDI) and Gas Well Supply Company (GWSC) listed on the attached appendix, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective January 1, 1988, PECO merged into UDI, with the latter continuing as the surviving company under the new name Equitable Resources Exploration, Inc. and GWSC merged into EKPC with the latter continuing as the surviving company under the name of Eastern Kentucky Production Company.

Comment date: June 14, 1988, in accordance with Standard Paragraph J at the end of the notice.

Appendix

CERTIFICATE AND RATE SCHEDULE OF PECO RESOURCES, INC. TO BE REDESIGNATED IN THE NAME OF EQUITABLE RESOURCES EXPLORATION, INC.

PECO rate schedule No.	Proposed EREX rate schedule No.	Purchaser	Docket No.
1	1	East Tennessee Natural Gas Company	CI86-245-001.

SMALL PRODUCER CERTIFICATES TO BE REDESIGNATED IN THE NAME OF EQUITABLE RESOURCES EXPLORATION, INC. OR EASTERN KENTUCKY PRODUCTION COMPANY

Original small producer/seller	Successor producer/seller	Docket No.
Union Drilling, Inc.	EREX	R-371 (Order No. 411).
Gas Well Supply Co.	EKPC	R-371 (Order No. 411).

3. Fina Oil and Chemical Company

May 31, 1988.

[Docket No. CI76-361, *et al.*]

Take notice that on March 11, 1988, Fina Oil and Chemical Company (Fina) of P.O. Box 2159, Dallas, Texas 75221, filed an application to amend the certificates in the dockets listed in the Appendix hereto by substituting Fina for Northwest Exploration Corporation (Northwest) as the certificate holder and to redesignate Northwest's related Rate Schedules listed on the Appendix hereto as Fina's Rate Schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignments dated December 29, 1986, and effective October 1, 1986, Williams Exploration Company assigned to Fina all right, title and interest in the properties covered under Northwest's certificates and rate schedules listed on the attached Appendix.

Comment date: June 14, 1988, in accordance with Standard Paragraph J at the end of this notice.

Appendix

Northwest rate schedule	FINA rate schedule	Buyer, contract date and property covered	Docket No.
3	131	Northwest Pipeline, January 7, 1976, Philadelphia Creek, Rio Blanco Co., Colo	C176-361.
4	132	Northwest Pipeline, August 31, 1977, East Douglas Creek, Rio Blanco Co., Colo	C178-49.
10	133	Northwest Pipeline, July 29, 1978, Twin Arrows Creek, Rio Blanco Co., Colo	C178-1235.
12	134	Northwest Pipeline, December 4, 1979, San Juan Basin, San Juan, Co, NM	C179-206.

4. Nothern Natural Gas Company, Division of Enron Corp.

June 1, 1988.

[Docket No. CP88-410-000]

Take notice that on May 25, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-410-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Citizens Gas Supply Corporation (Citizens Gas), a marketer of natural gas, under the certificate issued in Docket No. CP86-435-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated April 6, 1988, it proposes to receive up to 20 billion Btu of natural gas per day plus additional volumes if sufficient capacity exists, at existing interconnections in Eugene Island Blocks 384 and 372, Offshore Louisiana and redeliver thermally equivalent volumes at Eugene Island Block 342, Offshore Louisiana.

Northern further states that the average day, maximum day and annual volumes would be 20.0 billion Btu, 15.0 billion Btu, and 7.300 billion Btu, respectively. Northern states that no facilities need be constructed to implement the service. In addition Northern indicates that there is no agency relationship under which a local distribution company or affiliate of Citizens Gas would receive gas on behalf of Citizens Gas. Northern also states that on March 8, 1988, it commenced a transportation service for Citizens Gas under the 120-day authorization of § 284.223 of the Commission's Regulations.

Northern states that the contract provides for a two-year primary term and would continue month to month thereafter unless terminated by thirty-day written notice.

Northern proposes to charge the rates and abide by the terms and conditions provided by its Rate Schedule IT-1.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

June 1, 1988.

[Docket No. CP88-406-000]

Take notice that on May 24, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-406-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Consolidated Fuel Supply, Inc. (Consolidated), a marketer, under applicant's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to transport up to 50,000 Dt. per day on behalf of Consolidated pursuant to a transportation agreement dated April 8, 1988, between Applicant and Consolidated (Agreement). Applicant

would receive gas from various existing points of receipt on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas and transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois for various end-users.

Applicant further states that the estimated daily and estimated annual quantities would be 27,000 Dt. and 10,000,000 Dt., respectively. Service under §284.223(a) commenced on April 11, 1988, as reported in Docket No. ST88-3567.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

June 1, 1988.

[Docket No. CP88-392-000]

Take notice that on May 13, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-392-000 pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales tap and valve assembly, to be located in McKinley County, New Mexico in order to permit the delivery of natural gas to the Gas Company of New Mexico (GCNM) for resale to the Gallup McKinley County Elementary School located in McKinley County, New Mexico, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that it is advised by GCNM that the requested quantities of natural gas will be utilized to serve the natural gas requirements of the new Gallup McKinley County Elementary School. It is stated that initial deliveries of natural gas are requested to begin in the first quarter of 1989. The estimated cost of the sales tap in $3,970, it is further stated.

Comment date: July 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph:

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.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12707 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18748-005, et al]

ARCO Oil and Gas Co. Division of Atlantic Richfield Company, et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

May 31, 1988

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 14, 1988, file with the Federal Energy Regulatory Commisson, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Description
G-18748-005, D, May 17, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company Mocane, *et al.*, Fields, Beaver and Ellis Counties, Oklahoma, and Lipscomb and Ochiltree Counties, Texas.	(1)
CI61-1429-020, D, May 16, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	.....do.....	(2)
CI61-1429-021, D, May 19, 1988	.....do.....	Jalmat, *et al.*, Fields, Lea County, New Mexico	(2)
		.....do..... Langlie-Mattix Field, Lea County, New Mexico	(2)
CI65-543-000, D, May 13, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Company of America, Indian Basin Field, Eddy County, New Mexico.	(1)
CI65-1227-001, D, Dec. 1, 1987	Mobil Oil Exploration and Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Second Bayou Field, Cameron Parish, Louisiana.	(4)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Description
CI88-456-000, (CI64-522), B, May 13, 1988.	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	K N Energy, Inc., Camrick Field, Beaver County, Oklahoma.	(5)
CI88-457-000, (CI61-1429), B, May 16, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(6)
CI88-458-000, F, May 16, 1988	Helmerich & Payne, Inc., 1579 E. 21st, Tulsa, OK 74114.	Williams Natural Gas Company, Hobart Ranch Area, Hemphill County, Texas.	(7)
CI88-459-000, (CI62-3), B, May 16, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(8)
CI88-460-000, (CI62-530), B, May 18, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	National Gas Pipeline Company of America, Northeast Alden Field, Caddo County, Oklahoma.	(1)
CI88-461-000, (G-4361), B, May 19, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., LaReforma Field, Starr and Hidalgo Counties, Texas.	(9)
CI88-462-000 (CI61-1425), B, May 19, 1988.	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Yates Field, Lea County, New Mexico.	(10)

[1] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[2] Effective 1-2-86, Sun assigned its interest in Property No. 527338 to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[3] Effective 6-1-84, Sun assigned its interest in Property No. 481203, Gregory 'A' 2-7 (partial assignment), limited from the surface down to 3,500 ft., to Doyle Hartman.
[4] Effective 5-15-87, Mobil assigned certain acreage to Fina Oil and Chemical Company, American Cometra Inc. and Corexcal, Inc.
[5] Effective 4-1-72, Union assigned a certain lease to R. W. Fine Drilling Company.
[6] Effective 1-2-86, Sun assigned its interest in Property No. 527258, S. E. King, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[7] Effective 1-1-88, Shell Western E&P Inc. assigned certain acreage to Helmerich & Payne, Inc.
[8] Effective 1-2-86, Sun assigned its interest in Property No. 749363, Wells 12 & 13, to Doyle Hartman, James A. Davidson, Michael L. Kline, and John H. Hendrix Corporation.
[9] Effective 10-1-87, Sohio assigned certain acreage to Union Pacific Resources Company and Mobil Exploration & Producing U.S. Inc.
[10] Effective 1-2-86, Sun assigned its interest in Property No. 639882, So-Langlie Jal Unit (formerly Gutman 18), to Doyle Hartman, James A Davidson, Michael L. Klein, and John H. Hendrix Corporation.
Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 88-12623 Filed 6-3-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-35-011]

Great Lakes Gas Transmission Co.; Compliance Filing

June 1, 1988.

Take notice that on May 20, 1988, Great Lakes Gas Transmission Company (Great Lakes) filed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

Great Lakes states that these tariff sheets incorporate changes in revised base tariff rates, interim overrun rates, and interim minimum bill in compliance with Articles III, VI, VII and IX of the stipulation and agreement approved by the Commission in its letter order issued April 6, 1988.

Great Lakes states that the filing fee is being tendered under protest to the extent, if any, a protest is required to preserve the right of Great Lakes to the refund of any amount thereof which may subsequently be determined to have been unlawfully collected as a result of final disposition of administrative or judicial proceedings.

Great Lakes states that copies of this filing are being served on all its customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

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 (1987)). All such motions or protests should be filed on or before June 8, 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. 88-12705 Filed 6-3-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ88-1-51-001 and RP88-158-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff

June 1, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 20, 1988, tendered for filing Substitute Fourteenth Revised Sheet Nos. 57(i), Substitute Fourteenth Revised Sheet Nos. 57(ii), and Substitute First Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 1, 1988.

Great Lakes states that on May 2, 1988, it filed with the Federal Energy Commission (Commission), pursuant to Order No. 483—Revisions to Purchased Gas Adjustment Regulations, a series of tariff sheets which included Fourteenth Revised Sheet Nos. 57(i), Fourteenth Revised Sheet No. 57(ii) and First Revised Sheet No. 57(v) with a proposed effective date of June 1, 1988.

Great Lakes states that since this filing was made, it has been notified by its largest resale customer, Natural Gas Pipeline Company of America ("Natural"), of a revision in the level of volumes projected by Natural to be purchased during the months of June and July, 1988. This change in volumes causes a corresponding change in Great Lakes' company use gas which results in a decrease in the Purchased Gas Cost Adjustment rates from those of the May 2, 1988, filing for most of Great Lakes' customers.

Great Lakes is requesting the Commission to accept this revised filing in order to implement the aforementioned revised Purchased Gas Cost Adjustments effective June 1, 1988.

Great Lakes requests waiver of the notice requiremnt of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit Substitute Fourteenth Revised Sheet Nos. 57(i), Substitute Fourteenth Revised Sheet No. 57(ii) and Substitute First Revised Sheet No. 57(v) to become effective on June 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 8, 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. Copies of this filing are on file with the Commisison and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-12703 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-007]

High Island Offshore System; Tariff Filing

June 1, 1988.

Take notice that on May 24, 1988, High Island Offshore System ("HIOS") tendered for filing Third Substitute Eighteenth and Second 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 Third Substitute Eighteenth and Second Substitute Nineteenth Revised Sheet Nos. 4 reflect a decrease of $.03 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 being made as an amendment to its previous filing submitted on May 6, 1988 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 June 8, 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. 88-12708 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-004, et al.]

High Island Offshore System, et al.; Filing of Pipeline Refund Reports and Refund Plans

May 31, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before June 17, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
Apr. 8, 1988	High Island Offshore System.	RP87-22-004
Apr. 18, 1988	MIGC, Inc.	RP87-43-004
Apr. 25, 1988	High Island Offshore System.	RP87-22-005
Do	Arkla Energy Resources.	RP86-106-011
May 2, 1988	Southern Natural Gas Company.	RP85-153-006
May 16, 1988	Midwestern Gas Transmission Company.	RP86-33-010
May 17, 1988	East Tennessee Natural Gas Company.	RP87-70-010
May 23, 1988	Southern Natural Gas Company.	CP86-401-010

[FR Doc. 88-12700 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-15-002]

Mid Louisiana Gas Co.; Correction to Filing

June 1, 1988.

Take Notice that on May 24, 1988, Mid Louisiana Gas Company (Mid Louisiana) filed Sixty-Third Revised Sheet No. 3a to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1988.

Mid Louisiana states that the previously filed sheet entitled Sixty-Third Revised Sheet No. 3a, Superseding Substitute Sixty-Second Revised Sheet No. 3a should have been titled Sixty-Third Revised Sheet No. 3a, Superseding Sixty-Second Revised Sheet No. 3a.

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 (1987)). All such motions or protests should be filed on or before June 8, 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. 88-12702 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-002]

Natural Gas Pipeline Co. of America; Tariff Filing

June 1, 1988.

Take notice that on May 25, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, submitted in Docket No. RP88-94-002 revised tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on May 1, 1988:

Substitute Alternate Eight Revised Sheet No. 8,

Substitute Alternate Fourth Revised Sheet No. 13,

Substitute Alternate Original Sheet Nos. 165 through 170.

Natural states that in compliance with Ordering Paragraph D of the Commission order issued in Docket Nos. RP88-94-000 and 001 on April 29, 1988

(Order). Natural revised its sheets to (1) reflect removal of all Relief Gas from its Base Period and Comparison Period purchase calculations for the purpose of allocating Take-or-Pay Settlement Costs to jurisdictional and non-jurisdictional customers; and (2) reflect removal of all interest included in the Take-or-Pay Settlement Costs for the period prior to May 1, 1988.

Natural states that its revised tariff sheets reflect elimination of (1) the provision for recovering take-or-pay or other contractual claims not asserted by a supplier on or before December 31, 1988; and (2) the provision which required terminating customers to pay their full allocation of Take-or-Pay Settlement Costs in one lump sum within 60 days of termination. Terminating customers shall remain liable for their full cost allocation but will be permitted to pay for these costs as if they had remained a customer.

Natural states that a copy of its filing has been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88-94-000.

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 §§ 385.211 and 385.214. All such motions or protests must be filed on or before June 8, 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. 88-12710 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-168-000]

Raton Gas Transmission Co.; Compliance Filing

June 1, 1988.

Take notice that on May 20, 1988 (fee filed), Raton Gas Transmission Company (Raton) filed First Revised Sheet Nos. 22, 23, 24, and Original Sheet Nos. 24-A and 24-B to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective June 1, 1988, in compliance with Order No. 483.

Raton states that these revised tariff sheets reflect modifications of its existing PGA Clause where necessary to implement Order No. 483 and 483-A. Raton also states that it is electing to continue use of its currently existing unit-of-sales method as contained in the revised tariff sheets.

Raton states it is not filing Revised Tariff Sheet—Statement of Rates since the rate change of its supplier, Colorado Interstate Gas Company (CIG), is below the Minimum amount of one mill per Mcf and Raton's Surcharge Deferral and Amortization Period does not currently expire until September 30, 1988 and could not be changed under Commission's regulations.

Raton requests that the Commission grant waiver of filing requirements for magnetic tape in any PGA filing requirement since Raton does not have the necessary equipment or trained personnel for this purpose and considering its limited operation could not economically provide such a facility. Raton further requests that such waivers be granted as is necessary to permit Raton to follow CIG in its delayed filings as ordered April 12, 1988, since Raton's rates directly follow and coincide with CIG's rates and dates of filing.

Copies of this filing have been served on Raton's customers and the New Mexico Public Service Commission.

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 (1987)). All such motions or protests should be filed on or before June 8, 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. 88-12706 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-177-000]

Texas Gas Transmission Corp.; Tariff Filing

June 1, 1988.

Take notice that on May 24, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventh Revised Sheet No. 14
Original Sheet No. 14A
Original Sheet No. 14B
Original Sheet No. 14C
Original Sheet No. 122
Original Sheet No. 123

Texas Gas states that this filing is made to reflect the allocation of United Gas Pipe Line Company's fixed take-or-pay charges to Texas Gas's downstream customers. Texas Gas states that this filing is consistent with the Commission's proposed Interim Rule and Statement of Policy pursuant to Order No. 500 issued August 7, 1987, which allows "downstream pipelines . . . to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely, cumulative purchase deficiencies." Texas Gas reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is June 1, 1988.

Copies of this filing have been served upon Texas Gas's affected jurisdictional and nonjurisdictional sales 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 June 8, 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. 88-12709 Filed 6-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-134-001]

Trunkline Gas Co.; Filing

June 1, 1988.

Take notice that on May 24, 1988, Trunkline Gas Company (Trunkline) filed the following tariff sheets to its

FERC Gas Tariff, Original Volume No. 1, proposed to be effective June 1, 1988:

Seventh Revised Sheet No. 21–D
Seventh Revised Sheet No. 21–E
Twelfth Revised Sheet No. 21–F
Fourth Revised Sheet No. 21–F.1
Eighth Revised Sheet No. 21–G
Sixth Revised Sheet No. 21–H
Sixth Revised Sheet No. 21–I
Sixth Revised Sheet No. 21–J
First Revised Sheet No. 21–J.1
First Revised Sheet No. 21–J.2
Original Sheet No. 21–J.3
Original Sheet No. 21–J.4
Original Sheet No. 21–J.5

Trunkline states that this filing corrects the headings on the revised tariff sheets that were filed with the Commission on May 3, 1988.

Trunkline requests that the Commission accept these corrected sheets in place of those submitted on May 3, 1988, to be effective June 1, 1988. Therefore, Trunkline requests waiver of § 154.22 of the Commission's Regulations.

Trunkline states that a copy of this filing is being sent to each of its jurisdictional customers and to the respective State Regulatory 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 (1987)). All such motions or protests should be filed on or before June 8, 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. 88–12701 Filed 6–3–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP87–15–023, RP86–115–014]

Trunkline Gas Co.; Proposed Changes In FERC Gas Tariff

June 1, 1988.

Take notice that Trunkline Gas Company (Trunkline) on May 24, 1988, filed the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's Opinion No. 297 issued February 26, 1988 and its April 22, 1988 Notice of Denial of Rehearing by operation of law:

Ninth Revised Sheet No. 5
Thirteenth Revised Sheet No. 5–A
Fourth Revised Sheet No. 9–E
Fourteenth Revised Sheet No. 9–F

The effective date of these revised tariff sheets pursuant to the Commission orders referenced above is May 1, 1987.

Trunkline states that these tariff sheets are being filed under compulsion of such orders of the Commission and without prejudice to Trunkline's position that the subject of the Commission's orders can not lawfully be made applicable retroactively, and in fact no refunds should be ordered at this juncture in the proceedings. Accordingly, these tariff sheets are submitted without prejudice to judicial review of the Commission's orders and Trunkline's position in the above-docketed proceedings.

Copies of the filing were served upon Trunkline's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 8, 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 in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12704 Filed 6–3–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3391–5]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Corn Products' Stockton Cogeneration Facility (SCF) (EPA Project Number SJ 85–04)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 14, 1988, the Environmental Protection Agency issued a modified PSD permit (which was originally issued on December 16, 1985 under EPA's Federal regulations 40 CFR 52.21) to the applicant named above. The original PSD permit grants approval to construct a 49.9 MW coal-fired circulating fluidized bed combustor (CFBC) cogeneration facility located in Stockton, California. The permit modification allows Corn Products simultaneous operation of an existing gas turbine with the CFBC, and flexibility to operate an existing incinerator/waste heat boiler during the initial startup period of the CFBC. (Both turbine and boiler were originally proposed to be shutdown following the initial operation of the CFBC).

FOR FURTHER INFORMATION: Copies of the permit modification are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

DATE: The PSD permit modification is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within sixty (60) days of the date of this notice.

Date: May 20, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 88–12634 Filed 6–3–88; 8:45 am]

BILLING CODE 6560–50–M

[CFRL–3391–6]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Cyprus Casa Grande Corporation (Cyprus) (EPA Project Number NSR 4–1–3; AZP 87–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 18, 1988, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct/modify the Cyprus Casa Grande existing copper mining and processing facility located on the Tohono O'odham Indian Reservation in Pinal County, Arizona. Due to a decline in copper prices and the unavailability of copper concentrates, the plant ceased operating in August 1977. Cyprus now wishes to resume operation of the plant. The facility presently includes an underground copper leaching operation;

concentrate preparation system; two fluidized bed concentrate roasters with an associated leach and acid plant; a solvent extraction plant; and an electrowinning plant. The permit is subject to certain conditions, including an allowable emission rate (and averaging time) as follows: sulfur dioxide (SO_2) not to exceed 165 lbs/hr or 650 ppm (one-hour), 600 ppm (24-hour) and 500 ppm (annual); particulate matter (as TSP or PM-10), each not to exceed 5.56 lbs/hr (3-hour).

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the existing cyclones, venturi scrubber, electrostatic precipitator, acid plant, mist eliminator and the proposed new double alkali scrubber for the control of SO_2, TSP and PM-10 emissions from the plant.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within sixty (60) days of the date of this notice.

Dated: May 20, 1988.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 88-12635 Filed 6-3-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3391-8]

Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations; Availability of Draft Report

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of Risk Assessment Forum draft report.

SUMMARY: This notice announces the availability of an EPA Risk Assessment Forum draft report entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations." EPA has asked for combined Science Advisory Board (SAB) and Science Advisory Panel (SAP) review of this report. The date, time, and place of the SAB/SAP review meeting will be announced in a separate Federal Register notice.

DATES: The Agency will make the document available for public review and comment on or about June 6, 1988. Comments must be postmarked by August 6, 1988.

ADDRESSES: To obtain a single copy of this document, interested parties should contact: the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency (EPA), 26 Martin Luther King Drive, Cincinnati, OH 45268. Telephone: (513) 569-7562 or FTS: 684-7562. Please provide your name, mailing address, and the EPA document number (EPA-625/3-88/014A). The document will be distributed from the Cincinnati office only.

It will be available for public inspection and copying at the EPA Public Information Reference Unit (PIRU), EPA Headquarters Library, 401 M Street SW., Washington, DC 20460, between the hours of 8:00 a.m. and 4:30 p.m. Comments on the document may be sent to Linda C. Tuxen, Technical Liaison, Risk Assessment Forum (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Tuxen, (202) or FTS) 475-6743.

SUPPLEMENTARY INFORMATION: EPA's Guidelines for Carcinogen Risk Assessment call for use of mechanistic and other relevant information in making choices about the models to be used in extrapolating hazard estimates from high to low exposures (51 FR 33998: September 24, 1986). The Forum report on thyroid neoplasia proposes that, under clearly specified conditions, chemical carcinogenesis in thyroid follicular cells can be analyzed as a threshold phenomenon, rather than assuming low-dose linearity as EPA customarily does for carcinogenic compounds. Specifically, for chemicals that induce tumors only in the thyroid gland and alter pituitary-thyroid status, EPA scientists would use metabolic, toxicological, and ancillary data on preneoplastic endpoints to identify a NOAEL or LOAEL as the basis for a cancer potency estimate.

The Forum report reviews the physiology and biochemistry of normal thyroid-pituitary function, discusses factors influencing thyroid carcinogenesis, and analyzes human data on thyroid hyperplasia and neoplasia. These findings were in part described in a 1986 Office of Pesticide Programs (OPP) report which was favorably reviewed by the FIFRA SAP. The Forum report enlarges on some of the issues in the OPP paper and provides analysis of additional topics.

Date: May 26, 1988.

Carl R. Gerber,

for Assistant Administrator for Research and Development.

[FR Doc. 88-12633 Filed 6-3-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44508; FRL-3392-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrafluoroethylene (CAS No. 116-14-3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for tetrafluoroethylene (TFE) was submitted by E. I. du Pont de Nemours and Company, Inc. pursuant to a test rule for the fluoroalkenes group, which includes TFE, at 40 CFR 799.1700. The data was received by EPA on May 20, 1988. The submission describes an evaluation of TFE in the mouse micronucleus test. Mutagenic effects testing is required by ths test rule.

Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to its completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44508). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA

Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 26, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–12763 Filed 6–2–88; 12:56 pm]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of 3067–0122

Title: Debt Collection Financial Statement

Abstract: FEMA Form 22–13, Debt Collection Financial Statement, is used by the Federal Emergency Management Agency to obtain information on a debtor's financial condition to determine the debtor's ability to pay a debt due the Federal Government. The FEMA Claims Collection Officer uses the information to decide whether to allow installment payments or to suspend or terminate the debt.

Type of Respondents: Individuals or households

Number of Respondents: 280

Burden Hours: 280

Frequency of Recordkeeping or Reporting: On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20502 within two weeks of this notice.

Date: May 27, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 12619 Filed 6–3–88; 8:45 am]

BILLING CODE 671–821–M

FEDERAL HOME LOAN BANK BOARD

Alliance Savings and Loan Association, Houston, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Alliance Savings and Loan Association, Houston, Texas on May 13, 1988

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12600 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Universal Savings and Loan Association, Scottsdale AZ; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings and Loan Association, Scottsdale, Arizona, on May 25, 1988.

Dated: May 25, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12602 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Briercroft Savings and Loan Association, Austin TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Briercroft Savings and Loan Association, Austin, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12594 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Cameron County Savings Association, San Benito, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cameron County Savings Association, San Benito, Texas, on May 13, 1988.

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12599 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Cardinal Savings Bank Inc., Newport, NC; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Cardinal Savings Bank, Inc., Newport, North Carolina, on May 13, 1988.

Dated: May 19, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12592 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

City Savings and Loan Association, San Angelo, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for City Savings and Loan Association, San Angelo, Texas, on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–12598 Filed 6–3–88; 8:45 am]

BILLING CODE 6720–01–M

Colorado County Federal Savings and Loan Association, Columbus, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Colorado County Federal Savings and Loan Association, Columbus, Texas on May 13, 1988.

Dated: May 19, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-12593 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-719; FHLBB No. 2219]

Danielson Federal Savings and Loan Association, Danielson, CT; Final Action; Approval of Conversion Application

Date: May 20, 1988.

Notice is hereby given that on May 13, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Danielson Federal Savings and Loan Association, Danielson, Connecticut for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88-12601 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

Lamar Savings Association, Austin, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Lamar Savings Association, Austin, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-12595 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

Security Savings and Loan Association, Dickinson, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Security Savings and Loan Association, Dickinson, Texas on May 13, 1988.

Dated: May 19, 1988.

John L. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-12597 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

Stockton Savings Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Stockton Savings Association, Dallas, Texas on May 18, 1988.

Dated: May 20, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-12596 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

Bluebonnet Savings Association, of Texas, Hempstead, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Bluebonnet Savings Association of Texas, Hempstead, Texas, on May 26, 1988.

Dated: May 26, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-12603 Filed 6-3-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have failed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Alomar Transport, Inc., 167-43 148th Avenue, Jamaica, New York 11434, Officer: Henry M. Kelly, President

Atlantic Customs Brokers, Inc., 2261 Broadbridge Avenue, Stratford, Conn. 06497, Officers: Peter K. Schlesinger, President, Valerie B. Schlesinger, Secretary/Treas.

Teresa Fisher Pittillo, 2470 Windy Hill Road, Suit 161, Marietta, Georgia 30067, Officer: Teresa F. Pittillo, Sole Proprietor

Dateline Forwarding Services, Inc., 377 Oyster Point Blvd., Unit 15, South San Francisco, CA 94080, Officers: Freddie Dias, President, Violet Dias, Secretary/Treasurer, Robert Villanueva, Senior Vice President

Ice-USA Inc., 341 Edwin Drive, Virginia Beach, VA 23462, Officers: Gunnar Gudjonsson, President, Henry Swann Poteet III, Dir./Sec./Treas.

By the Federal Maritime Commission.

Dated: June 1, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-12670 Filed 6-3-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Blood Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on May 13, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–433–2765.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner.

[FR Doc. 88–12610 Filed 6–3–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81F–0156]

American Cyanamid Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of sodium acrylate-acrylamide resins to control organic and mineral scale in beet sugar juice and liquor or cane sugar juice and liquor by the polymerization and hydrolysis of acrylamide.

FOR FURTHER INFORMATION CONTACT: Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1981 (46 FR 30196), FDA published a notice that it had filed a petition (FAP 9A3475) from the American Cyanamid Co., Wayne, NJ 07470, that proposed to amend the food additive regulations to provide for the safe use of sodium acrylate-acrylamide resins to control organic and mineral scale in beet sugar juice and liquor or cane sugar juice and liquor by the polymerization and hydrolysis of acrylamide. American Cyanamid Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: May 24, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–12609 Filed 6–3–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Open Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Advisory Board Subcommitee on Cancer Centers to be held at the times and places listed below. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meetings and rosters of the Committee members, upon request.

Name of Committee: Subcommittee on Cancer Centers.
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, Md. 20892 (301/496–5515).
Date of Meeting: June 25.
Place of Meeting: O'Hare Hilton Hotel, O'Hare Airport, Chicago, Illinois 60666.
Open: 10 a.m.–2 p.m.
Agenda: To plan a Workshop for July 21–22 pertaining to the Cancer Centers Program.

Name of Committee: Subcommittee on Cancer Centers Workshop.
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, Md. 20892 (301/496–5515).
Dates of Meeting: July 21–22.
Place of Meeting: Capital Hilton Hotel, 1001 16th Street, NW., Washington, D.C. 20036.
Open:
July 21, 8:30 a.m.–5 p.m.
July 22, 8:30 a.m.–5 p.m.
Agenda: To discuss a new direction for the Cancer Centers Program.

Dated: May 26, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–12653 Filed 6–3–88; 8:45 am]

BILLING CODE 4140–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Allocations to States of FY 1988 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes the allocations to States of FY 1988 funds for social services under the Refugee Resettlement Program (RRP).

EFFECTIVE DATE: June 6, 1988.

ADDRESS: Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, (202) 245–1924.

SUPPLEMENTARY INFORMATION: Notice of the proposed allocations to States of FY 1988 social services funds was published in the **Federal Register** on February 25, 1988 (53 FR 5646). As a result of the comments received, over $1.5 million which ORR previously had planned to use for discretionary initiatives has been added to the amount allocated by formula. Adjustments have been made in the estimated refugee populations of four States as a result of evidence submitted by those States.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $65,694,000 in FY 1988 refugee/entrant social service funds. This amount is based upon the Continuing Resolution for FY 1988 (Pub. L. 100–202) and the accompanying Conference Report (H. Rept. 100–498).

Of the total of $65,694,000, the Director of ORR will make available to States during FY 1988 $57,073,451 (86.9%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants. The final allocation amounts have been adjusted as a result of ORR's addition of $1,573,451 to the formula allocation and after taking into consideration population adjustments based on evidence submitted by four States.

All allocation figures include both refugees and Cuban/Haitian entrants since both populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $57,073,451 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $54,573,451 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. 3 years or less as of October 1, 1987 (including a floor of $75,000 for States which have small refugee/entrant populations).
- $2,500,000 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee-entrant populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The approximately $8,600,000 in remaining social service funds is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

The discretionary funds will support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued (Availability of Grants to States to Implement Community/Family Stability Projects, ORR Regional Letter issued to April 29, 1988; Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; and Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985). ORR is also continuing the Key States Initiative, which began last year, for projects to increase employment and self-support in States that have a high rate of dependence of refugees on cash assistance.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence.

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that under current regulations services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985–1987 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three circumstances exist: The cash assistance rate for time-eligible refugees/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473) amended section 412(e)(7)(A) of the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain certain provisions for the allocation of additional social service funds beyond the amounts made available by this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

2. That the MAA incentive allocation is subject to and included under ORR's requirement that 85 percent of the total amount of social service funds allocated by this notice to a State be used for priority services, as defned elsewhere in this notice.

3. That the State agency will observe the following definition of a mutal assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW, Washington, DC 20201, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by 30 days from the date of publication of this notice in order to avail themselves of this special allocation.

II. Discussions of Comments Received

We received three letters of comment in response to the notice of the proposed allocation to States of FY 1988 funds for social services for refugees and Cuban/Haitian entrants. The comments are summarized below and are followed in each case by the Department's response.

Comment: One commenter objected to the use of a formula based on refugees who have been in the U.S. 3 years or less, stating that 60% of the refugees who are receiving assistance in the commenter's area have been in the U.S. more than 3 years.

Response: The 3-year formula is required by statute.

Comment: Two commenters recommended that the approximately $10 million which ORR proposed to use for discretionary purposes be allocated instead according to the formula. The comments stated that this would aid States in addressing the reductions in funding for social services and State administration under the FY 1988 Continuing Resolution on Appropriations.

Response: After careful consideration, we have concluded that it would not be appropriate to distribute all of the discretionary funds under the allocation formula because of the importance of continuing a number of special efforts including the Key States Initiative to reduce welfare dependence and the Community/Family Stability Projects to provide services in on-impacted communities which are favorable locations for refugees. Other initiatives to provide services to newly arriving Hmong refugees from Laos and to Amerasians from Vietnam are also important. These and other discretionary projects, which are intended to improve the effectiveness and efficiency of the refugee resettlement program, fully merit the use of funds for these purposes and are able to address particular needs in a more flexible and productive manner than could be achieved by simply adding funds to the formula allocation. Most of the discretionary funds for special initiatives are awarded to States.

In response to the commenters' recommendation, we have, however, re-examined the amount of funds required this year for ORR's high-priority discretionary activities and have concluded that $1,573,451 can appropriately be added to the allocation formula. This addition brings the total amount allocated by this notice to $57,073,451. This is 98% of the $58,224,410 allocated in FY 1987. The FY 1988 formula allocations comprise 86.9% of the appropriation available for social services as compared with 84.9% in FY 1987.

III. Allocation Formula

Of the funds available for FY 1988 for social services, $54,573,451 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1987, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1988 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1987, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1984. Figures on the numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1988, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1985, 1986, and 1987. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1984, and September 30, 1987, who are throught to be living in each State as of October 1, 1987. The population estimates for the FY 1988 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All participating States submitted data on their secondary in-migration on Form ORR-11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in April-May 1987. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 12 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.68% to constrain the sum of the State figures to the known national total. Due to the adjustments made for population appeals, the population estimates for

most States are changed slightly from the notice of proposed allocations. Four States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State.

Table 1, below, shows the estimated 3-year population of refugees and entrants, as of October 1, 1987 (col. 1); the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3); and the amounts available as an incentive to States to use MAAs as service providers (col. 4).

V. Allocation Amounts

The following amounts are *allocated* for refugee social services in FY 1988:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1988

State	Total population (1)	Formula amount (2)	Allocation (3)	MAA incentive allocation (4)
Alabama	724	$200,757	$200,757	$9,134
Arizona	2,587	717,345	717,345	32,637
Arkansas	522	144,744	144,744	6,585
California	71,958	19,953,106	19,953,106	907,803
Colorado	2,342	649,409	649,409	29,546
Connecticut	2,273	630,276	630,276	28,676
Delaware	74	20,519	75,000	5,000
Dist. of Columbia	556	154,172	154,172	7,014
Florida	4,304	1,193,448	1,193,448	54,298
Georgia	2,923	810,513	810,513	36,876
Guam	34	9,428	75,000	5,000
Hawaii	935	259,264	259,264	11,796
Idaho	599	166,096	166,096	7,557
Illinois	7,886	2,186,695	2,186,695	99,488
Indiana	555	153,895	153,895	7,002
Iowa	1,584	439,225	439,225	19,983
Kansas	2,192	607,816	607,816	27,654
Kentucky	695	192,715	192,715	8,768
Louisiana	2,104	583,414	583,414	26,544
Maine	593	164,432	164,432	7,481
Maryland	3,038	842,402	842,402	38,327
Massachusetts	8,315	2,305,652	2,305,652	104,900
Michigan	3,323	921,429	921,429	41,922
Minnesota	6,235	1,728,892	1,728,892	78,659
Mississippi	299	82,909	82,909	5,000
Missouri	1,915	531,007	531,007	24,159
Montana	117	32,443	75,000	5,000
Nebraska	379	105,092	105,092	5,000
Nevada	785	217,671	217,671	9,903
New Hampshire	263	72,927	75,000	5,000
New Jersey	2,867	794,985	794,985	36,169
New Mexico	377	104,538	104,538	5,000
New York	14,336	3,975,204	3,975,204	180,859
North Carolina	1,516	420,369	420,369	19,125
North Dakota	239	66,272	75,000	5,000
Ohio	2,433	674,642	674,642	30,694
Oklahoma	1,326	367,684	367,684	16,728
Oregon	2,326	644,972	644,972	29,344
Pennsylvania	5,424	1,504,011	1,504,011	68,428
Rhode Island	1,545	428,410	428,410	19,491
South Caroiina	208	57,676	75,000	5,000
South Dakota	309	85,682	85,682	5,000
Tennessee	2,165	600,329	600,329	27,313
Texas	12,173	3,375,430	3,375,430	153,571
Utah	1,536	425,915	425,915	19,378
Vermont	230	63,776	75,000	5,000
Virginia	5,501	1,525,362	1,525,362	69,399
Washington	7,974	2,211,096	2,211,096	100,598
West Virginia	26	7,209	75,000	5,000
Wisconsin	2,948	817,446	817,446	37,191
Wyoming	7	1,941	75,000	5,000
Total	195,575	54,230,642	54,573,451	2,500,000

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Asistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: May 19, 1988.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 88-12608 Filed 6-3-88; 8:45 am]

BILLING CODE 4150-04-M

Social Security Administration

Agreement on Social Security Between the United States and France; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States and French social security programs is effective beginning July 1, 1988. The agreement with France, which was signed on March 2, 1987, is similar to U.S. social security agreements already in force with nine other countries—Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-French agreement eliminates duel social security coverage—the situation that exists when a person from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker and his or her employer may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-French agreement, an employee who is sent by an employer in the United States to work in France for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and French coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or French benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235 or may call (301) 965-3546.

Dated: May 27, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc 88-12618 Filed 6-3-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1810]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 31, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Nondiscrimination Based on Handicap in Federally Assisted Programs.
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and Its Proposed Use: This rule implements Section 504 of the Rehabilitation Act of 1973, as amended. HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from HUD.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 1,413,470.
Status: New.
Contact:
David H. Enzel, HUD, (202) 755-5404
John Allison, OMB, (202) 395-6880.

Dated: May 18, 1988.

Proposal: Record of Employee Interview.
Office: Secretary.
Description of the Need for the Information and Its Proposed Use: This information is needed to assure compliance with the Davis-Bacon Act and 24 CFR Part 5.6. HUD uses the form, Record of Employee Interview, to assist in recording interviews with construction workers and in conducting labor standards investigations.
Form Number: HUD-11.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 10,000.
Status: Reinstatement.

Contact:
Elizabeth G. Cronin, HUD, (202) 755–5370
John Allison, OMB, (202) 395–6880.

Dated: May 26, 1988.

[FR Doc. 88–12712 Filed 6–3–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Issued

May 6, 1988.

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to this permit application duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on this permit action may be requested by contacting the Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329, telephone (202/343–4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

Toledo Zoo Gardens	726229	05/06/88

Dated: May 27, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–12691 Filed 6–3–88; 8:45 am]
BILLING CODE 4310–55–M

Receipt of Application for Permit

The public is invited to comment on the following application for amendment of a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

PRT–691972

Applicant
Name: Carle Foundation Hospital.
Address: 611 West Park, Urbana, IL 61801.
Type of Permit: Scientific Research.
Name and Number of Animals: Polar bear (Ursus maritimus); 40 per year.
Summary of Activity to be Authorized: The applicant proposes to import approximately 300 serum samples, 300 urine samples and 300 adipose tissue samples per year to examine the seasonal ability of the polar bear to use specialized protein sparing metabolic adaptations to facilitate long-term fasting during their over-winter hibernation.
Source of Marine Mammals for Display: Canada.
Period of Activity: Annually.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC, 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400 1375 K Street, NW., Washington, DC 20005.

Dated: June 1, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 122692 Filed 6–3–88; 8:45 am]
BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20253, telephone (202) 395–7313.

Title: Coal Production and Reclamation Fee Report, Form OSM–1
Abstract: In order to ensure compliance with 30 CFR 870 a quarterly record is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.
Bureau Form Number: OSM–1
Frequency: Quarterly
Description of Respondents: Coal Operators
Annual Responses: 22,000
Annual Burden Hours: 5,867
Bureau Clearance Officer: Nancy Ann Baka (202) 343–5981

Dated: May 20, 1988

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88–12607 Filed 6–3–88; 8:45 am]
BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from The Woodside Consulting Group for permission to use certain waybill data from the Commission's 1986 waybill sample. The data sought are to be used to estimate the going concern value of certain lines of railroads operated by The Kansas City Southern Railway Company and the Louisiana and Arkansas Railway Company. The requester states that such an analysis should be based not only on existing KCS traffic but also on other relevant traffic in which the KCS System does not now participate but for which it can compete. The data fields requested are those used by Woodside in Finance Docket No. 32000 (list of items available on request to OTA). The requested traffic is limited to:

- All traffic in which KCSR participates; and
- Non-KCSR traffic between Illinois or states west of the Mississippi River and the following states: VA, WV, KY, TN, NC, SC, GA, AL, MS, FL, AR, LA, AND TX.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of propietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not

release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864

Noreta R. McGee,

Secretary.

[FR Doc. 88-12521 Filed 6-3-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 1, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

Revision of a Currently Approved Collection

(1) Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students—
(2) I-20, A, B, and 20 ID, Immigration and Naturalization Service
(3) On occcasion.
(4) Businesses or other for-profit, non-profit institutions. In accordance with Section 1001(A)(15)(F)(I) of the Immigration and Nationality Act, counsular and immigration officials use this form to determine if an alien student is eligible for an F-1 student visa.
(5) 200,000 respondents at .5 hours each.
(6) 100,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Application by Noninmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training—
(2) I-538, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households, businesses or other for-profit, non-profit institutions. This form is provided for by the Immigration and Nationality Act, section 101(a)(15) and 8 CFR Part 214 and is submitted by a nonimmigrant student seeking an extension of stay, transfer, or permission to accept or continue employment or practical training.
(5) 150,000 respondents at .166 hours each.
(6) 24,900 estimated annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Nonresident Alien's Canadian Border Crossing Card—
(2) I-175, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to obtain data from an applicant for a Canadian Border Crossing Card to determine eligibility.
(5) 700 respondents at .083 hours each.
(6) 58 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for Certification of Military or Naval Service—
(2) N-426, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to verify the military or naval service claimed by an applicant for naturalization.
(5) 7,000 respondents at .166 hours each.
(6) 1,162 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Registration for Classification as Refugee—
(2) I-590, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is use to determine eligibility of applicant for refugee status under Section 207 of the Immigration and Nationality Act.
(5) 75,000 respondents at .332 hours each.
(6) 24,900 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Supplement to Application to File Petition for Naturalization (Seaman)—
(2) N-400B, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to determine eligibility for naturalization benefits.
(5) 25 respondents at .25 hours each.
(6) 6.25 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Revalidation Letter (Immigrant Visa Petition)—
(2) I-71, Immigration and Naturalization Service
(3) On occasion.
(4) Businesses or other for-profit. Form is used to determine if petition should be revalidated on behalf of an alien to be employed by the petitioner.
(5) 13,000 respondents at .033 hours each.
(6) 429 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Nonresident Alien's Mexican Border Crossing Card—
(2) I-190, Immigration and Naturalization Service
(3) On occasion.
(4) Individuals or households. Form is used to obtain data from an applicant for a Mexican border crossing card to determine eligibility.
(5) 250,000 respondents at .083 hours each.
(6) 20,750 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Application to Payoff or Discharge Alien Crewmen—
(2) I–408, Immigration and Naturalization Service
(3) On occasion.
(4) Businesses or other for-profit. Form is for use in obtaining permission from the Attorney General by a master or an agent of a vessel or aircraft to discharge or payoff alien crewmen in the United States.
(5) 90,000 respondents at .25 hours each.
(6) 22,500 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–12646 Filed 6–3–88; 8:45 am]

BILLING CODE 4410–10–M

Consent Decree in Clean Water Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Judgment in *People of the State of Illinois, United States of America, et al. v. The East Chicago Sanitary District, et al.*, Civil Action No. H–81–613, was lodged with the United States District court for the Northern District of Indiana on May 12, 1988. The United States' Complaint in the action alleged that the East Chicago Sanitary District violated the Clean Water Act by (1) discharging waste into a navigable water without a permit; (2) discharging waste at a permitted location in excess of effluent limitations set by its National Pollutant Discharge Elimination System (NPDES) permit; and by violating permit provisions relating to equipment, operations, and maintenance.

The Consent Judgment requires East Chicago to take a number of specified measures to ensure compliance with the Clean Water Act, including completing construction of new facilities at the District's plant and achieving compliance with final permit effluent limits by July 1, 1988. East Chicago is also required to pay a civil penalty of $160,000 to the United States, and to reimburse the State of Illinois $40,000 for its litigation expenses.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *People of the State of Illinois, United States of America, et al. v. The East Chicago Sanitary District*, DOJ No. 90–5–1–1–1763.

The proposed Consent Judgment may be examined without charge at the office of the United States Attorney, Federal Building, 507 State Street, Hammond, Indiana 46320; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the Consent Judgment may be requested in person or by mail from the Department of Justice, at the above address. A copying charge of $2.50 (10 cents per page reproduction cost) must be paid, by check or money order payable to the Treasurer of the United States, at the time of the request.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–12657 Filed 6–3–88; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Advisory Board; Meeting

Time and date: 8:00 a.m., Monday, June 27, 1988.

Place: Ramada Hurstbourne, 9700 Bluegrass Parkway, Louisville, KY.

Status: Open.

Matters to be considered: Issues related to the possible relocation of the National Institute of Corrections Boulder, Colorado offices to the University of Louisville Shelby Campus.

Contact person for more information: Larry Solomon, Assistant Director, (202) 724–3106.

Raymond C. Brown,

Director.

[FR Doc. 88–12638 Filed 6–3–88; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–55]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 6, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Space Transportation System; Duty Free Entry of Space Articles.
OMB Number: 2700–0044.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 6.
Annual Burden Hours: 12
Abstract-Need/Uses: Public Law 97–446 authorized duty-free entry of space materials into the U.S. if NASA certifies that the statutory requirements are met. Information from applicants requesting duty-free entry is necessary to determine whether NASA should certify and if the statutory requirements are met.

John F. Duggan,

Director, General Management Division.

May 27, 1988.

[FR Doc. 88–12615 Filed 6–3–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88-56]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, tranmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 6, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 2000.
Annual Burden Hours: 500.
Abstract-Need/Uses: Report is needed to tranmit information from NASA contractors and NASA laboratory personnel who have developed new technological advances (inventions, discoveries, improvements or innovations) in the course of NASA-sponsored research and development programs. Such reporting is required under contract provisions.

May 27, 1988.

John F. Duggan,
Director, General Management Division.

[FR Doc. 88-12616 Filed 6-3-88; 8:45 am]
BILLING CODE 7510-01-M

[Notice 88-57]

NASA Wage Committee 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 Wage Committee.

DATE AND TIME: June 29, 1988, 2:30 p.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah C. Green, Code NPM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2622).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Personnel and General Management on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92-392. The Committee, chaired by Ms. Deborah Green, consists of six members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters believed to be deserving of the Committee's attention.

Type of Meeting: Closed.

Purpose of Meeting: The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

May 31, 1988.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-12617 Filed 6-3-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Meetings; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of § 552 of Title 5, United States Code.

1. *Date:* June 20, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications for Elementary and

Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.

2. *Date:* June 22, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.

3. *Date:* June 24, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.

4. *Date:* June 23–24, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Undergraduate Education, submitted to the Office of Challenge Grants Programs, for projects beginning after December 1, 1988.

5. *Date:* June 28–29, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Small Museums and Historical Organizations, submitted to the Office of Challenge Grants Programs, for projects beginning after December 1, 1988.

Stephen J. McCleary,
Advisory Committee, Management Officer.

[FR Doc. 88–12655 Filed 6–3–88; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

The Federal Demonstration Project (Formerly the Florida Demonstration Project); Phase II Solicitation

AGENCIES: National Science Foundation, National Institutes of Health, Office of Naval Research, Department of Energy, and Department of Agriculture.

ACTION: Notice.

SUMMARY: This Notice announces a solicitation to select organizations to participate in a Federal Demonstration Project (FDP) to eliminate unnecessary administrative burdens on sponsored research, thereby enhancing research productivity. The FDP constitutes Phase II of the current Florida Demonstration Project.

DATES: Evaluation and selection of organizations will be completed about August 15, 1988. Project organization and execution of Phase II agreements will be completed about October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Geoffrey Grant, National Institutes of Health, 301–496–5967; William Kirby, National Science Foundation, 202–357–7880; Charles Paoletti, Office of Naval Research, 202–696–4601; Edward Sharp, Department of Energy, 202–586–8192; or Lyn Zimmerman, Department of Agriculture, 202–382–1304.

SUPPLEMENTARY INFORMATION:

Background

In April 1986 NIH, NSF, DOE, ONR, and USDA joined with the Florida State University System and the University of Miami in a demonstration of a standard and simplified research support instrument.

The demonstration was developed by Federal officials with the encouragement of the Government-University-Industry Research Roundtable of the National Academy of Sciences.

The demonstration is testing the efficacy of standardizing and simplifying most Federal grant financial and administrative requirements as a means of enhancing research productivity and reducing administrative burden for Federal agencies and grantees.

The standard research grant being tested differs from the grants issued by most Federal agencies by eliminating most of the current requirements for Federal prior approval of certain expenditure items (foreign travel, permanent equipment, etc.) as long as pertinent grantee administrative systems are adequate. The terms of the Florida Demonstration Project also allow grantees the authority to incur pre-award costs up to 90 days before the effective date of the grant and to extend the period of the grant, if necessary, without Federal approval. Grantees may also determine that all Federally supported research of individual PI's is scientifically related and, if so, may charge available Federal funds to accomplish the work supported by each agency in the most effective way without detailed justifications of such allocations now required by Federal regulations. The Federal agencies continue to approve changes in the scope of the research or of the Principal Investigator.

Based on extensive review of the results of the project to date, an Interagency Assessment Committee recommended to the Office of Management and Budget that all research agencies be authorized to make routine use of most of the above features and that the Demonstration be continued with an enlarged scope and broader participation. On May 18, OMB issued a memorandum to all agencies making these authorities available for all agencies to apply to many research awardees, including contractors. The following solication is intended to implement the recommendation that the Demonstration be continued in an expanded form.

Purpose and Scope

The purpose of this solicitation is to provide a mechanism to expand the scope of the Florida Demonstration Project and to broaden participation in demonstration activities.

Phase II will have the following basic purposes:

1. To refine and test further certain features of the Florida Demonstration Project.

2. To identify and test or review new features.

3. To serve as the basis for the continued development of a model policy for the administration of all fundamental research and related awards.

4. To serve as a catalyst for awardee organizations and state government participation in reducing unnecessary or redundant internal and state systems administrative burden.

5. To examine the potential effects of administrative requirements on research productivity and/or costs.

Eligibility and Composition of Phase II

This solicitation is open to all organizations which perform or administer Federally sponsored research, or recognized representatives of such organizations. Up to 20 organizations may be selected. Those organizations that participated in Phase I that submit proposals and wish to participate under the same conditions outlined in this solicitation for Phase II will be included.

The selection or organizations is intended to be broadly representative of the research community, including primarily large and small public and private colleges and universities, and also possibly predominantly undergraduate institutions, non-profit research institutions, hospitals, and profit-making organizations. However, no commitment is made to select either a minimum number of organizations or to ensure representation by every

organization type or other characteristics.

Participation Conditions

As a condition for participation in Phase II, the selected organizations will be required to agree to the following conditions:

1. To participate fully in the development and demonstration of Phase II activities; and in subsequent review and communication of Phase II results to appropriate officials and audiences.

2. To accept the General Terms and Conditions governing the current Florida Demonstration project, as revised for Phase II.

3. To conduct an assessment of its own internal systems and to report on and undertake appropriate organizational changes (including review and approval at organization system or state/local levels) to improve administrative systems by reducing unnecessary and redundant requirements.

4. To assess or measure actual or potential impact of changes on research productivity.

5. To defray the costs of participation without special awards or funding from the participating Federal agencies.

Selection Criteria

1. Proposed approach(es) to addressing required Phase II activities, including methodologies for assessing the impact of administrative changes on research productivity.

2. Evidence of organizational and top management commitment to full participation in Phase II.

3. Organization's proposed approach to its own internal systems assessment, including evidence of appropriate state system or agency agreement to engage in these or corresponding assessments.

4. Evidence of experience and leadership in improving research administration.

In addition to the above, equally weighted criteria, consideration will be given to achieving an appropriate representation of organizations, including organization type, size, extent of research support, geographic location, etc.

Evaluation of Proposals and Selection Process

Evaluation of proposals will be carried out by a panel comprised of Federal agency officials and representatives of the research community convened by the Government-University-Industry Research Roundtable (GUIRR). The panel will make its recommendations to an Interagency Assessment Committee, comprised of representatives of participating Federal agencies for final selection.

Organization of Phase II

Phase II will be organized around several major core activities and issues which will be addressed by the participating organizations and agencies. The emphasis of these activities will be on examining administrative requirements and processes which directly impact research productivity. The Federal agencies, in cooperation with the selected organizations, will assess policies and operational issues in the core areas; select appropriate issues for demonstration or testing purposes; develop demonstration protocol; and be the focal point for carrying out the activity and evaluating its results. Selected organizations must be involved in all the core areas. While the focus of the Phase II activities will be on Federal requirements and processes, selected organizations will be expected to make corresponding changes in internal systems, where appropriate and consistent with prudent stewardship of Federal or institutional resources.

Phase II Activities

The following core areas will be included in Phase II:

1. Terms, Conditions, and Award Instruments

The standard terms and conditions governing the original Florida Demonstration Project will be refined and modified, with particular emphasis on the issues of project relatedness, data rights and copyrightable materials, and issues related to different types of award instruments (grants, contracts, cooperative agreements). It is intended that, prior to the commencement of Phase II, the parties will ratify standard terms and conditions which will goven both the Phase II participation and awards made during Phase II. The period of the Phase II agreements will extend for 24 months.

2. Application Process

Issues pertaining to the administrative burden associated with the application process will be explored, with particular emphasis on the time, effort and paperwork required to comply with Federal application requirements. The goals of this core area will be to simplify the process for non-competing applications and funding and to develop uniform protocol and formats for application materials and electronic submission.

3. Reporting Requirements

Issues pertaining to the administrative burden associated with technical and financial reporting requirmenets will be explored. The focus of this core area will include contents of reports, standardization, and frequency, and electronic submission.

4. Audit Requirements

Alternatives to existing audit and systems review processes as a means of assuring appropriate accountability and proper stewardship of Federal funds will be explored.

Other Areas

In addition to the above core areas, selected organizations and participating agencies may agree to pursue additional administrative issues, including more limited studies and demonstrations which may not involve all participants. Examples of such activities could include developing standard certifications and assurances, addressing indirect cost negotiation and reimbursement issues, reviewing payment processes, etc.

What to Submit

Proposing organizations must submit fifteen (15) copies of a brief proposal (not to exceed 5 pages) which covers the following:

1. Phase II Narrative

A narrative describing: (i) the primary areas of organizational and staff expertise which the proposer would contribute to Phase II, with particular emphasis on the core activities; (ii) suggested approaches for addressing those areas; (iii) other suggested subject areas and features; (iv) expected benefits to organization and research community of organization's participation, including suggested methods or approaches for assessing the impact of changes on research productivity.

2. Commitment/Responsibility

A section indicating the organization's top management and working level willingness and commitment to fully participate in the Phase II activities. This discussion should also identify the person who will be responsible for coordinating the organization's participation and their qualifications. In the case of organizations representing university systems, a single contact is required.

3. Internal Systems Review

A brief description of what and how the organization would reveiw its

internal systems and make or recommend changes. In the case of state institutions, how they will also seek review and appropriate changes at the system or state levels and evidence of appropriate state agency agreement to engage in such reviews.

4. Experience

A description of the organization's and its staff's experience and contributions in the area of sponsored research management.

5. Organization Profile

A brief summary of the organization's characteristics: type of institution/organization, size, Federal R&D funding for FY 85–87, by year and funding agency, etc.

Proposal Submission and Deadlines

Fifteen (15) copies of the organization's proposal must be received by C.O.B. July 15, 1988 at: Government—University—Industry, Reasearch Roundtable, National Academy of Sciences, National Academy of Engineering, Institute of Medicine, 2101 Constitution Avenue NW., Washington, DC 20418. Attention: FDP.

Selection and Schedule

Evaluation and selection of organizations will be completed about August 15, 1988.

Project organization and execution of Phase II agreements will be completed about October 1, 1988.

(OMB No. 3145–0080)

William S. Kirby,

Head, Policy Office, Division of Grants and Contracts, National Science Foundation.

[FR Doc. 88–12820 Filed 6–3–88; 10:11 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Agenda

The Advisory Committee on Nuclear Waste will hold a meeting on June 27–29, 1988. The sessions on June 27–28, 1988 will be held in Room 1046, 1717 H Street, NW., Washington, DC. The sessions on June 29, 1988 will be held in the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. The meeting room location will be determined at a later date.

Monday, June 27, 1988—Room 1046, 1717 H Street, NW., Washington, DC

10:00 a.m. – 10:15 a.m.: Comments by ACNW Chairman (Open) — The ACNW Chairman will report briefly regarding items of current interest.

10:15 a.m. – 12:00 noon: LLW Form and Polyethylene High-Integrity Containers (HICs) (Open) — The Division of Low-Level Waste and Decommissioning will report on recent staff and contractor actions concerning LLW solidified by cement, and studies regarding the serviceability of polyethylene HICs.

1:00 p.m. – 5:00 p.m.: Licensing of LLW Treatment Processes and the Dry Storage and Consolidation of Spent Fuel (Open)—The NRR Staff will report on the licensing of waste management activities at reactor sites with emphasis on the consolidation of spent fuel, LLW treatment processes, and dry storage.

Tuesday, June 28, 1988 — Room 1046, 1717 H Street, NW., Washington, DC

8:30 a.m.–9:30 a.m.: Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet to discuss anticipated ACNW activities, future meeting agendas, program plans and organization matters and preparation of ACNW reports as appropriate.

9:30 a.m. – 12:00 noon: Alternative Site Models of the Yucca Mountain Site (Open) — The DOE Staff and contractors will report on alternative site models for the Yucca Mountain Site with the emphasis on alternative models of the hydrologic regions at the Yucca Mountain Site.

1:00 p.m. – 3:00 p.m.: Design Basis Accident Limits for the HLW Repository (Open) — The DOE Staff will discuss their proposed request for a rulemaking defining the design basis accident limit for the HLW repository.

3:15 p.m. – 4:00 p.m.: NRC's Review of DOE's Consultation Draft Site Characterization Plan (Open) — The NRC Staff will discuss their response to the May 11, 1988 memo from R. Fraley to V. Stello on the NRC Staff's review of DOE's Consultation Draft Site Characterization Plan (CDSCP).

4:00 p.m. – 5:45 p.m.: Consultation Draft Site Characterization Plan (Open) — The DOE Staff will review the content of the CDSCP and describe their plans to address the NRC Staff's comments on it.

Wednesday, June 29, 1988 — Room 2F–17, 11555 Rockville Pike, Rockville, MD

8:30 a.m. – 10:00 a.m.: ACNW Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters.

10:00 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open) — The ACNW will meet with the NRC Commissioners to discuss ACNW future activities.

1:00 p.m. – 2:30 p.m.: ACNW Future Activities and Preparation of ACNW Reports (Open) — The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters and preparation of ACNW reports, as appropriate.

2:30 p.m. – 3:00 p.m.: New Members (Closed) — The ACNW will discuss appointments of proposed members and the qualifications of consultants considered for nomination.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)] or involve internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)].

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the **Federal Register** on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW) are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776). The Commission has determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and

• Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meeting are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's review.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202–634–3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additonal information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: May 31, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–12626 Filed 6–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Alabama Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NFP–2 and NPF–8, issued to Alabama Power Company, (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The licensee proposes to amend the Technical Specifications (TS) in response to Generic Letter 88–06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements." The proposed amendment deletes Figure 6.2.1, "Offsite Organization for Facility Management and Technical Support," and Figure 6.2.2, "Facility Organization." TS 6.2.1 and 6.2.2 will be revised to have more general organization requirements. These general requirements capture the essential organization aspects that are defined by the organization charts to be relocated to the Final Safety Analysis Report. This action is in response to licensee's letter dated April 28, 1988.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the organizational structure be included in the Final Safety Analysis Report (FSAR). Chapter 13 of the FSAR provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), Alabama Power Company will maintain the organization description in the FSAR current. Therefore, the NRC will continue to be informed of organizational changes. With the existing technical specification requirements and the proposed additional requirements, the deletion of the organization charts will not result in a decrease in safety requirements. Therefore, the probability or consequences of an accident previously evaluated will not change.

2. The proposed change will not create the possibility of a new or different kind of accident previously evaluated. The proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change will not involve a reduction in a margin of safety. The existing organizational requirements in the Technical Specifications combined with the proposed additional requirements will ensure that there is no reduction in current safety requirements. Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's determination and concurs with the licensee's findings. In addition, the proposed changes are in conformance with Commission guidance of Generic Letter 88–6.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 6, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Esquire, 2300 N Street, NW., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Rockville, Maryland, this 31st day of May 1988.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Senior Project Manager, Project Directorate II-3, Division of Reactor Projects I/II.

[FR Doc. 88–12642 Filed 6–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Issuance of Interim Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued an interim decision concerning a request filed pursuant to 10 CFR 2.206 by Governor Michael S. Dukakis and Attorney General James M. Shannon on behalf of the Commonwealth of Massachusetts and its citizens (Petitioners). On October 15, 1987 the Petitioners requested the Director of the Office of Nuclear Reactor Regulation to institute a proceeding to modify, suspend, or revoke the operating license held by Boston Edison Company (BECo) for its Pilgrim Nuclear Power Station (Pilgrim). In particular, the Petitioners requested the NRC to: (1) Modify the Pilgrim license to bar restart of the facility until a plant-specific probabilistic risk assessment (PRA) is performed and all indicated safety modifications are implemented; (2) modify the license to extend the current shutdown pending the outcome of a full hearing on the significant outstanding safety issues and the development and certification by the Governor of Massachusetts of adequate emergency plans; and (3) issue an Order, effective immediately, to modify the Pilgrim license to preclude the licensee from taking steps in its power ascension program until a formal adjudicatory hearing is held and findings of fact are made concerning safety questions raised.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with the exception of the management and emergency preparedness issues is denied. The portion of the Petition concerning licensee management and emergency preparedness will be addressed in a subsequent response.

The reasons for this decision are explained in the "Interim Director's Decision Under 10 CFR 2.206, "DD–88–7", which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five days (25) after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 27th day of May 1988.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–12641 Filed 6–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

GPU Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Notice of Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR–73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

By letter dated April 23, 1987, and revised October 26, November 9, and December 4, 1987 the licensee requested in part an exemption from the requirements of 10 CFR 70.24, Criticality accident requirements. Specifically, 10 CFR 70.24 requires licensees authorized to possess special nuclear material above a minimum quantity to maintain redundant monitoring systems that are capable of detecting a criticality in each area in which such licensed special nuclear material is handled, used or stored. The monitoring system, using gamma- or neutron-sensitive radiation detectors, is required to energize clearly audible alarm signals if an accidental

criticality occurs. The regulations applicable to TMI-2 (10 CFR 70.24(a)(1)) state that the monitoring system shall be capable of detecting a criticality that produces an absorbed dose of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the special nuclear material within 1 minute. Also, 10 CFR 70.24 requires that the licensee have emergency procedures for each area in which special nuclear material is handled, used or stored. These procedures include evacuation plans, including periodic drills to familiarize personnel, plans for determining the cause of the alarm, and the placement of radiation survey instruments in accessible locations for use in an emergency. Section 70.24(d) states that any licensee may apply to the Commission for an exemption from the regulation if good cause exists.

III

The licensee has requested exemption from the above described regulation in conjunction with the license amendment request submitted by letter dated April 23, 1987 and revised by letters dated October 26, November 9, and December 4, 1987. The staff has reviewed the safety evaluation submitted in support of the proposed license amendments, which also provides the bases for the licensee's exemption request.

The licensee proposes to extensively revise the TMI-2 Technical Specifications to align license requirements appropriate to current, as well as future, plant conditions through the remainder of the current cleanup operations. At the end of the current cleanup operations the licensee plans to place the facility into a post-defueling monitored storage condition (PDMS). The proposed amendment to the Technical Specifications allows for the transition from the current defueling phase through the completion of defueling and offsite fuel shipment by the incorporation of Technical Specifications that are applicable during specific phases or modes of the cleanup. Certain Technical Specifications are retained during the entire transition period while others are phased out or modified as the cleanup progresses. Phase-out of specific requirements would be dependent on the status of the cleanup as defined by the facility mode. Three cleanup modes are proposed:

Mode 1—The current condition, during which defueling and other major tasks are in progress.

Mode 2—The period subsequent to defueling of the reactor vessel and the reactor coolant system but prior to completion of the core debris shipping program. The possibility of criticality in the Reactor Building (RB) is precluded and no canisters containing core material are in the RB.

Mode 3—The period subsequent to shipment of the remaining core material offsite.

Prior to an anticipated change in Mode, the licensee proposes to submit to the NRC a report which provides the basis for the transition.

The requested exemption from 10 CFR 70.24, Criticality accident requirements, would be Modes 2 and 3, after defueling has been completed and there no longer exists the possibility of criticality.

The licensees' Mode 1 defueling program is expected to result in removal of greater than 99% of the reactor fuel. Because of the March 28, 1979 accident, fuel has escaped from the fuel pins and reactor fuel and fission products were dispersed throughout the reactor coolant piping system as finely divided particles and/or as plating on surfaces. During the accident, a small quantity of finely fragmented fuel was also released into the basement by reactor coolant escaping through the pressurizer relief valve to the reactor coolant drain tank into the basement through a rupture disk. Directional surveys of the reactor coolant system components have permitted estimates of fuel present outside the reactor vessel. The majority of this residual fuel is contained within the reactor coolant system with less than 11 lbs (5 kg) in piping drains, floors and sumps of the Auxiliary and Fuel Handling Building and less than 7 lbs (3 kg) dispersed in the rector building basement. Prior to the transition to Mode 2 the licensee will provide a criticality analysis that will address each separate quantity of residual fuel in each defined location. The criticality analysis will estimate the quantity of fuel remaining, its location, its dispersion within the location, its physical form (i.e. film, finely fragmented, intact fuel pellets), its mobility, the presence of any mechanism that would contribute to the mobility of the material, the presence of any moderating or reflecting material, and its potential for a critical event. In this submittal the licensee must demonstrate that the cleanup has progressed far enough such that an inadvertent criticality is precluded and therefore, may enter Mode 2 without the need for criticality monitoring.

The licensee's request for an exemption to the requirements of 10 CFR 70.24 subsequent to Mode 1 operation is based on the conclusion that an inadvertent criticality will not occur. All fuel will have been removed to the extent practicable, and the remaining fuel will be in a geometric configuration that precludes criticality. Reactor systems will be drained. There will be no mechanism that could result in significant movement or concentration of dispersed fuel such that a critical geometry could be attained. At the conclusion of defueling there will be a lack of material that could act as a moderator or reflector. Once defueling has been completed, access to the reactor building will be primarily limited to readying the facility for long-term monitored storage. Once the facility enters monitored storage, access will be on a frequency of one a month or less. Residual fuel will be limited to areas normally inaccessible to personnel.

Based on the quantities of fuel that will remain, the configuration of the fuel, the lack of a mechanism to move and concentrate the remaining fuel, the lack of a moderator or a reflector, and the infrequent personnel access t the building, the staff finds that a significant radiation exposure due to a hypothetical criticality event is highly improbable.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 70.24(d) good cause exists for the grant of this exemption after the transition to Mode 2. Further, in accordance with 10 CFR 50.12 granting of this exemption from the requirements of 10 CFR 70.24 after staff review of the Mode 1 criticality analysis and transition to Mode 2 is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that in accordance with 50.12(a)(2)(ii) special circumstances are present justifying this exemption. The application of the criticality monitoring requirements of 10 CFR 70.24 will not be necessary at TMI-2 following Mode 1 to achieve the underlying purpose of the rule, which is to provide for warning of, and adequate response in the event of, an inadvertent criticality.

Accordingly, the Commission hereby grants exemption from the requirements of 10 CFR 70.24, criticality accident

requirements, contingent upon staff review of the Mode 1 criticality analysis described above, and will be effective upon transition to Mode 2.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (53 FR 15608).

Dated at Rockville, Maryland, this May 27, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12643 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 112 to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS's to: (1) Delete reference from Table, 3.3-5, TS Section 3/4.3.2, to the Makeup System as containing valves receiving a Safety Features Actuation Signal; (2) delete containment isolation valve MU-33 (penetration 19) from Section A of Table 3.6-2, TS Section 3/4.6.3 and add valves MU-6422 (penetration 19) and MU-6421 (penetration 50) to section C; and (3) correct two typographical errors on Page 6-20 at Penetrations 10 and 28.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on December 8, 1987 (52 FR 46545). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated October 27, 1987, (2) Amendment No. 112 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated May 25, 1988 and (4) the Environmental Assessment dated May 13, 1988 (53 FR 18627). All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 25th day of May, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-12644 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

Application for License To Export Nuclear Facilities or Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATION

Name of applicant, Date of Appl., Date Received, Application Number	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Transnuclear, Inc., 5-23-88, 5-27-88, XSNMO2142.	93.3% Enriched.....	Decrease to 10.772.....	Decrease to 10.050.....	Production of isotopes for medical purposes.	EURATOM Research Reactors.

Dated this 31st day of May 1988 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

[FR Doc 88-12640 Filed 6-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Notice of Exemption

I

Yankee Atomic Electric Company (YAEC or the licensee) holds Facility Operating License No. DPR-3 which authorizes the operation of the Yankee Nuclear Power Station (Yankee or the facility) at steady-state power levels not in excess of 600 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site near Rowe, Massachusetts.

II

The Code of Federal Regulations, in 10 CFR 50–62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants" requires, "Each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS."

III

By letters dated October 15, 1985, January 21, 1987, January 22, 1988 and April 25, 1988, the licensee requested an exemption from the requirements of 10 CFR 50.62. The January 21, 1987 letter also provided information to identify the special circumstances for granting this exemption to Yankee pursuant to 10 CFR 50.12, "Specific exemptions." Because Yankee is an older and smaller plant (licensed in 1960 with a rating of 185 MWe), the staff can consider Yankee for exemption from the ATWS rule based upon the requirements of 10 CFR 50.12(a). Guidance provided in SECY 83–293 dated July 19, 1983 states: "Some of the older nuclear power plants (e.g., those licensed to operate prior to August 22, 1969) may be granted an exemption from these amendments if they can demonstrate that their risk from ATWS is sufficiently low. Factors important to this demonstration could be power level, unique design features that could prevent or mitigate the consequences of an ATWS, remaining plant lifetime, or remote siting."

In the October 15, 1985 request for exemption, the licensee cites a Probabilistic Safety Study which indicates that the risk imposed by YNPS is small and ATWS is not a major risk contributor. Total annual core melt frequency was conservatively calculated to be less than 2×10^{-5}. The ATWS induced core melt contribution was about 1×10^{-6} per year.

Two previous studies of the YNPS emergency feedwater system [for Item II.E.1.2 of NUREG–0737 and SEP Topic VII–3] each concluded that automatic initiation of emergency feedwater was unnecessary. The main feedwater system is unique in that it consists of ten pumping trains and eight flow paths to supply feedwater to the steam generators. A steam driven emergency feedwater pump and a new safe shutdown system assure feedwater even for a station blackout event.

The licensee states that there has never been a failure of a reactor trip breaker to open either in testing or actual demand in more than 25 years of operation. It is operating policy (by procedure) to manually actuate the reactor and turbine trip buttons on every unanticipated transient and to immediately reaffirm that these trips have occurred.

The plant is located in a river valley on a 2,000 acre site in the rural northwestern corner of Massachusetts. The area is sparsely populated with 60 people within a 1-mile radius of the plant and 1,600 within a 5-mile radius. The low population zone extends 2 miles upstream and 6 miles downstream and has an estimated population of 260 persons. The population numbers have remained stable since the plant was built and are expected to remain stable in the future. Considering the cumulative population data for 91 plants as presented in NUREG/CR–2239, the staff finds that 51 percent of the plants have a higher average population density over a 20-miles radius than YNPS. Given a range of population densities of 1 to 711 persons per square mile among the 91 plants, YNPS with 81 persons per square mile is in the lower or sparser population density range for up to a 20-mile radius.

We find that the Yankee Rowe Nuclear Power Station satisfies the guidance for an exemption to the ATWS rule as provided in SECY 83–293. Licensed for operation in 1960 at a power level roughly 20% of current PWRs, YNPS has demonstrated over twenty-five years of safe operation with a capacity factor exceeding 70 percent. Unique design features in the main feedwater systems and unique operating procedures are believed to have contributed (along with the small size and remote location) to facility characteristics assessed through a Probabilistic Safety Study to indicate that YNPS has a low predicted total core melt frequency and that the contribution of ATWS to the total frequency is small.

The approval of this exemption from physical changes to satisfy the rule was: (1) Contingent upon receipt of a commitment from the licensee describing how they intend to maintain and operate the plant for its remaining lifetime within the conditions assumed for the safety study and (2) contingent on obtaining a commitment from the licensee to maintain the moderate temperature coefficient at hot, full power, with equilibrium xenon, no less negative than -5.5×10^{-5} delta k/k° F for every fuel cycle. This value of the moderator temperature coefficient corresponds to the value which would result in a system pressure corresponding to Service Limit C for the Westinghouse reference plant.

By letter dated April 25, 1988 the licensee committed to maintain and operate the plant within the conditions assumed in the safety study and described plant upgrades and analyses supporting this commitment. In addition, the licensee committed to maintain the moderator temperature coefficient at hot, full power, with equilibrium xenon, no less negative than -5.5×10^{-5} delta k/k° F for every fuel cycle.

IV

Based on the above evaluation, and on the condition that the licensee maintain and operate the plant consistent with the commitments made in the April 25, 1988 letter, the staff concludes that an exemption to 10 CFR 50.62 should be granted. The purpose of the rule, which is to reduce the risk of ATWS events and to mitigate the consequences of an ATWS event, is satisfied by the special circumstances associated with this facility. Application of 10 CFR 50.62 would require the plant to install an independent trip system to initiate the emergency feedwater system and initiate a turbine trip under ATWS conditions. However, as discussed above, the risk from ATWS, at Yankee, is sufficiently low, without addition of this equipment, to meet the intent of 10 CFR 50.62. We conclude, per 10 CFR 50.12(a)(2)(ii), that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of 10 CFR 50.62.

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, 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. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.62.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 3368, February 3, 1987).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of May, 1988.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Director, Division of Reactor Projects, I/II.
[FR Doc. 88-12645 Filed 6-3-88; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF TRADE REPRESENTATIVE OF THE UNITED STATES

[Docket No. 301-66]

Initiation of Section 301 Investigation; Japan's Restrictions on Imports of Fresh Oranges and Orange Juice

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Initiation of an Investigation under Section 302.

SUMMARY: Pursuant to 19 U.S.C. 2412, the U.S. Trade Representative has initiated an investigation of the Government of Japan's policies and practices with respect to the importation of fresh oranges and orange juice.

EFFECTIVE DATE: May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs, (202) 395-5006; Amelia Porges, Associate General Counsel, (202) 395-7305; or Glen Fukushima, Director for Japan, (202) 395-5070, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 6, 1988, Florida Citrus Mutual, Florida Citrus Packers, the Florida Citrus Processors Association, the Florida Department of Citrus and the Indian River Citrus League filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2412(a). The petition alleges that the Government of Japan engages in acts, policies and practices that violate obligations of Japan under the General Agreement on Tariffs and Trade ("GATT") and are unjustifiable, unreasonable and burden or restrict U.S. commerce.

Specifically, the petition states that Japan maintains import quotas on fresh oranges and orange juice, and that these trade restrictions contravene Article XI of the GATT. It also states that Japan requires that importers of orange juice blend such imported juice with domestic orange juice, in contravention of Article III, paragraph 5 of the GATT. The petitioners estimate that elimination of the import quota restrictions and the juice blending requirement could increase United States exports to Japan by $50 to $100 million annually.

Effective May 25, 1988, the U.S. Trade Representative initiated an investigation of the Japanese government's policies and practices restricting imports of oranges and orange juice into Japan. The United States Government has already begun proceedings under the dispute settlement procedures of Article XXIII of the General Agreement on Tariffs and Trade concerning Japan's import restrictions on fresh oranges, orange juice and beef, and the orange juice blending requirement. On May 4, the GATT Council authorized formation of a dispute settlement panel concerning this matter under Article XXIII:2 of the GATT. We have held many rounds of consultations with Japan on this issue. These consultations are deemed to have fulfilled the requirement in section 303(a) of the Act (19 U.S.C. 2413(a)) that the USTR, on behalf of the United States, request consultations with the government concerned regarding issues raised in the petition.

USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Act (19 U.S.C. 2155) in preparing United States presentations for consultations and dispute settlement proceedings. Any interested person is invited to submit comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than June 25, 1988. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street, NW., Washington, DC 20506.

Judith Hippler Bello,
General Counsel, Chairman, Section 301 Committee
[FR Doc. 88-12606 Filed 6-3-88; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25701; File Nos. SR-Amex-88-12; SR-CBOE-88-6; SR-CBOE-88-8; SR-NYSE-88-12; SR-PSE-88-4; and SR-Phlx-88-19]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al. Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] the Chicago Board Options Exchange ("CBOE"), and the American ("Amex"), New York ("NYSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges ("Exchanges") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to amend their rules to increase the customer margin requirements for equity and index options.

The proposals were noticed in the **Federal Register**.[3] No comments were received on the proposed rule changes.

On September 26, 1985,[4] the Commission approved proposed rule changes filed by the Amex, CBOE, PSE, Phlx, NYSE, and the National Association of Securities Dealers, Inc. ("NASD") (collectively, the self-regulatory organizations ["SROs"]), to establish a uniform, premium-based customer margin system for short options positions.[5] Under this uniform margin system, the SROs' rules[6] calculate margin requirements by use of a formula applicable to bill options products. The formula calls for the deposit and maintenance of margin equal to 100% of the current option premium value plus a fixed percentage of the underlying product value with an adjustment for out-of-the-money options, with a minimum of 100% of the current option premium value plus a fixed lesser percentage of the current value of the underlying product. The percentage requirement varies with the options product. The percentages were developed by relating option margin to the annualized price volatility of the underlying product to provide for initial margin that would cover the underlying product's historical volatility over a seven day period with a 95% confidence level.

The SRO's current margin requirements for each short put or call on a narrow-based market index is 100%

[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1987).

[3] CBOE's proposals were noticed in Securities Exchange Act Release Nos. 25552 (April 7, 1988), 53 FR 12486 and 25609 (April 21, 1988), 53 FR 15490; Amex's proposal was noticed in Securities Exchange Act Release No. 25646 (May 3, 1988), 53 FR 16606; NYSE's proposal was noticed in Securities Exchange Act Release No. 25645 (May 3, 1988), 53 FR 16608; PSE's proposal was noticed in Securities Exchange Act Release No. 25666 (May 5, 1988), 53 FR 16824; and Phlx's proposal was noticed in Securities Exchange Act Release No. 25679 (May 9, 1988), 53 FR 17132.

[4] Securities Exchange Act Release No. 22469 (September 26, 1985), 50 FR 40633.

[5] A short position is the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).

[6] Amex Rule 462; CBOE Rule 24.11; NASD Rules, Article III Sec. 30, Appendix A, Sec. 4; NYSE Rule 431; PSE Rule XXI, Sec. 16; Phlx Rule 722.

of the current premium plus 15% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current index value times the index multiplier. Current margin requirements for short equity option positions is 100% of the current premium plus 15% of the current value of the underlying security, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current value of the underlying security.

The SROs' margin requirements for short puts or short calls on broad-based market index were raised after the October 1987 market break.[7] The SRO's current margin requirements for short positions in option on a broad-based index is 100% of the current premium plus 10% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of 100% of the current premium plus 5% of the current index value times the index multiplier.

In view of the increased volatility experienced in the stock markets during the fourth quarter of 1987, and because current margin requirements are based upon historical levels of volatility that are no longer valid under current market conditions, the Exchanges have proposed to raise the margin requirements applicable to index and equity options. The increased margin requirements cover 95% of all historical seven business day percentage price moves during a six-month review period, and reflect the substantial rise in market volatility stemming from the October 1987 market break. Previously, a twelve-month review period was used. A six-month review period would provide a methodology for determining margin requirements that is more responsive to change in market volatility.

Based upon a review of six-month date, the Exchanges propose to increase by 5% the basic and minimum formula percentage for both index and equity options. Accordingly, the new margin requirements for broad-based index options will be premium plus 15% of the current index value times the index multiplier, less any out-of-the-money amount, with a minimum of premium plus 10%. The new margin requirements for equity options and narrow-based index options will be premium plus 20% of the underlying product value, less any out-of-the money amount, with a minimum of premium plus 10% of the underlying product value.

The Amex CBOE, PSE, and Phlx proposals provide that the new margin requirements will be in effect for a period of six months commencing on the date the margin increases become effective for positions established on or after the effective date. At the end of the six month period, the new percentages will revert to their previous levels unless other proposed percentages are deemed to be appropriate in light of experienced market volatility. The NYSE did not provide for such a "sunset" provision, but stated that it will continue to monitor market volatility data to determine if the margin requirements should be adjusted.

The Exchanges stated that they will work together to develop procedures to monitor routinely the adequacy of option margin requirements and a system for adjusting margin requirements more expeditiously in order to provide adequate protection for both investors and firms based upon current market volatility.

The Exchanges also proposed to amend the margin requirements for straddle/combination positions. Currently, the margin for short straddles or combinations is the required margin on the short put or short call position, whichever is greater, plus any unrealized loss on the other position. The margin requirements for short straddles/combinations would be revised to include the required margin on the short put or short call position, whichever is greater, plus the current market value of the other contract. This proposed change would more accurately reflect the potential risk of such positions by requiring deposit of the current market value of the option rather than any unrealized loss.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[8] which provides, in pertinent part, that the rules of the Exchanges must be designed to protect investors and the public interest. The increased margin requirements for index and equity options will provide more financial protection to the securities industry at a time of increased market volatility. The current margin levels are based on historical volatility levels that are no longer valid in light of the events of the week of October 19, 1987. Hence, at a minimum, higher margin levels are needed to ensure the financial stability of member firms.

At this time, the Exchanges have determined to raise the initial margin level for broad-based index options to premium plus 15 percent and to raise the initial margin levels for equity options and narrow-based index options to premium plus 20 percent. The Commission believes this action is necessary in assuring the adequacy of margin levels in light of the increased market volatility during the last quarter of 1987. Because of concerns raised in the Commission staff's Report on the October 1987 Market Break about the effect on market volatility of margin levels on derivative products, however, the Commission reserves judgment both on the sufficiency of the levels of margin set by the proposed rule change as well as the method of determining adequate margin.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** in light of the increased stock market volatility since the October 1987 market break and its effect on margin adequacy. In addition, the Commission notes that the Amex, NYSE, and PSE proposals are substantially identical to the CBOE proposed rule change that was noticed for the full thirty-day period. In addition, the proposals are consistent with the recommendation contained in the Commission staff's Report on the October 1987 Market Break that options exchanges should review the impact on the stock market of options margin levels.[9]

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at

[7] *See* Securities Exchange Act Release Nos. 25081 (November 2, 1987), 52 FR 42751; 25178 (December 8, 1987), 52 FR 47654; and 24561 (March 15, 1988), 53 FR 9390.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] *The October 1987 Market Break* at 3–22.

the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by June 27, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: May 17, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-12647 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25760; File No. SR-NASD-87-35]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On October 14, 1987, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to amend Article V, Sections 1 and 2 of the NASD's Rules of Fair Practice ("Rules") to conform the language of Article V, section 1 to section 15A(b)(7) of the Act and to amend Article XIV of the NASD By-Laws to bring all monetary sanctions imposed by the NASD, including disgorgement,[1] within the purview of Article V, section 2. Two amendments to the proposed rule change were filed, one on March 31, 1988 and a second on April 20, 1988. Notice of the proposed rule change, together, with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25608, April 21, 1988) and by publication in the **Federal Register** (52 FR 15161, April 27, 1988). No comment letters were received with respect to the proposed rule change.

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 section 15a and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned 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).

Dated: May 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12649 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16414; 812-6993]

American Home Acceptance Corporation; Application

May 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Home Acceptance Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations ("Bonds") by the Applicant.

Filing Dates: The application was filed February 23, 1988, and amended on April 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One California Street, Suite 2630, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272-2811, or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Texas corporation, was incorporated on July 21, 1987, and is a wholly-owned subsidiary of RPR Mortgage Finance Corp., which, in turn, is wholly-owned by Rauscher Pierce Refsnes, Inc., a registered broker/dealer which transacts a full range of investment banking and related financial services. Applicant's primary activity shall consist of issuing Bonds collateralized by interests in mortgage-backed securities.

2. Each Series of Bonds will be either registered under the Securities Act of 1933, as amended (the "1933 Act"), or sold in transactions exempt from registration pursuant to section 4(2) of the 1933 Act. Each Series of Bonds will be issued pursuant to the Applicant's Standard Indenture Provisions which will be incorporated by reference in a terms indenture for such Series (the "Terms Indenture") between an independent trustee (the "Bond Trustee") and the Applicant (the Standard Indenture Provisions and Terms Indenture collectively, the "Indenture"). The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

3. Each Series of Bonds will consist of one or more classes ("Classes"), which may include fixed interest rate Bonds, floating interest rate Bonds and compound interest rate Bonds. A floating interest rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in the Prospectus Supplement and the Indenture relating to the Series of such Bonds.[1]

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[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30-3(a)(12) (1987).

[1] The NASD's policy with respect to the disgorgement sanction provides for the imposition of orders to disgorge monetary profits where such profits were earned through conduct constituting a violation of the federal securities laws, the regulations thereunder, or the NASD Rules. When a public customer has suffered a loss due to the violative conduct and such customer is, or reasonably can become, known to the NASD, the respondent will generally be ordered to disgorge "ill-gotten gains" to such customer. In other instances, disgorgement may be ordered to the NASD to deprive the wrongdoer of his ill-gotten gains.

[1] A Prospectus Supplement for a Series may provide for book entry Bonds issued in the name of a clearing agency or its nominee ("Clearing Agency"). Any such Clearing Agency will be registered with the SEC under section 17A of the Securities Exchange Act of 1934. Transfers and pledges of book entry Bonds may be made only through entries on the books of the Clearing Agency.

4. The Collateral securing the Bonds will primarily consist of one or more of the following (collectively, "Mortgage Collateral"): Fully-modified pass-through certificates guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA Certificates"); mortgage participation certificates guaranteed as to timely payment of interest and timely or ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"); other mortgage pass-through certificates evidencing an undivided interest in a pool of mortgages that are secured by first liens on single (one- to four-unit) family residential properties ("Non-Agency Certificates") (collectively, "Mortgage Certificates"); and Funding Agreements (as hereinafter defined) together with the related promissory notes (the "Funding Notes") which will be secured by Mortgage Certificates. Each Series of Bonds also may be secured by certain funds and accounts (including a collection account, debt service fund, a reserve fund and other funds) and by insurance policies and other credit enhancement devices described in the Prospectus Supplement for such Series of Bonds.

5. The Mortgage Collateral securing each Series of Bonds will not be used to secure any other obligation of the Applicant, and will have scheduled cash flows (plus cash available to be withdrawn from any debt service fund, reserve fund, or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each nationally recognized statistical rating organization rating the Bonds of such Series (individually and collectively, a "Rating Agency") sufficient to make all timely payments of principal and interest on the Bonds in accordance with their terms and to pay all of the fees and expenses of the issuance of the Bonds. The collateral value of the Mortgage Certificates securing the Bonds will be described in the Indenture for such Series and, together with other assets pledged to secure the Bonds, will be at least equal to the initial principal amount of such Bonds on their date of issuance and following each payment date for such Bonds.

6. The Mortgage Collateral securing each Series of Bonds will be owned either by the Applicant or by certain homebuilders, thrifts, commercial bankers, mortgage bankers or other entities engaged in mortgage finance companies affiliated with any of the foregoing (the "Participants") and pledged to secure such Series of Bonds pursuant to funding agreements with respect to such Series of Bonds (the "Funding Agreements"). Such collateral will consist of or include Mortgage Certificates which are backed by mortgage loans: (1) That were initially originated by or on behalf of a Participant or an affiliate thereof participating in such Series of Bonds; or (2) that are purchased by the Applicant or a Participant or an affiliate thereof participating in such Series of Bonds in the mortgage market. The Bond Trustee will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral and other items of collateral securing the Bonds.

7. Each participant in a Series of Bonds will enter into a Funding Agreement with respect to such Series of Bonds pursuant to which the Participant will: (i) Borrow a portion of the proceeds of the sale of such Series of Bonds; (ii) repay such loan by causing payments to be made to the Bond Trustee for such Series of Bonds in such amounts as are necessary to pay the accrued interest on such loan and to repay the principal amount of such loan; and (iii) pledge Mortgage Certificates to the Applicant as security for the loan. Applicant will assign to the Bond Trustee as security for such Series of Bonds its entire right, title and interest in the Mortgage Collateral and all proceeds thereof pledged under the Funding Agreements (except for the Applicant's right to indemnification thereunder).

8. The Bonds may be subject to redemption by Applicant under the circumstances set forth in the Prospectus Supplement for such Series of Bonds. The Bonds will not be redeemable at the option of Bondholders except that certain Series of Bonds may provide for the establishment of a redemption fund and, subject to the limitations and priorities set forth in the Prospectus Supplement for each such Series of Bonds, requests for redemption by Bondholders will be honored to the extent funds are available in such redemption fund. Such redemption, if provided, will not render the Bonds of such Series "redeemable securities" within the meaning of section 2(a)(32) of the Act. Unless an event of default with respect to a Series of Bonds has occurred and is continuing, the Bondholders will not be entitled to accelerate payment of the Bonds or otherwise to compel the liquidation of the remaining Collateral.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds of each Series will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Certificates underlying each Series of Bonds will be limited to GNMA Certificates, FNMA Certificates, FHMA Certificates and Non-Agency Certificates.

3. If new Mortgage Certificates are substituted, the substituted Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A(2) and (4). In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged to the Bond Trustee as security for a Series of Bonds. In no event will any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

4. The collateral securing a Series of Bonds will be assigned to and held by the Bond Trustee for such Series of Bonds pursuant to the Indenture under which such Bonds were issued. The Bond Trustee for a Series of Bonds will act as custodian for all of the Collateral of such Series. The Bond Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all collateral securing such Series of Bonds. The Bond Trustee for a Series of Bonds will not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant of the servicer or master servicer of the mortgage loans underlying the Non-Agency Certificates securing such Series of Bonds. In addition, any master servicer and any servicer of mortgage loans underlying Non-Agency

Certificates will be approved by FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Non-Agency Certificates shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with mortgage loans insured by the Federal Housing Administration, guaranteed by the Veteran's Administration or eligible for purchase by FNMA or FHLMC.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds of each Series will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Applicant. In addition, such accountant will report at least annually on whether the anticipated payments of principal and interest on the collateral securing each Series of Bonds together with reinvestment income thereon at the assumed reinvestment rate, will continue to be adequate to pay the principal of and interest on the Bonds of each such Series in accordance with their terms. Upon completion of such audits, copies of each of the accountants' reports will be provided to the Bond Trustee for each Series of Bonds.

B. Conditions Relating To Floating Interest Rate Bonds

(1) Each Class of Bonds of a Series bearing a floating interest rate will have a set maximum interest rate which may vary from period to period as specified in the applicable Indenture or Prospectus Supplement.

(2) At the time of the deposit of the collateral of a Series of Bonds, as well as during the life of the Bonds, the Mortgage Collateral securing such Series of Bonds will have scheduled cash flows sufficient (plus cash available to be withdrawn from any Debt Service Fund, Reserve Fund or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each Rating Agency rating the Bonds of such Series, to make all timely payments or principal and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the Applicant with respect to such Series of Bonds, assuming the maximum interest rate for each specified period on each Class of Bonds bearing a floating interest rate. In the case of a Series of Bonds that contains a Class or Classes of adjustable or floating interest rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the adjustable or floating interest rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the adjustable or floating interest rate Bonds; (ii) "inverse" floating interest rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating interest rate Bonds); (iii) floating rate collateral (such as ajustable rate GNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to the counter-party at a fixed rate of interest based on a stated principal amount such as the principal amount of Bonds in the floating interest rate Class, in exchange for receiving corresponding periodic payments from the counter-party at a floating rate of interest based on the same principal amount, and (v) hedge agreements (including interest rate futures and option contracts, under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating interest rate Class of Bonds). It is expected that other mechanisms may be identified in the future. Applicants will give the staff of the Division of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories and no Bonds will be issued for which this is not the case.

3. The Mortgage Collateral will be paid down as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds (except pursuant to the limited right of substitution described in condition A(3)).

C. Conditions Relating to REMICs

1. The election by the Applicant to treat the arrangement by which any Series of Bonds is issued as a real estate mortgage investment conduit (a "REMIC") will have no effect on the level of the expenses that would be incurred by the Applicant. If such an election is made, the Applicant will provide that all administration of the REMIC will be paid or provided for in a manner satisfactory to the Rating Agency rating such Series of Bonds.

2. The Applicant will provide for the payment of the administrative fees and expenses incurred in connection with the issurance of a Series of Bonds and the administration of the REMIC by one or more of the methods set forth in the application.

3. The Applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the above methods (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12650 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16415; 812-7022]

GW Utilities Limited; Application

May 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 ("1940 Act").

Applicant: GW Utilities Limited.

Relevant 1940 Act Sections: Order requested under section 3(b)(2) or, alternatively, under section 6(c).

Summary of Application: Applicant seeks an order amending a prior order declaring Applicant to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities (Investment Company Act Rel. No. 16088, October 28, 1987) ("Prior Order"), or, alternatively, granting Applicant an exemption from all provisions of the 1940 Act.

Filing Date: The application was filed on April 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on

June 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or my mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2 First Canadian Place, Suite 2700, P.O. Box 20, Toronto, Ontario, Canada M5X 1B5, Attention: Secretary; with a copy to: Gregory K. Palm, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Curtis R. Hilliard, Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. As a result of the reorganization of Gulf Canada Corporation ("Gulf"), a Canadian corporation, pursuant to a court-approved statutory arrangement (the "Arrangement"), Applicant acquired and is conducting certain businesses formerly conducted by Gulf, Gulf Canada Limited, and Hiram Walker Resources Ltd. ("Hiram Walker"). The Arrangement was authorized by Gulf's board of directors and approved by Gulf's shareholders.

2. Prior to the effective date of the Arrangement, July 1, 1987 (the "Effective Date"), Applicant had no material assets or operations. Pursuant to the Arrangment, Applicant was engaged primarily in four lines of business: 1) In the distilled spirits business through its 49% ownership of Hiram Walker-Gooderham & Worts Limited ("HW–GW"); 2) in the natural gas distribution business through its 82.7% in The Consumers' Gas Company Ltd. ("Consumers"); 3) in the pipeline business through its 40.8% interest in Interprovincial Pipe Line Limited ("IPL"); and 4) in the oil and gas business through IPL's wholly-owned subsidiary, Home Oil Company Limited ("Home").

3. In Investment Company Act Release No. 16027 (October 2, 1987), the SEC granted a temporary order, subject to conditions, under section 3(b)(2) of the 1940 Act exempting Applicant from all provisions of the 1940 Act during the period from July 25, 1987, until the SEC made a final determination upon the request for the permanent order set forth in Applicant's application (File No. 812–6734). In the Prior Order, the SEC granted a permanent order, subject to conditions, under section 3(b)(2) of the 1940 Act, declaring Applicant to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

4. On November 26, 1987, Applicant entered into an agreement with Allied-Lyons PLC ("Allied-Lyons") to transfer its entire interest in HW–GW to Allied-Lyons ("Transfer"). In a two-step transaction, Applicant transferred its 49% of the preference shares of HW–GW to Allied-Lyons on December 23, 1987, for approximately $299 million in cash.[1] The receipt of this cash enabled Applicant to forego, at this time, a previously publicly announced rights offering to raise cash to retire certain debt incurred by Applicant in connection with the Arrangement. On March 3, 1988, Applicant then transferred its 49% of the common shares of HW–GW to Allied-Lyons in return for approximately $141.6 million in cash and 80,937,638 Allied-Lyons preference shares convertible after 1990 into approximately 10% of the capital shares of Allied-Lyons after giving effect to such conversion.

5. Allied-Lyons, a corporation organized under the laws of the United Kingdom, is engaged principally in the production and sale of food and drinks and the provision of leisure services to consumers. Allied-Lyons' businesses are organized into three divisions: beer and retailing, wines and spirits, and food.

6. Prior to the Transfer, Applicant and Allied-Lyons had exercised joint control over HW–GW in accordance with the provisions of a shareholder agreement. As a result of the Transfer, HW–GW has become a wholly-owned subsidiary of Allied-Lyons and Applicant has continued its investment in the distilled spirits business and has acquired an interest in the other businesses of Allied-Lyons through direct ownership in the larger corporate entity, Allied-Lyons.

Applicant's Legal Analysis:

1. Applicant comes within the definition of an investment company as contained in section 3(a)(3) of the 1940 Act since more than 40% of its assets on an unconsolidated basis are "investment securities." Therefore, Applicant requests an order under section 3(b)(2) of the 1940 Act declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. Applicant's historical development, its public representation of policy, the activities of its directors and officers, the nature of its present assets and the source of its present income support the issuance of such an order.

2. Applicant's predecessors (Gulf, Gulf Canada Limited, and Hiram Walker) historically have actively conducted the businesses which Applicant is engaging in as intergral parts of its current business. Consumers amalgamated with HW-GW in 1980 and both became wholly-owned subsidiaries of Hiram Walker in 1981. Consumers subsequently issued shares to the public and was 83% owned when Hiram Walker was acquired by Gulf in 1986. HW-GW remained a wholly-owned subsidiary of Hiram Walker until December 1986. Certain of the Applicant's executive officers have had long associations working with their counterparts in HW-GW. Applicant and its predecessors also have had an established relationship with IPL. Furthermore, on the Effective Date, Gulf's shareholders became Applicant's shareholders and as such are aware of the historical involvement in these lines of business.

3. Applicant's representations of policies since the Effective Date indicate that Applicant will be engaged in the gas distribution, pipelines and natural resources businesses through its interests in Consumers and IPL and not in the business of trading in securities. The Applicant does not hold itself out as being an investment company.

4. Applicant's directors and executive officers have had extensive involvement in the management of businesses with extensive natural resource operations. A majority of Applicant's directors are engaged, either as directors or officers or both, in the management of businesses with substantial operations in areas of activity similar to that conducted by Applicant through its operating subsidiaries. With the exception of one, all of Applicant's directors and executive officers had been or are directors or executive officers of Gulf Canada Resources

[1] All dollar amounts are stated in Canadian Dollars.

Limited [2] and thus are familiar with Applicant's businesses. None of Applicant's directors or executive officers is a portfolio management or brokerage professional.

5. Moreover, Consumers, the majority owned company, and IPL accounted for 31% and 35%, respectively, of Applicant's a fair market value, pro forma basis, and Allied-Lyons accounted for 32% of Applicant's assets at December 31, 1987, calculated on a pro forma basis based upon a written opinion of Applicant's independent investment advisor. Since 66% of the fair market value of Applicant's total assets on an unconsolidated basis is derived from its ownership interest in regulated utilities (through Consumers and IPL), it should continue to be deemed primarily engaged in non-investment company operating businesses.

6. Applicant's pro forma revenues for the twelve month period ended June 30, 1987, from Consumers, IPL and Allied-Lyons are $55 million (35%), $44 million (28%), and $59 million (37%), respectively. Applicant's earnings from other sources (primarily interest income) represent less than 1% of such earnings. Alternatively, in terms of dividend income, Applicant received, on a pro forma basis, $44 million, $32 million and $59 million from Consumers, IPL and Allied-Lyons, representing 32%, 24% and 44%, respectively, of Applicant's pro forma cash receipts for the fiscal year ended June 30, 1987. Thus, for the periods stated, Applicant's ownership interest in regulated utilities through Consumers and IPL resulted in 63% of its revenues or 56% of its dividend income.

7. With respect to section 3(a)(1) of the 1940 Act, Applicant did not in the past, does not now and does not propose to hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, it is a holding company engaged in a number of business enterprises through its majority-owned subsidiary, Consumers, and through IPL, which Applicant jointly "controls" with another major shareholder within the meaning of section 2(a)(9) of the 1940 Act. Applicant has not acquired the Allied-Lyons preference shares for speculative purposes. Pursuant to their terms, the preference shares are convertible into Allied-Lyons ordinary shares between 1991 and 1994 inclusive. Additionally, any proposed sale of Applicant's holdings of equity securities of Allied-Lyons is subject to a right of first refusal. Applicant believes that the transfer of its interest in HW-GW will allow the full integration of the distilled spirits businesses of Hiram Walker and Allied-Lyons by permitting the development of joint production, distribution and marketing operations. The benefits derived from the Transfer will flow to the shareholders of Allied-Lyons, as well as those of the Applicant, by virtue of their opportunity to participate in the ownership of Allied-Lyons. The conversion by Applicant of its Allied-Lyons preference shares would make Applicant the single largest shareholder in Allied-Lyons, assuming present ownership patterns. However, acquisition of such shares has not changed the nature of Applicant's primary activities nor will the shares be used for trading purposes. Ownership of the Allied-Lyons preference shares is consistent with the undertaking which Applicant made as a condition to the receipt of the Prior Order that it "will not engage in the trading of investment securities for speculative purposes so as to bring its activities within those intended to be regulated by the 1940 Act."

8. In the alternative, Applicant requests an order under section 6(c) of the 1940 Act exempting it from all provisions of the 1940 Act. Applicant submits that exempting it from all provisions of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the aforementioned reasons.

Applicant's Conditions:

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will not engage in the trading of investment securities for speculative purposes so as to bring Applicant's activities within those intended to be regulated by the 1940 Act.

2. Applicant intends to continue to be primarily engaged in non-investment company businesses.

3. Applicant will notify the staff of the Division of Investment Management immediately of any proposed material changes to be made in its investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12651 Filed 6-3-88 8:45 am]

BILLING CODE 8010-01-M

[2] Under the Arrangement, Gulf changed its name to "Gulf Canada Resources Limited."

[Rel. No. IC-16405; 812-7001]

Victorian Public Authorities Finance Agency; Notice of Application

May 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Victorian Public Authorities Finance Agency.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the offering and sale of debt securities by the Applicant in the United States.

Filing Date: The application was filed on March 4, 1988, and an amendment to the application was filed on May 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on June 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant, a public authority of the State of Victoria ("Victoria"), Commonwealth of Australia, was

established by the Victorian Public Authorities Finance Act 1984 (the "Act") principally to borrow in both the Australian and international capital markets on behalf of certain public authorities and instrumentalities of Victoria ("Participating Authorities"). The Applicant, which is constituted by four members who are appointed by the Governor in Council of Victoria, has authority to lend to, or arrange financial accommodation for, the Participating Authorities. As of June 30, 1987, the Applicant states, the total borrowings of the Applicant from public sources were A$4.5 billion.

2. The Applicant is required under the Act to maintain proper accounts and records of its transactions and affairs. It is required within three months of the end of each financial year, to prepare and submit to the Treasurer of Victoria a statement of accounts in respect of the financial year in the manner and form approved by the Treasurer and signed by not less than two members of the Applicant. The statement of accounts is to be audited by the Auditor-General of Victoria.

3. The Applicant proposes, from time to time, in the future, to offer and sell debt securities in the United States ("Debt Securities"). No equity in the Applicant has been sold, and there is no provision in the Act permitting the sale of equity in the Applicant.

4. Applicant undertakes that the payment of principal of, and interest and premium, if any, on Debt Securities issued by the Applicant will be unconditionally guaranteed by Victoria pursuant to section 13(2) of the Borrowing and Investment Powers Act 1987 (the "Borrowing Act"). The guarantee of Victoria will be backed by the full faith and credit of Victoria.

5. Applicant undertakes that there is no requirement that legal proceedings be commenced against the Applicant prior to making a demand against or, if necessary, taking proceedings against Victoria in respect of section 13(2) of the Borrowing Act. Section 16(1) of the Borrowing Act provides in effect that any sums required by the Treasurer of Victoria in fulfulling any liabilities arising under the guarantee by or on behalf of Victoria shall be paid out of the Consolidated Fund of Victoria (which is thereby to the necessary extent appropriated accordingly). Proceedings may be brought against Victoria for enforcement of section 13(2) of the Borrowing Act.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. The Applicant undertakes that no Debt Securities will be offered or sold unless (a) they are registered under the Securities Act of 1933 (the "1933 Act") or (b) in the opinion of United States counsel for the Applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale or (c) the staff of the Commission states that they would not recommend that the Commission take any action under the 1933 Act if such securities are not registered.

(2) The payment of principal of, and interest and premium, if any, on Debt Securities issued by the Applicant will be unconditionally guaranteed by Victoria pursuant to section 13(2) of the Borrowing Act.

3. The Debt Securities will have received, as certified by the Applicant's United States counsel, one of the two highest investment grade ratings from one nationally recognized statistical rating organization.

4. The Applicant undertakes to provide to any person to whom it offers its Debt Securities in the United States (and undertakes to take reasonable steps to ensure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made prior to any sale of Debt Securities to such offeree) disclosure documents which are at least as comprehensive in their description of the Applicant and Victoria as those which would be used by United States issuers in United States offerings of such securities and which contain the latest available audited financial statements of the Applicant.

5. In connection with any offering by the Applicant of its Debt Securities in the United States, the Applicant and Victoria will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to the Debt Securities which may be instituted in any state or federal court in the City or State of New York, by the holder of any Debt Securities. The Applicant and Victoria will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agency to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such Debt Securities have been paid.

6. Applicant consents to any order of the SEC being expressly conditioned on its compliance with the undertakings and representations contained in the application.

Applicant's Legal Analysis

The Applicant believes that granting the exemption would be necessary or appropriate in the public interest and that its activities would not lend theselves to the abuses against which the 1940 Act is directed. The applicant further believes that the issuance of an order pursuant to section 6(c) would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Debt Securites issued by the Applicant would be unconditionally guaranteed by Victoria and will be backed by the sovereign credit of Victoria and not merely the credit and assets of the Applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant. Secretary.

[FR Doc. 88-12648 Filed 6-3-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 11:00 a.m. on Thursday, June 16, 1988, in Room 1205 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (2:00 p.m. to 3:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the immunity of foreign States and their instrumentalities in United States courts, and the International Court of Justice. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to June 15, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-6771) of their name, affiliation,

address and telephone number in order to arrange admittance.

Bruce C. Rashkow,

Executive Director.

May 27, 1988.

[FR Doc. 88-12659 Filed 6-3-88; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending May 27, 1988

The following applications for certificates of public convenience and necessity and foreign air carriers permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45631

Date Filed: May 24, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 1988.

Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 129 to permit Northwest to provide nonstop air transportation services between Honolulu and Nagoya.

Docket No. 45637

Date Filed: May 27, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 21, 1988.

Descriptions; Application of Continental Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations authorizing Continental to provide foreign scheduled air transportation of persons, property and mail between Los Angeles, California, on the one hand, and San Jose Del Caba (Los Cabos), Mexico, on the other hand.

Docket No. 45639

Date Filed: May 27, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 24, 1988.

Description: Application of Jet Express, pursuant to section 401 of the Act and Subpart Q of the Regulations applies to transfer its certificate of public convenience and necessity to Jet Ex Inc.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-12662 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting the Standard Foreign Fare Level Index

[Docket No. 37554]

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-4-38 set the currently effective two-month SFFL applicable through May 31, 1988.

In establishing the SFFL for the two-month period beginning June 1, 1988, we have projected nonfuel costs based on the year ended December 31, 1987 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-5-64 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.1629
Latin American	1.1442
Pacific	1.5020
Canada	1.1382

For further information contact: Julien R. Schrenk (202) 366-2441.

By the Department of Transportation: May 1, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-12663 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP 88-02; Notice 2]

Goodyear Tire and Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Goodyear Tire and Rubber Company (Goodyear), of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1361 et seq.) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 25, 1988, and an opportunity afforded for comment (53 FR 9844).

Paragraph S4.3(e) of Standard No. 109 requires in pertinent part that the actual number of plies in the tread area be permanently molded into or onto both sidewalls. Goodyear produced and labeled 17,694 P195/60HR15 Eagle GT + tires with the incorrect number of plies.

The tires in question were marked as follows:

Tread 6 Plies: 2 Polyester Cord + 2 Steel Cord + 2 Nylon Cord Sidewall 2 Plies Polyester Cord.

The correct marking should be:

Tread 5 Plies: 2 Polyester Cord + 2 Steel Cord + 1 Nylon Cord Sidewall 2 Plies Polyester Cord.

Goodyear believes that the incorrect stamping has no effect on the tire performance or safety. The company supports the petition for inconsequential noncompliance "because the tires meet all test requirements of FMVSS No. 109, including tire strength, tire endurance, high speed performance, tubeless tire resistance to bead unseating, and physical dimensions." In addition, "the tires meet the temperature resistance requirement of § 575.14 of Title 49, Code of Federal Regulation, Uniform Tire Quality Grading Standard."

No comments were received on the petition.

Ply labeling is an indicator to the consumer of the strength and endurance of the tire. Standard No. 109, however, does not specify the number of types of plies required to meet the minimum requirements of the standard, and petitioner has certified that its tires meet those requirements.

The noncompliance is similar to one for which the agency has previously granted an inconsequentiality petition (Sumitomo Rubber Industries, Ltd., IP85-12, 50 FR 48151). There the agency concluded "(t)he error in no way affects the load carrying or endurance properties of the tires, and retreading operations will not compromise safety." NHTSA believes that the same conclusions are appropriate with respect to Goodyear's petition.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on May 31, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-12661 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0383.
Form Number: IRS Form 6560.
Type of Review: Extension.
Title: Employer Summary of Form W-2 Magnetic Media Wage Report.
Description: This form must be filed by all transmitters of wage information who file on magnetic media. Form 6560 is used to provide balancing totals to insure that all records are processed.
Respondents: State or local government, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Burden: 25,000 hours.

OMB Number: 1545-0745.
Form Number: None.
Type of Review: Extension.
Title: LR-27-83 TEMP REG—Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and LR-54-85 TEMP REG—Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.
Description: LR-27-83 amends the definition of first retail sale. Under the revised rules, a sale is treated as a first retail sale unless the purchaser (a) is not in the business of leasing and intends to resell, or (b) registers under section 4222 and certifies that it intends to resell the vehicle. LR-54-85 amends the definition of first retail sale to correspond to sections 505 and 506 of Highway Revenue Act of 1987.
Respondents: Businesses or other for-profit.
Estimated Burden: 3,059,480 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-12628 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington DC 20220.

U.S. Customs Service

OMB Number: 1515-0041.
Form Number: CF 6059B.
Type of Review: Extension.
Title: U.S. Customs Declaration.
Description: The Customs Form 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the U.S. by requiring basic information necessary to determine Customs exception status and if any duties or taxes are due. The form is used for the enforcement of other Federal agencies laws and regulations.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Burden: 1,000,000 hours.

OMB Number: 1515-0007.
Form Number: CF 7506.
Type of Review: Reinstatement.
Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.
Description: This form is an application and permit to withdraw goods from a warehouse without paying duties and taxes. The form also covers several types of withdrawals from a Customs Bonded Warehouse, subject to Customs controls.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 15,819 hours.

Clearance Officer: John L. Poore (202) 566-2491, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-12629 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Dept. Cir.; Public Debt Series—No. 14-88]

Treasury Notes, Series AB-1990

Washington, May 26, 1988.

The Secretary announced on May 25, 1988, that the interest rate on the notes designated Series AB-1990, described in Department Circular—Public Debt Series—No. 14-88 dated May 19, 1988, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-12681 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circ.; Public Debt Series—No 15-88]

Treasury Notes, Series L-1993

Washington, May 27, 1988.

The Secretary announced on May 26, 1988, that the interest rate on the notes designated Series L-1993, described in Department Circular—Public Debt Series—No. 15-88 dated May 19, 1988, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-12682 Filed 6-3-88; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Income Taxes; 1989 Electronic Filing Program; Forms 1040, 1040A and 1040EZ Returns; Briefing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of electronic filing software/communications industry briefing.

SUMMARY: An Electronic Filing Software/Communications Industry Briefing will be conducted by the Electronic Filing Systems Project Office, Internal Revenue Service.

DATES: The briefing is scheduled for July 1, 1988, beginning at 8:30 a.m. and continuing until 3:30 p.m. Notification of attendance is required no later than June 17, 1988.

ADDRESS: The briefing will be held in the IRS Main Auditorium, 7400 Corridor, 1111 Constitution Ave., NW., Washington, DC 20224.

Registration: To register for the briefing and for additional information telephone (202) 566–3328 (not a toll free number).

SUPPLEMENTARY INFORMATION: Electronic Filing software and communications will be discussed. This session is an information session for potential participants and is not intended to generate RFPs.

Seating capacity is limited: Attendees will be accommodated on a first-come, first-served basis; no more than two representatives from the same company.

Richard Moran,

Project Officer, Electronic Filing Systems.

[FR Doc. 88–12683 Filed 6–3–88; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 108
Monday, June 6, 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).

FARM CREDIT ADMINISTRATION

Regulator Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for June 7, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 7, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Final Rule on Simultaneous Service, 12 CFR 612.2150
2. Proposed Changes to Farm Credit System Retirement Plans
   - Springfield District
   - Texas District
   - Farm Credit Corporation of America
3. Proposed Farm Credit System District Special Early Retirement Programs
   - Baltimore District
   - Texas District
   - Springfield District
4. Proposed Changes on Farm Credit System District Severance Plans
   - St. Paul District
   - Louisville District
   - Central Bank for Cooperatives
5. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management
6. Mergers of the Farm Credit System Federal Land Banks and Federal Intermediate Credit Banks

[1] Closed Session

7. Examination and Enforcement Matters.

Dated: June 1, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–12697 Filed 6–2–88; 9:24 am]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:38 p.m. on Tuesday, May 31, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Personnel matters.

Matters relating to the possible closing of certain insured banks.

Discussion of certain procedures for handling bank failures.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Request for financial assistance 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 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)(2), (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. 552 (c)(2), (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: June 1, 1988.

Federal Deposit Insurance Corporation.

Rober E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–12715 Filed 6–1–88; 9:01 am]

BILLING CODE 6714–01–M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.–5:00 p.m., Thursday, and Friday, June 16, and 17, 1988.

PLACE: American Chemical Society, 1155 Sixteenth Street, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the twenty-third meeting. Consideration of grant application matters.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 457–1700.

Dated: June 1, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88–12717 Filed 6–2–88; 10:26 am]

BILLING CODE 3155–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

Corrections

Federal Register
Vol. 53, No. 108
Monday, June 6, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL 3378-4]

Stratospheric Ozone Protection; Apportionment of Baseline Consumption and Production Rights

Correction

In proposed rule document 88-11710 beginning on page 18800 in the issue of Tuesday, May 24, 1988, make the following correction:

On page 18800, in the second column, in the first complete paragraph, in the last line, "June 23, 1988" should read "July 7, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0104]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ucephan™

Correction

In notice document 88-10481 beginning on page 16786 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16786, in the second column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "project" should read "product".

2. On page 16787, in the first column, in the third complete paragraph, in the eighth line, "is" should read "its".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0106]

Medtronic, Inc.; Premarket Approval of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter

Correction

In notice document 88-10485 beginning on page 16789 in the issue of Wednesday, May 11, 1988, make the following correction:

On page 16789, in the third column, in the fourth line from the bottom, after "petition" insert "supporting".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0114]

Medtronic, Inc.; Premarket Approval of the Medtronic® SynchroMed™ Infusion System

Correction

In notice document 88-10548 appearing on page 16788 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16788, the heading is corrected to read as set forth above.

2. In the first column, under **SUMMARY**, the seventh line should read "Medtronic® SynchroMed™ Infusion System".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0091]

Zeus Scientific, Inc.; Premarket Approval of Fluoro-Cep® Estrogen

Correction

In notice document 88-10484 beginning on page 16788 in the issue of Wednesday, May 11, 1988, make the following corrections:

1. On page 16788, in the third column, under **SUMMARY**, in the sixth line, after "the" insert "Fluoro-Cep® Estrogen. After reviewing the recommendation of the".

2. On page 16789, in the first column, in the third complete paragraph, in the third line, "CDRF" should read "CDRH".

3. On the same page, in the second column, in the first complete paragraph, in the third line, "909" should read "90".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-08-4220-11; WYW 28577, WYW 059320, WYW 094183]

Proposed Continuation of Forest Service Withdrawals; Wyoming

Correction

In notice document 88-10671 appearing on page 17117 in the issue of Friday, May 13, 1988, make the following correction:

In the second column, under **SUMMARY**, in the sixth line, "in" should read "to".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8204]

Income Taxes; Safe-haven Interest Rates and Rental Charges for Commonly Controlled Taxpayers

Correction

In rule document 88-11393 beginning on page 18276 in the issue of Monday, May 23, 1988, make the following correction:

§ 1.482-2 [Corrected]

On page 18279, in the third column, in § 1.482-2(a)(1)(iii)(E)(*3*), *Example* (i), in the eighth line, "jX's" should read "X's".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-102-86]

Cooperative Housing Corporations; Proposed Rulemaking

Correction

In proposed rule document 88-11970 beginning on page 19312 in the issue of Friday, May 27, 1988, make the following correction:

§ 1.216-1 [Corrected]

On page 19313, in the third column, in § 1.216-1(d)(3), *Example (3)*, in the 16th line, before "fair" insert "total".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-52-86]

Income Taxes; Information Reporting and Backup Withholding

Correction

In proposed rule document 88-4140 beginning on page 5991 in the issue of Monday, February 29, 1988, make the following correction:

§ 1.6049-5 [Corrected]

On page 6007, in the third column, in § 1.6049-5(j)(1)(ii), in the fifth line, "payer" should read "payee" and "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 11]

Delegation of Authority; Division Chiefs

Correction

In notice document 88-10520 appearing on page 16835 in the issue of Wednesday, May 11, 1988, make the following correction:

In the third column, in the 15th line, "frivol" should read "frivolous".

BILLING CODE 1505-01-D

Federal Register

Monday
June 6, 1988

Part II

Environmental Protection Agency

40 CFR Part 81

State Implementation Plans; Attainment Status Designations; Proposed Rulemaking and Alternative Policy Proposals

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3378-6]

State Implementation Plans; Attainment Status Designations; Proposed Rulemaking and Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; alternative policy proposals.

SUMMARY: The EPA, as directed by the Mitchell-Conte Amendment of December 22, 1987 (contained in the Budget Reconciliation Act of 1987, Pub. L. 100-202), is proposing to designate as nonattainment under the Clean Air Act (CAA) those areas throughout the nation that have not attained the National Ambient Air Quality Standard (NAAQS) for either ozone or carbon monoxide (CO). EPA proposes to designate as nonattainment those areas currently codified as attainment or unclassified, and to renew the designations for areas currently codified as nonattainment. This notice thus proposes rulemaking to create a list of nonattainment designations pursuant to the Mitchell-Conte Amendment. This list will be set forth either as a supplement or as a modification to 40 CFR Part 81, Subpart C (1987), which contains designations pursuant to the Clean Air Act Amendments of 1977.

EPA employed the most recently available air quality data as the basis for today's proposed action. For ozone, EPA used air quality data for calendar years 1985, 1986 and 1987; for CO, data for calendar years 1986 and 1987. In both instances, EPA has followed the methodologies prescribed in 40 CFR Part 50 (1987) in making these determinations as to air quality violations.

In this notice, EPA also discusses three alternative intepretations of the Mitchell-Conte Amendment. The first interpretation would leave undisturbed EPA's current practice under which the states, pursuant to section 107 of the Clean Air Act, have the authority to designate areas as nonattainment for purposes of the planning and implementation requirements imposed by Part D of the Clean Air Act. Under this interpretation, EPA would issue a list of which areas throughout the country have not attained the National Ambient Air Quality Standards for either ozone or CO.

Under a second interpretation of the amendment, EPA not only would determine which areas have failed to attain the ozone and CO NAAQS, but also would designate those areas as nonattainment under section 107 of the Act, thereby triggering the Part D planning and implementation requirements. These regulatory consequences would apply both to areas currently designated as nonattainment and to those areas that EPA would newly designate as nonattainment. Adopting this interpretation would involve a new initiative as explained below.

The third interpretation of the amendment is identical to the second one, except that an EPA nonattainment designation would attach Part D regulatory consequences only to those areas newly designated as nonattainment. As is the case with the second interpretation, this would also involve a new initiative.

EPA solicits comments on both portions of this notice: the proposed rulemaking establishing nonattainment designations pursuant to the Mitchell-Conte Amendment; and the discussion of possible regulatory consequences for such nonattainment designations. EPA intends to promulgate the nonattainment designations, and to issue its final policy on these matters, only after responding to public comment. That final policy will be an advance notice of how EPA intends, in subsequent rulemakings on State Implementation Plan (SIP) submittals, to judge the adequacy of states' efforts to plan for attainment of the ozone and CO NAAQS.

The EPA believes that each of the three interpretations has federalism implications as described in Executive Order 12612. To understand the significance of the federalism implications on the various roles of local, state and federal governments in air quality management, and in particular to the Mitchell-Conte Amendment, EPA specifically solicits comments on today's notice.

DATES: The EPA will consider comments received by August 5, 1988.

ADDRESSES: Docket A-88-17 containing material relevant to this action is located at: Central Docket Section, South Conference Center, Room 4, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Interested persons may inspect the docket between 8:00 am and 4:00 pm on weekdays. The EPA may charge a reasonable fee for copying.

All written comments should be submitted (in duplicate if possible) to: Central Docket Section, Docket A-88-17, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brock Nicholson, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5517 or (FTS) 629-5517.

Questions or comments regarding state-specific designations should be addressed to the appropriate EPA Regional Office as listed below:

John Hanish, Chief, Air Branch, EPA, Region I, JFK Federal Bldg. Boston MA, 02203 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) (617) 565-3245.

William Baker, Chief, Air Branch, EPA, Region II, 26 Federal Plaza, New York, NY, 1007 (New York, New Jersey, Puerto Rico, Virgin Islands) (212) 264-2517.

Jessie Baskerville, Chief, Air Branch, EPA, Region III, Curtis Bldg, Sixth and Walnut Streets, Philadelphia, PA 19106 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) (215) 597-9075

Bruce Miller, Chief, Air Branch, EPA Region IV, 345 Courtland St. NE, Atlanta, GA, 30308 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina) (404) 347-2864.

Steve Rothblath, Chief, Air Branch, EPA Regional V, 230 South Dearborn St, Chicago, IL, 60604 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin) (312) 353-2211.

Gerald Fontinot, Chief, Air Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75270 (Arkansas, Louisiana, Oklahoma, New Mexico, Texas) (214) 655-7204.

Carl Walter, Chief, Air Branch, EPA Region VII, 1735 Baltimore St, Kansas City, MO, 64108 (Nebraska, Iowa, Kansas, Missouri) (913) 236-2893.

Doug Skie, Chief, Air Branch, EPA Region VIII, 1860 Lincoln St, Denver, CO 80295 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) (303) 293-1751.

Dave Calkins, Chief, Air Branch, EPA Region IX, 215 Fremont St., San Francisco, CA. 94105 (Arizona, California, Hawaii, Nevada, American Samoa, Northern Mariana Islands) (415) 974-8058.

George Abel, Chief, Air Branch, EPA Region X, 1200 Sixth Ave, Seattle, WA 98101 (Alaska, Idaho, Oregon, Washington) (206) 442-1275.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1978 Air Quality Designations

The 1970 Amendments to the Clean Air Act directed EPA to establish primary and secondary National Ambient Air Quality Standards (NAAQS) to protect the public health

and the public welfare, respectively. Under these amendments, the states were directed to develop and adopt State Implementation Plans (SIPs) to attain and maintain the NAAQS.

In 1971, EPA promulgated NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone (originally called photochemical oxidants) and nitrogen dioxide. States were required, pursuant to CAA § 110(a), to develop and adopt SIPs that would attain the NAAQS in most areas in 1975, with some extensions, pursuant to CAA section 110(e), until 1977. Many of these SIPs were inadequate to attain the NAAQS; by 1976 EPA had begun issuing numerous "calls," under CAA section 110(a)(2)(H), for states to revise their SIPs to provide for attainment.

Section 107(d) of the Clean Air Act (CAA) Amendments of 1977 required that each State identify all areas within their boundaries that had not attained the national ambient air quality standards (NAAQS) by August 7, 1977. The States were directed to submit a list of these areas to EPA by December 7, 1977. The EPA was required to promulgate these lists within 60 days with such modifications as EPA deemed necessary and after giving the States notice and opportunity to comment.

The EPA promulgated most of these designations in 43 FR 8962 (March 3, 1978). Part D of the Clean Air Act required that those areas designated as nonattainment in 1978 submit SIP revisions by January 1, 1979 that demonstrated attainment of the NAAQS by December 31, 1982.[1] EPA could approve a state's application for an extension of the attainment deadline until December 31, 1987, upon a proper demonstration that attainment of the NAAQS was not possible by the December 1982 deadline, despite the use of all reasonably available measures.

B. Part D's Planning and Sanctions Provisions

Each SIP revision due in 1979 was to provide for the implementation of reasonably available control measures (RACM) and for "reasonable further progress" (RFP) is defined as annual incremental reductions in emissions sufficient to provide for attainment by the applicable deadline, including such reductions as may be obtained through the adoption of "reasonably available control technology (RACT)."

[1] The requirements for this SIP revision are contained in the Administrator's memo of February 24, 1978, entitled "Criteria for the Approval of 1979 SIP Revisions," published at 43 FR 21673 (May 19, 1978).

Each such SIP revision was also to include a permit program for the preconstruction review of major new sources of the relevant pollutants. As outlined by CAA section 173, this program would allow construction, even before attainment occurs, upon determinations that (1) the source would have state-of-the-art emissions controls; (2) its emissions would be offset by greater than one-for-one reductions elsewhere or would be accounted for in an approved attainment demonstration for the area where the source proposed to locate; (3) the applicant's other sources in the state are in compliance with the SIP; and (4) the State is carrying out the SIP. In the case of the areas with an attainment deadline of December 31, 1987 ("extension" areas), each revision due in 1979 had to identify any measures beyonnd RACM that would be necessary to assure timely attainment and had to contain commitments to adopt a vehicle inspection and maintenance (I/M) program. In addition, each state with an extension area was to submit a supplemental revision before July 1, 1982, containing those additional measures necessary to assure attainment by December 31, 1987.

As part of the 1977 Amendments, section 110(a)(2)(I) required each SIP to contain a construction ban that would operate against major new sources and major modifications of existing sources of the relevant pollutants in each nonattainment area after June 30, 1979, "unless, as of the time of application for a permit for such construction * * *, such plan meets the requirements of Part D * * *." As further incentive for timely submission of Part D. SIP revisions, Congress added CAA sections 176(a) and 316(b). Section 176(a) bars the U.S. Department of Transportation from funding many highway projects, and bars EPA from making air quality planning grants, in any ozone or CO nonattainment area where EPA determines that the state has failed to make reasonable efforts to submit approvable SIP revisions for the area in accordance with Part D. Section 316(b) authorizes EPA to withhold certain grants for sewage treatment construction where an area has failed, among other things, to submit an adequate Part D SIP for the area.

In the Clean Air Act Amendments of 1977, Congress also established three sanctions for failures to implement a SIP. First, Congress authorized EPA's discretionary withholding of air quality planning grants and sewage treatment grants for any area where the state is not implementing the applicable SIP. *See* CAA sections 176(b) and 316(b). Beyond these sanctions, CAA section 173(4) operates, in effect, as a ban on the construction of major new sources and major modifications of existing sources in the event that a state is not "carrying out" its approved Part D SIP.

C. EPA's 1983 Policy for Newly Designated Nonattainment Areas

The Clean Air Act does not establish any express deadlines for submittal of SIP revisions in those areas that are designated nonattainment after 1978, and thus does not fully prescribe EPA's treatment of those areas' planning and implementation failures.

In 48 FR 50686 and 50695–6 (Nov. 2, 1983) (The "1983 Sanctions Policy"), EPA determined that newly designated nonattainment areas should meet the CAA's Part D planning and implementation requirements. Under that policy, newly designated nonattainment areas must adopt and submit SIP revisions whose provisions satisfy the criteria of CAA sections 110(a) and 172. Moreover, these areas would be subject to a construction ban and funding restrictions under the same circumstances that would trigger those sanctions for areas designated nonattainment in 1978: e.g., EPA's determination of failure to submit an approvable plan, or to implement a plan upon approval.

In this 1983 Sanctions Policy, EPA acknowledged that it would be impossible for those areas which are designated as nonattainment long after 1978 to meet the statutory deadlines for submittal and implementation of Part D SIP revisions. EPA concluded that Congress intended for such areas to have a reasonable time to submit SIP revisions and implement them. Accordingly, having calculated the time periods between the statutory deadlines for areas designated in 1978, EPA required newly designated nonattainment areas to follow approximately the same time periods, commencing whenever redesignation occurred, in submittal and implementation of Part D SIPs. *Id.*

Under EPA's longstanding interpretation of the Clean Air Act, an unconditional approval of a Part D SIP revision for an area designated nonattainment either in 1978, or subsequently, satisfies the Part D planning requirements for that area. Such approval also exempts that area from associated sanctions for planning failures, specifically the bans on construction of major new and modified sources pursuant to CAA section 110(a)(2)(I), and on federal funding of

highway construction pursuant to CAA section 176(a). For an explanation of this policy, *See* 48 FR 50686–50691 (Nov. 3, 1983); 52 FR 45044, 45049–45052 (Nov. 24, 1987).) [2]

D. EPA's Designation Practice Pursuant to Bethlehem Steel

The designation process embodied in CAA section 107(d) required each state to submit a list of areas classified according to attainment status for each NAAQS. That section in turn obliged EPA to promulgate those designations within sixty days of receipt of the state's list of recommendations. It authorized EPA to modify the state's submittal, after giving the state notice and an opportunity to comment. It further authorized a state to review, and as appropriate revise and resubmit, its list of recommended attainment designations. EPA initially took the position that it could modify an area's promulgated designation at any time when warranted by evidence of nonattainment, not only upon review of the state's original recommendations. The Agency relied upon its authority to modify designations under CAA section 107(d)(2) and CAA section 171(2). The latter section, in the "Definitions" of Part D, provides broadly that a "nonattainment area" "include[s]" an area designated nonattainment under CAA section 107(d); the verb "include" suggests that EPA's redesignation authority covers not only areas for which the state has requested a nonattainment designation pursuant to CAA section 107(d), but also areas for which the state has not requested such a designation. Part D's definition of "nonattainment area," in conjunction with CAA section 107(d), governs EPA's choice of the areas that are subject to the Part D provisions which apply to "nonattainment areas."

In *Bethlehem Steel v. EPA*, 723 F.2d 1303 (1983), the U.S. Court of Appeals for the Seventh Circuit held that EPA may not modify designations, under either CAA section 107(d) or 171(2), following EPA's promulgation of the initial list of designations for a state unless the state has requested such a modification. While not conceding the decision's validity, EPA has, as a matter of practice, acquiesced in the reasoning of *Bethlehem Steel* in all states, not just those in the Seventh Circuit (Illinois, Indiana, and Wisconsin). *See*, e.g., post-1987 policy proposal, 52 FR 45044, 45049 (Nov. 24, 1987). Accordingly, absent a request from the affected state, an area which was originally designated as attainment or unclassifiable would not be redesignated as nonattainment, regardless of the evidence of violation of the NAAQS. In turn, absent designation as nonattainment, an area would not be subject to Part D's planning and implementation requirements. *Id.* As explained below, however, the EPA believes that the Mitchell-Conte Amendment could be interpreted to give EPA authority to designate areas as nonattainment, with regulatory consequences under Part D, absent a request from the affected state.

E. Proposed Post-1987 Attainment Policy and SIP Calls

In 52 FR 45044 (Nov. 24, 1987), EPA proposed a post-1987 policy for areas that would not attain the NAAQS for ozone and carbon monoxide by December 31, 1987. Supplemental Information Section IV of today's notice supplements that earlier proposal in certain respects.

In the November 24, 1987 notice, EPA proposed similar planning requirements for three categories of areas previously designated nonattainment: those areas whose Part D SIPs had not received EPA's approval and thus which were (prior to Mitchell-Conte) subject to Part D's provisions; those urbanized areas whose Part D SIPs had been approved; and those rural areas whose emissions produce local violations or contribute to violations in adjacent urbanized areas. Invoking the authority of Part D as to any area whose SIP has not received EPA's approval, and otherwise relying on CAA section 110, EPA proposed that such areas would be obliged to prepare SIP revisions which met specified planning requirements. These include: the submittal of a new plan that provides for attainment within three to five years of its approval, and interim progress towards attainment; adoption of reasonably available control technologies (RACT) for certain categories of sources; and for certain areas, an I/M program. *See* 52 FR 45065–45082. EPA also proposed that, regardless of the unconditionality of EPA's approval of a Part D SIP, any inconsistency between that SIP and EPA's prior Part D Guidance would have to be corrected. *See id.* at 45105–45109.

While the previous designations for many nonattainment areas have applied to only the "urbanized" portion of the metropolitan area, the proposed post-1987 policy would apply planning requirements to the suburban or rural areas surrounding the central cities, including those outlying areas designated as attainment. Except for isolated rural areas, the Metropolitan Statistical Area (MSA), as defined by the U.S. Bureau of Census (or, where applicable, the Consolidated Metropolitan Statistical Area (CMSA)), will be the minimum planning area for the post-1987 SIPs. *See id.* at 45055–45056. The proposed post-1987 policy does not require RACT for such outlying attainment areas (*id.* at 45062–45063) but does oblige the states to account for such areas in their attainment demonstrations for the MSA/CMSA, and to control emissions "to the extent necessary" for timely progress and attainment throughout the MSA/CMSA (*id.* at 45055).

In the November 24, 1987 notice, EPA also proposed a policy for imposition of sanctions for planning or implementation failures. Under that proposal, only a nonattainment area whose Part D SIP has not received EPA's unconditional approval could ever potentially become subject to the ban on construction under CAA section 110(a)(2)(I), or to the highway funding restriction under CAA section 176(a). A nonattainment area with an approved Part D SIP could become subject to the construction ban under CAA section 173(4), if it failed to do the necessary planning. *Id.* at 45050. Any area, whether or not attainment, which failed to plan as required could become subject to restrictions on federal funding for such planning, pursuant to CAA section 176(b) and for sewage treatment, pursuant to CAA section 316(b).

The post-1987 policy proposal discussed EPA's intitial intent to publish the final policy in early 1988 and shortly thereafter to issue "calls" for SIP revisions pursuant to CAA section 110(a)(2)(H) (SIP calls). The EPA is currently developing responses to comments received during the extended public comment period on the proposed policy and now anticipates issuance of the final policy later this year, although this schedule depends in part on whether and how Congress amends the Act in this session. As to SIP calls, however, EPA believes that, even before the issuance of EPA's final post-1987 policy, the states should initiate certain

[2] EPA has never viewed this policy as the only permissible reading of the Clean Air Act as amended through 1977.

In 48 FR 4972 (Feb. 3, 1983), EPA proposed to disapprove various SIPs that it had previously approved, that had not produced attainment by December 31, 1982, but that did not contain requests, pursuant to CAA section 172(a)(2), for an extension of the attainment deadline to December 31, 1987. EPA thereby proposed to re-impose Part D's obligations on these areas. In its subsequent finalization of policy for these areas, EPA noted that "[n]early all commenters" objected to that proposal. 48 FR. 50686, 50689 (Nov. 3, 1983). EPA stated that it "now agrees that the better interpretation of the Act," *id.* at 50690, is that Part D obligations are discharged by EPA's unconditional approval of a Part D SIP.

fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. Then, upon publication of the final post-1987 policy, EPA will direct all areas affected by SIP calls to begin the process of fully implementing all other elements of the final post-1987 policy.

Parallel to today's notice, through a letter to the affected state's Governor, EPA is issuing a SIP call for each area which measures a violation, or which contributes to a violation, of the ozone or CO NAAQS. Such a SIP call will apply to the expanded planning area described in the Post-1987 Policy proposal. EPA will call on each affected state: first, to correct discrepancies between EPA's existing Part D guidance and the approved Part D SIP or pending SIP submittal; second, to satisfy any unimplemented commitments in the Part D SIP to adopt control measures; and third, to begin updating the baseyear emissions inventory for the defined planning area. In addition, EPA will call on some MSAs to commit to a schedule of monitoring for nonmethane organic compounds (NMOCs). Within 60 days of receipt of a SIP call, each affected state must submit a schedule to the appropriate EPA Regional Office setting forth the time periods and interim steps required to complete all actions defined in the SIP call. The EPA believes that the maximum period for satisfaction of the SIP call requirements should be one year.

F. Budget Reconciliation Act of 1987 (Mitchell-Conte Amendment)

In the Budget Reconciliation Act of 1987, P.L. 100–202 (December 22, 1987), Congress enacted the Mitchell-Conte Amendment, which prohibited any of the Clean Air Act's planning and implementation sanctions from taking effect until August 31, 1988.

The Mitchell-Conte Amendment also states that, by August 31, 1988, EPA shall "make determinations with respect to which areas throughout the nation have attained, or failed to attain" these NAAQS. It further provides that EPA "shall take appropriate steps to *designate those areas failing to attain either or both of the standards as nonattainment within the meaning of part D of title I of the Clean Air Act*" (emphasis added).

II. Interpretations of the Designation Provision of the Mitchell-Conte Amendment

It is clear that the Mitchell-Conte Amendment obliges EPA to determine which areas violate the ozone or CO NAAQS and to take appropriate steps to designate these areas as nonattainment within the meaning of Part D. The Mitchell-Conte Amendment applies whether or not these areas are currently designated as nonattainment under CAA § 107.

As explained below, EPA's rulemaking proposal to designate an nonattainment both attainment and nonattainment areas is consistent with a reasonable interpretation of the Mitchell-Conte Amendment. Beyond that, EPA has identified three plausible, alternative interpretations of the Amendment as to the regulatory consequences of such designations. Where Congress has not directly or unambiguously spoken to the precise question at issue, EPA has the responsibility and discretion to establish and implement its own interpretation of the statute, so long as that interpretation is consistent with the language, structure, purpose, and legislative history of the statute. *See Chevron v. NRDC*, 467 U.S. 837, 842–3 (1984). EPA believes that there are three plausible views as to the regulatory consequences of nonattainment designations pursuant to the Mitchell-Conte Amendment. Therefore, EPA solicits comments from all interested parties regarding its discussion of the regulatory consequences of such designations.

A. Designations without regulatory consequences

A plausible interpretation of the Mitchell-Conte Amendment is that EPA should make determinations on nonattainment by using the definition in CAA § 171(2), but without attaching any regulatory consequences—e.g., without obliging any nonattainment area to satisfy Part D planning requirements, and without subjecting it to sanctions for planning or implementation failures. Under that interpretation, designations pursuant to the Mitchell-Conte Amendment would be informational at present, and would have regulatory consequences only insofar as Congress amended the Clean Air Act to establish post-1987 obligations for nonattainment areas so identified.

This interpretation appears consistent with legislative history indicating that Congress intended to preserve the regulatory status quo, pending direct amendment of the Clean Air Act to establish a comprehensive framework for correcting post-1987 nonattainment of the ozone and CO NAAQS.[3] The legislative history [4] contains no express statement that Congress intended to allow EPA to designate areas for the purpose of imposing Part D consequences. Indeed, with the exception of one comment discussed below, Congressional debate did not address the designation provision at all, but instead focussed on the Amendment's other provision, which prohibits EPA's imposition of CAA sanctions for ozone or CO nonattainment until August 31, 1988.

This interpretation assumes that Congress limited the designation provision. A normal designation as nonattainment (as that term is used in Part D) includes Part D consequences; thus, designation "within the meaning of Part D" strongly suggests such consequences. It is possible, of course, that Congress intended Mitchell-Conte designations to be "within the *meaning* of Part D" (i.e., to apply to those areas which are nonattainment as that term is defined in CAA section 171(2)), but not for the *purpose* of Part D (e.g., imposition of planning and implementation requirements).

B. Designations for new and existing nonattainment areas, all of which would be subject to Part D planning and implementation requirements

Another plausible interpretation of the Mitchell-Conte Amendment is that EPA must take steps to designate as nonattainment every area which it determines not to have attained the ozone or CO NAAQS, regardless of current designation. Further, such designations would have the same regulatory consequences as would attach to a nonattainment designation newly requested by a state and promulgated by EPA pursuant to CAA section 107(d).

Under this reading, the Mitchell-Conte Amendment would change existing law and EPA practice in two respects. First, it would override *Bethlehem Steel* (as to the states comprising the Seventh Circuit) and EPA's nationwide acquiescence in *Bethlehem Steel's*

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[3] See, e.g., statement by Senator Mitchell, 133 Cong. rec. S 17,812 col. 2 (Dec. 11, 1987), regarding the Mitchell-Conte Amendment's prohibition of CAA sanctions until August 31, 1988:

> . . . a short-term extension appears necessary in order to provide time for Congress to make the needed decisions on the best way to assure national attainment of the air quality standards. These decisions require legislative changes; regulatory proposals will not suffice.
>
> I do not believe that the current Clean Air Act authorizes the agency to develop its own post-1987 attainment strategy. . . . While this extension [e.g., sanctions prohibition] does not specifically preclude the agency from implementing its policy [proposed in 52 FR. 45044 (Nov. 24, 1987)], I encourage EPA to reconsider the proposal.

[4] Congressional debate of the Mitchell-Conte Amendment is set forth in 133 Cong. Rec. H 10,923–H 10,946 (Dec. 3, 1987) and 133 Cong. Rec. S 17,812–S 17,814 (Dec. 11, 1987).

reasoning. Thus, EPA would now designate as nonattainment, areas which are currently designated as attainment or unclassifiable, even in the absence of requests from the affected states.

Second, the Mitchell-Conte Amendment would authorize EPA to supersede its existing policy that unconditional approval of a nonattainment area's SIP revision discharges for all time Part D's planning requirements and exempts that area from associated sanctions for planning failures, specifically the bans on construction of major new sources, pursuant to CAA section 110(a)(2)(I), and on federal funding of highway construction, pursuant to CAA section 176(a). Thus, EPA would designate as nonattainment every area which is nonattainment in fact, including those areas which are currently designated nonattainment and which have unconditionally approved Part D SIPs. Such confirmation or renewal of the existing nonattainment designation would subject such areas to Part D planning requirements (to the extent that EPA determined that the existing SIPs did not meet all such requirements) and, potentially, to sanctions for failures to meet such requirements and to implement approved plans.

This interpretation stems from the wording of the amendment, in particular the use of the term "designation" and the phrase "within the meaning of Part D." It could be argued that this language suggests that Congress intended that the Clean Air Act's redesignation process should be restarted, and that the designations should have all the regulatory consequences that they would have had in the initial round of designations following the enactment of the Clean Air Act Amendments of 1977. This interpretation would rely on the fact that the statutory language directing EPA to designate as nonattainment "those areas" which have not attained the ozone or CO NAAQS by December 31, 1987, is not limited to areas currently designated as attainment, and that there is no indication that such designations would have consequences different from those that attach when EPA redesignates as nonattainment at a state's request.

On the other hand, it can be argued that if Congress meant to restart the planning and sanctions provisions of Part D for all nonattainment areas, even those that had fulfilled their Part D planning obligations, such a decision would have led to extended debate. In fact, the proponents of the amendment uniformly described it as a simple extension of the Clean Air Act "freezing the status quo," and only Representative Dingell, an opponent of the House version of what was subsequently enacted, made any reference at all to the redesignation provision. However, that reference could provide some support for this interpretation. Mr. Dingell stated that the House bill "could subject" such areas as New York and New Jersey (that were already designated nonattainment and that had fulfilled their Part D planning obligations) "and others to new planning and sanctions." 133 Cong. Rec. H 10,942 col. 1 (Dec. 3, 1987). He also characterized the redesignation provision as a "significant change in the Clean Air Act." *Id.* No other participant in the debate confirmed or refuted Congressman Dingell's interpretation.

Part D itself does not expressly establish the regulatory requirements applicable to a nonattainment area designated as such after 1978, or to a nonattainment area which failed to improve its air quality adequately by December 31, 1987, the final attainment target set forth in CAA section 172. Part D establishes planning requirements in the context of a planning and implementation schedule starting in 1978. As previously discussed, in 1983 EPA reasoned that Congress intended that the Agency establish analogous substantive requirements, and schedules for satisfaction of those requirements, for newly designated nonattainment areas. Similarly, EPA's November 24, 1987 notice proposes Part D requirements for all nonattainment areas whose SIPs have not received EPA's approval, and CAA section 110 requirements for attainment areas and nonattainment areas whose Part D SIPs have received EPA's approval.

EPA's post-1987 policy proposal already contains the same planning requirements for three categories of areas already designated nonattainment: those areas whose Part D SIPs had not received EPA's approval and thus which were (prior to Mitchell-Conte) subject to Part D's provisions; those urbanized areas whose SIPs had been approved and thus whose post-SIP call planning efforts would (absent Mitchell-Conte) have been subject to CAA section 110, not Part D; and those rural or suburban areas whose emissions produce local violations or contribute significantly to violations in adjacent urbanized areas. Under this interpretation of the Mitchell-Conte Amendment, such nonattainment areas whose nonattainment status is confirmed would still be subject to the same planning requirements identified in the November 24, 1987 proposal. However, the authority for those planning requirements would then be Part D for all such areas. For the reasons discussed at 54 FR 45050, areas with either new or confirmed nonattainment designations would be subject to the 3–5 year attainment period discussed in the November 1987 proposal, which is analogous to the second Part D planning period (1982–87).

Applying Part D to all nonattainment areas in the post-1987 planning for attainment of the ozone or CO NAAQS would have several other consequences. Part D requires the adoption of RACT in every nonattainment area. Accordingly, EPA would require the adoption of RACT measures in areas which form part of a MSA/CMSA, which had previously been designated attainment, but which (through Mitchell-Conte designations) are redesignated nonattainment. The RACT requirements that would apply in these newly designated nonattainment areas would be those that would have applied under the November 1987 proposal if those areas had already been designated nonattainment prior to the Mitchell-Conte Amendment. Such newly designated nonattainment areas would otherwise not be subject to RACT under CAA section 110 and EPA's earlier proposal, discussed in Section I.E of today's notice.

Additionally, all areas which are designated nonattainment pursuant to Mitchell-Conte would be potentially subject to Part D sanctions, if they failed in the future to submit adequate plans or implement their plans. Therefore, under this interpretation, all nonattainment areas could potentially become subject to the construction ban, pursuant to CAA Section 110(a)(2)(I); and the restrictions on federal funding of highways and air quality planning, pursuant to CAA Section 176(a). Under the November 1987 policy proposal, these areas could potentially have become subject only to the other sanctions in the Act; the funding restrictions under CAA Sections 176(b) and 316, and the construction ban under CCC Section 173(4).

C. Designations with Regulatory Consequences Only for New Nonattainment Areas

A third interpretation is that the Mitchell-Conte Amendment authorizes EPA to attach regulatory consequences to nonattainment designations for areas currently designated attainment. This interpretation differs from the second insofar as EPA would not attach such consequences to confirmation of the

nonattainment status of areas already designated as nonattainment.

Under this interpretation, the Mitchell-Conte Amendment directs EPA to designate as nonattainment without mention of any request from the affected state, and does not limit EPA's pre-existing authority to attach regulatory consequences to any initial nonattainment redesignation. The relevant legislative history is discussed above in Supplemental Information Section II.B. This interpretation differs from the second interpretation discussed above on the basis of the assumption that the Congress would not have subjected nonattainment areas with approved Part D SIPs to further obligations without express debate on that subject, and that nonattainment areas without approved Part D SIPs are still subject to Part D obligations under the Clean Air Act prior to Mitchell-Conte.

D. Relative Effects of Nonattainment Designations Under the Various Options

Nonattainment designations for all areas measuring or contributing to violations of the ozone or CO NAAQS, and the application (or reapplication) of Part D's provisions to all such areas (discussed in Section II.B), would restart the planning and sanctions process. All areas measuring or contributing to NAAQS violations would be subject to the same control requirements and forcing functions (i.e., the potential application of the same array of sanctions).

By contrast, nonattainment designations without regulatory consequences, discussed in Section II.A, would not restart the planning and sanctions process.

III. Proposed Designations as Nonattainment Pursuant to the Mitchell-Conte Amendment

The EPA today proposes to designate those areas listed in the following Tables A and B as nonattainment for ozone and carbon monoxide, respectively. These designations, upon promulgation, either will be set forth in a supplement to existing 40 CFR Part 81, or will modify that existing nonattainment list. After receiving comment as to Mitchell-Conte's relation to Clean Air Act, Section 107, EPA will determine how to codify these designations pursuant to the Mitchell-Conte Amendment.

A. Air Quality Data

1. Ozone

The ambient air quality standard for ozone is 0.12 parts per million (ppm). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1. 40 CFR 50.9. 40 CFR Part 50, Appendix H (1987) contains the method for calculating the expected exceedances. To evaluate an area's attainment status, EPA uses the most recent 3-year period of air quality data. This period is consistent with the statistical form of the ozone standard.

The air quality data used for purposes of this notice are from calendar years 1985 through 1987 and thus are the most current available. EPA's Post-87 Policy proposal contains a somewhat different list of areas violating the ozone NAAQS, because it reflects the calendar years 1984 through 1986. *See* 52 FR 45100–45101.[5]

2. Carbon Monoxide

The ambient air quality standards for carbon monoxide are 9 ppm for an 8-hour average concentration not to be exceeded more than once per year, and 35 ppm for a 1-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 (1987). A violation is more than one exceedance of the standard in a year. However, to determine if an area has met the CO NAAQS, EPA uses the most recent 2-year period of air quality data. The EPA looks at data from the most recent 2-year period to ensure that attainment shown in 1 year is supported by air quality data for the second year and not merely a 1-year aberration.

The EPA reviewed CO data for calendar years 1986 through 1987 for purposes of this notice. EPA's Post-87 Policy proposal contains a somewhat different list of areas violating the CO NAAQS, because it reflects the calendar years 1985 through 1986. *See* 52 FR 45101–45103.[6]

B. Geographic Areas

The March 1978 nonattainment designations typically were limited to the "urbanized" counties in the metropolitan areas. In some instances, only portions of counties were included. As stated in its post-1987 policy proposal, EPA believes that the entire metropolitan area contributes to nonattainment measured anywhere within the area, and that attainment can be realized only through accounting for and controlling the emissions throughout the area. *See* 52 FR 45055. Consistent with its November 1987 policy proposal, today's rulemaking notice includes the entire metropolitan area as the area designated to nonattainment for both ozone and CO. The EPA will use the defined metropolitan statistical area (MSA) [7] or, where applicable, consolidated metropolitan statistical area (CMSA) for purposes of defining the planning area.

By definition MSA/CMSA's contain one or more large urban centers together with adjacent communities that have a high degree of social and economic interaction. The inclusion of outlying areas within a MSA/CMSA is based upon combinations of population density and percentage of commuters to the urban centers. These criteria coincide with the typical inventory and spacial distribution of emissions of CO, and the generation of volatile organic compounds (VOC), oxides of nitrogen (NO_x) and the subsequent formation of ozone.

Specific to proposed CO nonattainment areas, and consistent with its November 1987 proposed policy, EPA acknowledges that in certain areas, the ambient concentrations of CO may be attributable to localized traffic problems, or other "hotspots." In such cases, EPA will consider adjustments to the MSA/CMSA for purposes of designating the nonattainment area, but only upon an adequate and specific showing by the state that an adjusted area reflects the nature of the nonattainment problem and is consistent with its likely solution.[8]

For both ozone and area-wide CO, EPA recognizes that there may be logical exceptions to the MSA/CMSA planning area. For example, a MSA/CMSA may contain a large mountain range that physically divides the area into two or more planning areas, or a very large county with very sparse population in the portions of the county furthest from the urban core. Where such conditions exist, it may be more realistic to either adjust the size of the area or, in the case of multiple areas, require each of the areas involved to

[5] Seven areas in the November 1987 notice's list of violators of the ozone NAAQS now meet that NAAQS: 13 areas which were in attainment as of December 31, 1986 are now in violation of the NAAQS. Overall, the number of areas not attaining the ozone NAAQS is 68 in Table A of today's proposal, and 62 in the November 1987 notice.

[6] Ten areas in the November 1987 notice's list of violators of the CO NAAQS now meet that NAAQS; 4 areas which were in attainment as of December 31, 1986 are now in violation of the NAAQS. Overall, the number of areas not attaining the CO NAAQS is 59 in Table B to today's proposal, and 65 in the November 1987 notice.

[7] MSA/CMSA's are defined by the Office of Management and Budget (OMB). The MSA/CMSA's used in this Notice are those defined by OMB as of June 30, 1986.

[8] *See* 52 FR 45058 for a discussion of CO modeling requirements and hotspot determinations.

commence its own distinct planning and control activities as needed to bring about attainment in the respective areas. Therefore, EPA will consider alternatives to MSA/CMSA's as the designated nonattainment areas or the planning areas where significant topography or other physical impediments exist. Furthermore, consistent with its post-1987 policy proposal, today's rulemaking notice proposes that, where the boundaries of the previous planning area (under Part D) extend beyond the MSA/CMSA boundaries, this extended area will be designated nonattaintment.

EPA specifically requests comments on the criteria which EPA should use in defining both ozone and CO nonattainment areas, particularly with regard to such special circumstances as discussed immediately above.

C. Identification of Areas Proposed for Designation as Nonattainment Pursuant to the Mitchell-Conte Amendment

This notice proposes nonattainment designations for all areas nationwide that are not attaining the ozone or CO NAAQS. EPA is today proposing nonattainment designations only for those areas specifically listed in Tables A and B of this notice. Unless otherwise noted, whole counties are listed.

The designation status of all other areas remains unchanged. Any area which is currently designated nonattainment, but which is not on the Mitchell-Conte list, retains its nonattainment status until the state requests redesignation as attainment and follows the appropriate policy requirements.

IV. Solicitation of Comments Regarding Proposed Nonattainment Designations and Alternative Regulatory Consequences of Such Designations

EPA solicits comments on: (1) its proposed rulemaking, which identifies as nonattainment those areas which have failed to attain the ozone or CO NAAQS; and (2) its discussion of alternative regulatory consequences of such designations under the Mitchell-Conte Amendment. EPA will consider timely comments before it takes final action on this proposal.

V. Miscellaneous

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not major. The proposed designations only classify areas as to the status of attainment of the ozone or CO NAAQS; this rulemaking portion does not specify the planning or sanction provisions which apply following promulgation of those designations. The discussion of alternative interpretations of the Mitchell-Conte Amendment, in turn, is only a preliminary step in formulating a post-1987 policy, which itself will constitute an advance notice of how EPA intends, in subsequent rulemakings on State Implementation Plan (SIP) submittals, to judge the adequacy of states' efforts to plan for attainment of the ozone and CO NAAQS. Through its proposed designations and its discussion of alternatives, EPA is not prescribing the specific plans that states ultimately will have to adopt to comply with the applicable statutory requirements.

Under Executive Order 12612, EPA must determine whether a rule has federalism implications, namely, substantial impacts on the states, on the relationship between the U.S. and the states, or on the distribution of power between the various levels of government. The Executive Order also provides that a federal agency should refrain from national regulation which lacks clear statutory or constitutional authority. An agency must prepare a Federalism Assessment for a rule with sufficient federalism implications. EPA has determined that the proposed rulemaking to designate areas as nonattainment, and the discussion of possible regulatory consequences of Mitchell-Conte designations, have federalism implications.

The federalism Executive Order defines policies (including regulations) that have federalism implications as those "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." By this definition, the policies embodied in this proposed regulation have federalism implications. All three alternatives involve the federal government taking appropriate steps to designate nonattainment areas in the absence of state requests as clearly required by the Mitchell-Conte Amendment. Reinstituting Part D planning requirements in the absence of a state's request to do so, as required by the interpretations presented in Supplemental Information Sections II.B and C, would have greater federalism implications. To understand the significance of the federalism implications on the various roles of local, state and federal governments in air quality management, and in particular to the Mitchell-Conte Amendment, EPA specifically solicits comments on today's notice.

EPA believes that the Mitchell-Conte Amendment obligates it to "take appropriate steps to designate those areas failing to attain [the CO or ozone NAAQS] as nonattainment areas." The rulemaking proposal is based on air quality data collected by the states. All interested parties, including state and local agencies, may submit comments as to why any area should not be classified as nonattainment, or as to whether adjustments should be made in the geographic area designated as nonattainment. In turn EPA's discussion of the regulatory consequences of Mitchell-Conte designations does not require any action by the states.

EPA has submitted today's notice to the Office of Management and Budget (OMB) for review. Any written comments from OMB to EPA are available for public inspection in the docket.

Pursuant to 5 U.S.C. 605(b), I hereby propose to certify that this action will not have a significant economic impact on a substantial number of small entities because this action proposes to classify areas regarding their air quality attainment status for the purpose of deciding which existing statutory requirements apply, as opposed to creating new requirements applicable directly to small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, ozone, carbon monoxide.

Authority: Pub. L. 100-202; 42 U.S.C. 7501-7508.

Date: May 26, 1988.

Lee M. Thomas,

Administrator.

TABLE A.—AREAS PROPOSED TO BE DESIGNATED NONATTAINMENT FOR OZONE

State	Area	County
Alabama		
	Birmingham, AL	
		Blount Co
		Jefferson Co
		St Clair Co
		Shelby Co
		Walker Co
	Montgomery, AL	
		Autauga Co
		Elmore Co
		Montgomery Co
Arizona		
	Phoenix, AZ	
		Maricopa Co

Arakansas

Memphis, TN-AR-MS
Crittenden Co

California

Bakersfield, CA
Kern Co
Fresno, CA
Fresno Co
Kings Co [1]
Los Angeles-Anaheim-Riverside, CA
Los Angeles Co
Orange Co
Riverside Co
San Bernardino Co
Ventura Co
Modesto, CA
Stanislaus Co
Sacramento, CA
El Dorado Co [2]
Placer Co [2]
Sacramento Co
Yolo Co
San Diego, CA
San Deigo Co
San Francisco-Oakland-San Jose, CA [3]
Alameda Co
Contra Costa Co
Marin Co
Napa Co
San Francisco Co
San Mateo Co
Santa Clara Co
Solano Co
Sonoma Co
Santa Barbara-Santa Maria-Lompoc, CA
Santa Barbara Co
Stockton, CA
San Joaquin Co
Visalia-Tulare-Porterville, CA
Tulare Co

Connecticut (Entire State)

Hartford-New Britain-Middletown, CT
New York-Northern New Jersey-Long Island, NY-NJ-CT (CT Portion)
New Haven-Meriden, CT
New London-Norwich, CT-RI (CT portion)
Waterbury, CT
Non MSA Areas [1] (In Previous Planning Areas)

Delaware

Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
New Castle Co
Kent Co [1]

District Of Columbia (Entire District)

Washington, DC-MD-VA

Florida

Jacksonville, FL
Clay Co
Duval Co
Nassau Co
St Johns Co
Miami-Fort Lauderdale, FL
West Palm Beach-Boca Raton-Delray Beach, FL
Broward Co
Dade Co
Palm Beach Co [1]
Tampa-St. Petersburg-Clearwater, FL
Hernando Co
Hillsborough Co
Pasco Co
Pinellas Co

Georgia

Atlanta, GA
Barrow Co
Butts Co
Cherokee Co
Clayton Co
Cobb Co
Coweta Co
De Kalb Co
Douglas Co
Fayette Co
Forsyth Co
Fulton Co
Gwinnett Co
Henry Co
Newton Co
Paulding Co
Rockdale Co
Spalding Co
Walton Co

Illinois

Chicago-Gary-Lake County, IL-IN-WI
Cook Co
Du Page Co
Grundy Co
Kane Co
Kendall Co
Lake Co
Mc Henry Co
Will Co
St Louis, MO-IL
Clinton Co
Jersey Co
Madison Co
Monroe Co
St Clair Co

Indiana

Chicago-Gary-Lake County, IL-IN-WI
Lake Co
Porter Co
Cincinnati-Hamilton, OH-KY-IN
Dearborn Co
Indianapolis, IN
Boone Co
Hamilton Co
Hancock Co
Hendricks Co
Johnson Co
Marion Co
Morgan Co
Shelby Co
Louisville, KY-IN
Clark Co
Floyd Co
Harrison Co

Kentucky

Cincinnati-Hamilton, OH-KY-IN
Boone Co
Campbell Co
Kenton Co
Huntington-Ashland, WV-KY-OH
Boyd Co
Carter Co
Greenup Co
Lexington-Fayette, KY
Bourbon Co
Clark Co
Fayette Co
Jessamine Co
Scott Co
Woodford Co
Louisville, KY-IN
Bullitt Co
Jefferson Co
Oldham Co
Shelby Co

Louisiana

Baton Rouge, LA
Ascension Par
East Baton Rouge Par
Livingston Par
West Baton Rouge Par
Iberville Par [1]
St James Par [1]
Pointe Coupee Par [1]

Maine

Portland, ME
Cumberland Co
York Co (All Except)
Berwick town
Eliot town
Kittery town
North Berwick town
Ogunquit town
South Berwick town
Wells town
York town
Portsmouth-Dover-Rochester, NH-ME
York Co (Part)
Berwick town
Eliot town
Kittery town
North Berwick town
Ogunquit town
South Berwick town
Wells town
York town
Hancock Co, ME
Kennebec Co, ME
Knox Co, ME
Lincoln Co, ME
Sagadahoc Co, ME [1]

Maryland

Baltimore, MD
Anne Arundel Co
Baltimore Co
Carroll Co
Harford Co
Howard Co
Baltimore

Queen Annes Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Cecil Co
Washington, DC-MD-VA
Calvert Co
Charles Co
Frederick Co
Montgomery Co
Prince Georges Co

Massachusetts (Entire State)

Boston-Lawrence-Salem, MA-NH (MA Portion)
Fitchburg-Leominster, MA
New Bedford, MA
Pittsfield, MA
Springfield, MA
Worcester, MA
Providence-Pawtucket-Fall River, RI-MA (MA Portion)
Non MSA Areas [1] (In Previous Planning Areas)

Michigan

Detroit-Ann Arbor, MI
Lapeer Co
Livingston Co
Macomb Co
Monroe Co
Oakland Co
St Clair Co
Washtenaw Co
Wayne Co
Grand Rapids, MI
Kent Co
Ottawa Co
Muskegon, MI
Muskegon Co

Mississippi

Memphis, TN-AR-MS
De Soto Co

Missouri

St Louis, MO-IL
Franklin Co
Jefferson Co
St Charles Co
St Louis Co
St Louis

New Hampshire

Portsmouth-Dover-Rochester, NH-ME
Rockingham Co (Part)
Exeter Town
Greenland town
Hampton town
New Castle town
Newfields town
Newington town
Newmarket town
North Hampton town
Portsmouth city
Rye town
Stratham town
Kinsington town [1]
South Hampton town [1]
Hampton Falls town [1]
Strafford Co (Part)
Barrington town
Dover city
Durham town
Farmington town
Lee town
Madbury town
Milton town
Rochester city
Rollinsford town
Somersworth city
Boston-Lawrence-Salem, MA-NH
Rockingham Co (Part)
Atkinson town
Brentwood town
Danville town
Derry town
East Kingston town
Hampstead town
Kingston town
Newton town
Plaistow town
Salem town
Sandown town
Seabrook town
Windham town
Londonderry town
Hillsborough Co (Part)
Pelham town
Amherst town
Brookline town
Hollis town
Hudson town
Litchfield town
Merrimack town
Milford town
Mont Vernon town
Nashua city
Wilton town

New Jersey

Allentown-Bethlehem, PA-NJ
Warren Co
Atlantic City, NJ
Atlantic Co
Cape May Co
New York-Northern New Jersey-Long Island, NY-NJ-CT
Bergen Co
Essex Co
Hudson Co
Hunterdon Co
Middlesex Co
Monmouth Co
Morris Co
Ocean Co
Passaic Co
Somerset Co
Sussex Co
Union Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Burlington Co
Camden Co
Cumberland Co
Gloucester Co
Mercer Co
Salem Co

New York

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bronx Co
Kings Co
Nassau Co
New York Co (Manhattan)
Orange Co
Putnam Co
Queens Co
Richmond Co
Rockland Co
Suffolk Co
Westchester Co
Jefferson Co, NY

North Carolina

Charlotte-Gastonia-Rock Hill, NC-SC
Cabarrus Co
Gaston Co
Lincoln Co
Mecklenburg Co
Rowan Co
Union Co
Raleigh-Durham, NC
Durham Co
Franklin Co
Orange Co
Wake Co
Granville Co [1]

Ohio

Cincinnati-Hamilton, OH-KY-IN
Butler Co
Clermont Co
Hamilton Co
Warren Co
Cleveland-Akron-Lorain, OH
Cuyahoga Co
Geauga Co
Lake Co
Lorain Co
Medina Co
Portage Co
Summit Co
Huntington-Ashland, WV-KY-OH
Lawrence Co
Parkersburg-Marietta, WV-OH
Washington Co

Oklahoma

Tulsa, OK
Creek Co
Osage Co
Rogers Co
Tulsa Co
Wagoner Co

Oregon

Portland-Vancouver, OR-WA
Clackamas Co
Multnomah Co
Washington Co
Yamhill Co

Pennsylvania

Allentown-Bethlehem, PA-NJ
Carbon Co

Lehigh Co
Northampton Co
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Bucks Co
Chester Co
Delaware Co
Montgomery Co
Philadelphia Co
Pittsburgh-Beaver Valley, PA
Allegheny Co
Beaver Co
Fayette Co
Washington Co
Westmoreland Co
Butler Co [1]
Armstrong Co [1]

Rhode Island (Entire State)

Providence-Pawtucket-Fall River, RI-MA (RI Portion)
New London-Norwich, CT-RI (RI Portion)
Non MSA Areas [1] (In Previous Planning Areas)

South Carolina

Charlotte-Gastonia-Rock Hill, NC-SC
York Co

Tennessee

Nashville, TN
Cheatham Co
Davidson Co
Dickson Co
Robertson Co
Rutherford Co
Sumner Co
Williamson Co
Wilson Co
Memphis, TN-AR-MS
Shelby Co
Tipton Co

Texas

Beaumont/Port Arthur, TX
Hardin Co
Jefferson Co
Orange Co
Dallas-Fort Worth, TX
Collin Co
Dallas Co
Denton Co
Ellis Co
Johnson Co
Kaufman Co
Parker Co
Rockwall Co
Tarrant Co
El Paso, TX
El Paso Co
Houston-Galveston-Brazoria, TX
Brazoria Co
Fort Bend Co
Galveston Co
Harris Co
Liberty Co
Montgomery Co
Waller Co
Chambers Co [1]

Utah

Salt Lake City-Ogden, UT
Davis Co
Salt Lake Co
Weber Co

Virginia

Norfolk/Virginia Beach-Newport News, VA
Gloucester Co
James City Co
York Co
Chesapeake
Hampton
Newport News
Norfolk
Poquoson
Portsmouth
Suffolk
Virginia Beach
Williamsburg
Richmond-Petersburg, VA
Charles City Co
Chesterfield Co
Dinwiddie Co
Goochland Co
Hanover Co
Henrico Co
New Kent Co
Powhatan Co
Prince George Co
Colonial Heights
Hopewell
Petersburg
Richmond
Washington, DC-MD-VA
Arlington Co
Fairfax Co
Loudoun Co
Prince William Co
Stafford Co
Alexandria
Fairfax
Falls Church
Manassas
Manassas Park

Washington

Portland-Vancouver, OR-WA
Clark Co

West Virginia

Huntington-Ashland, WV-KY-OH
Cabell Co
Wayne Co
Parkersburg-Marietta, WV-OH
Wood Co

Wisconsin

Chicago-Gary-Lake County, IL-IN-WI
Kenosha Co
Milwaukee-Racine, WI
Milwaukee Co
Ozaukee Co
Racine Co
Washington Co
Waukesha Co
Sheboygan, WI
Sheboygan Co
Manitowoc Co [1]
Kewaunee Co, WI

[1] The counties (or cities or townships) are either (a) part of the previous planning area but not part of the CMSA (or MSA) or (b) counties adjacent to the CMSA (or MSA) and measuring violations.

[2] The Lake Tahoe area is proposed to be excluded from the designation because it is physically separated from the Sacramento area by a mountain range. The exact description of the Lake Tahoe area is described in 40 CFR 81.275.

[3] Santa Cruz Co. in California was not included because it is physically separated from the Bay Area by a mountain range.

TABLE B.—AREAS PROPOSED TO BE DESIGNATED NONATTAINMENT FOR CARBON MONOXIDE

State Area County

Alaska

Anchorage, AK
Anchorage Borough
North Star Borough, AK
(Fairbanks)

Arizona

Phoenix, AZ
Maricopa Co

Arkansas

Memphis, TN-AR-MS
Crittendon Co

California

Chico, CA
Butte Co
Fresno, CA
Fresno, Co
Los Angeles-Anaheim-Riverside, CA [1]
Los Angeles Co
Orange Co
Riverside Co
San Bernardino Co
Modesto, CA
Stanislaus Co
Sacramento, CA
El Dorado Co
Placer Co
Sacramento Co
Yolo Co
San Francisco-Oakland-San Jose CA [2]
Alameda Co
Contra Costa Co
Marin Co
Napa Co
San Francisco Co
San Mateo Co
Santa Clara Co
Solano Co
Sonoma Co

Colorado

Colorado Springs, Co
El Paso Co
Denver-Boulder, CO
Adams Co
Arapahoe Co
Boulder Co

Denver Co
Douglas Co
Jefferson Co
Fort Collins-Loveland, CO
Larimer Co
Greelly, CO
Weld Co

Connecticut

New York-Northern New Jersey-Long Island, NY-NJ-CT
Fairfield County
New Haven County (Part)
Ansonia city
Beacon Falls town
Derby city
Milford city
Oxford town
Seymour town
Litchfield County (Part)
Bridgewater town
New Milford town
Hartford-New Britain-Middletown, CT
Hartford County (Part)
Bristol city
Burlington town
Avon town
Bloomfield town
Canton town
East Granby town
East Hartford town
East Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford city
Manchester town
Marlborough town
Newington town
Rocky Hill town
Simsbury town
South Windsor town
Suffield town
West Hartford town
Wethersfield town
Windsor town
Windsor Locks town
Berlin town
New Britain city
Plainville town
Southington town
Litchfield County (Part)
Plymouth town
Barkhamsted town
New Hartford town
New London County (Part)
Colchester town
Tolland County (Part)
Andover (Part)
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Somers town
Stafford town
Tolland town
Vernon town
Willington town
Middlesex County (Part)
Cromwell town
Durham town
East Hampton town
Haddam town
Middlefield town
Middleton city
Portland town
East Haddam town
Non CMSA Portion of Hartford [3] (Part of Previous Planning Area AQCR 42)
Litchfield Country (Part)
Bethlehem town
Thomaston town
Watertown town
Woodbury town
New Haven County (Part)
Bethany town
Branford town
Cheshire town
East Haven town
Guilford town
Hamden town
Madison town
Meriden city
Middlebury town
Naugatuck town
New Haven city
North Bradford town
North Haven town
Orange town
Prospect town
Southbury town
Wallingford town
Waterbury city
West Haven city
Wolcott town
Woodbridge town

District of Columbia (Entire District)

Washington, DC-MD-VA

Idaho

Boise City, ID
Ada Co

Illinois

St Louis, MO-IL
Clinton Co
Jersey Co
Madison Co
Monroe Co
St Clair Co

Kansas

Wichita, KS
Butler Co
Harvey Co
Sedgwick Co

Maryland

Baltimore, MD
Anne Arundel Co
Baltimore Co
Carroll Co
Harford Co
Howard Co
Baltimore
Queen Annes Co
Washington, DC-MD-VA
Calvert Co
Charles Co
Frederick Co
Montgomery Co
Prince Georges Co

Massachusetts

Boston-Lawrence-Salem, MA-NH (MA portion)
New Bedford, MA
Non CMSA/MSA [3] (Previous Planning Areas)
Above Areas Include:
Essex County
Middlesex County
Plymouth County
Suffolk County
Barnstable County
Dukes County
Nantucket County
Norfolk County
Bristol County
Worcester County (Part)
Berlin town
Bolton town
Harvard town
Hopedale town
Lancaster town
Mendon town
Milford town
Southborough town
Upton town
Springfield, MA
Pittsfield, MA
Non MSA [3] (Previous Planning Areas)
Above Areas Include:
Hampden County
Hampshire County
Franklin County
Berkshire County

Michigan

Detroit-Ann Arbor, MI
Lapeer Co
Livingston Co
Macomb Co
Monroe Co
Oakland Co
St Clair Co
Washtenaw Co
Wayne Co

Minnesota

Duluth, MN-WI
St Louis Co
Minneapolis-St. Paul, MN-WI
Anoka Co
Carver Co
Chisago Co
Dakota Co
Hennepin Co
Isanti Co
Ramsey Co
Scott Co

Washington Co
Wright Co
St Cloud, MN
Benton Co
Shelburne Co
Stearns Co

Mississippi

Memphis, TN-AR-MS
De Soto Co

Missouri

Springfield, MO
Christian Co
Greene Co
St Louis, MO-IL
Franklin Co
Jefferson Co
St Charles Co
St Louis Co
St Louis

Montana

Great Falls, MT
Cascade Co
Missoula Co, MT

Nebraska

Lincoln, NE
Lancaster Co

Nevada

Las Vegas, NV
Clark Co
Reno, NV
Washoe Co

New Hampshire

Boston-Lawrence-Salem, MA-NH
Rockingham County (Part)
Atkinson town
Brentwood town
Danville town
East Kingston town
Hampstead town
Kingston town
Newton town
Plaistow town
Sandown town
Seabrook town
Derry town
Salem town
Windham town
Londonderry town
Hillsborough County (Part)
Pelham town
Amherst town
Hollis town
Hudson town
Litchfield town
Merrimack town
Milford town
Nashua city
Brookline town
Mount Vernon town
Wilton town
Manchester, NH
Hillsborough County (Part)
Bedford town
Goffston town
Manchester city
Merrimack County (Part)
Allenstown town
Hooksett town
Rockingham County (Part)
Auburn town
Candia town

New Jersey

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bergen Co
Essex Co
Hudson Co
Hunterdon Co
Middlesex Co
Monmouth Co
Morris Co
Ocean Co
Passaic Co
Somerset Co
Sussex Co
Union Co

New Mexico

Albuquerque, NM
Bernalillo Co

New York

New York-Northern New Jersey-Long Island, NY-NJ-CT
Bronx Co
Kings Co
Nassau Co
New York Co (Manhattan)
Orange Co
Purnam Co
Queens Co
Richmond Co
Rockland Co
Suffolk Co
Westchester Co
Syracuse, NY
Madison Co
Onondaga Co
Oswego Co

North Carolina

Raleigh-Durham, NC
Durham Co
Franklin Co
Orange Co
Wake Co

Ohio

Cleveland-Akron-Lorain, OH
Cuyahoga Co
Geauga Co
Lake Co
Lorain Co
Medina Co
Portage Co
Summit Co
Steubenville-Weirton, OH-WV
Jefferson Co

Oklahoma

Oklahoma City, OK
Canadian Co
Cleveland Co
Logan Co
McClain Co
Oklahoma Co
Pottawatomie Co

Oregon

Josephine Co, OR
Medford, OR
Jackson Co
Portland-Vancouver, OR-WA
Clackamas Co
Multnomah Co
Washington Co
Yamhill Co

Pennsylvania

Pittsburgh-Beaver Valley, PA
Allegheny Co
Beaver Co
Fayette Co
Washington Co
Westmoreland Co

Tennessee

Memphis, TN-AR-MS
Shelby Co
Tipton Co
Nashville, TN
Cheatham Co
Davidson Co
Dickson Co
Robertson Co
Rutherford Co
Sumner Co
Williamson Co
Wilson Co

Texas

El Paso, TX
El Paso Co
Houston-Galveston-Brazoria, TX
Brazoria Co
Fort Bend Co
Galveston Co
Harris Co
Liberty Co
Montgomery Co
Waller Co

Utah

Provo-Orem, UT
Utah Co
Salt Lake City-Ogden, UT
Davis Co
Salt Lake Co
Weber Co

Virginia

Washington, DC-MD-VA
Arlington Co
Fairfax Co
Loudoun Co
Prince William Co
Stafford Co
Alexandria
Fairfax

Falls Church
Manassas
Manassas Park

Washington

Portland-Vancouver, OR-WA
Clark Co
Seattle-Tacoma, WA
King Co
Pierce Co
Snohomish Co
Spokane, WA
Spokane Co
Yakima, WA
Yakima Co

West Virginia

Stuebenville-Weirton, OH-WV
Brooke Co
Hancock Co

Wisconsin

Duluth, MN-WI
Douglas Co
Minneapolis-St. Paul, MN-WI
St Croix Co

[FR Doc. 88-12364 Filed 6-3-88; 8:45 am]
BILLING CODE 6560-50-M

[1] Ventura Co. in California was not included it is physically separated from the South Coast Air Basin by a mountain range.

[2] Santa Cruz Co. in California was not included because it is physically separated from the Bay Area by a mountain range.

[3] The counties (or cities or townships) are part of the previous planning area but not part of the CMSA and MSA.

Federal Register

Monday
June 6, 1988

Part III

Department of Transportation

Research and Special Programs Administration

City of Maryland Heights (Missouri) Application for Inconsistency Ruling; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-43]

City of Maryland Heights (Missouri) Application for Inconsistency Ruling; Public Notice and Invitation to Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of Maryland Heights, Missouri, has applied for an administrative ruling determining whether its requirement for a $1,000 bond for each vehicle carrying hazardous and other wastes is inconsistent with the Hazardous Materials Transportation Act (HMTA), and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before July 29, 1988, and rebuttal comments received on or before September 16, 1988, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-43. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Michael K. Moran, Building Commissioner, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, MO 63043, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Moran at the address specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On May 13, 1988, Michael K. Moran, Building Commissioner of the City of Maryland Heights, Missouri, filed an inconsistency ruling application. That application requested a ruling concerning the consistency with the HMTA of the following prohibition in section I of the City's Ordinance 88-378:

> No person shall haul sewage, sludge, human excrement, special, hazardous or infectious wastes without providing a bond in the amount of One Thousand Dollars ($1,000) per vehicle for each vehicle, hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious waste.

The City has requested that this section be reviewed for consistency with the insurance and indemnification requirements of the HMTA. OHMT will consider its consistency with all relevant provisions of both the HMTA and the HMR.

On the issue of consistency, the City states:

> We believe this bonding requirement is not in conflict with the Hazardous Materials Transportation Act inasmuch as it imposes an additional requirement upon haulers; it does not exempt, or attempt to exempt them from the requirements of the Hazardous Materials Transportation Act.

3. Public Comment

Comments should be restricted to the issue of whether the requirement in Section 1 of Ordinance 88-378 of the City of Maryland Heights, Missouri, for a $1,000 bond for each vehicle carrying hazardous and other wastes is inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Among the issues to be addressed are: Is there any conflict with HMTA or HMR requirements? How great a burden or obstacle is the $1,000 per vehicle bond? Is any such "obstacle" an obstacle to the HMTA or HMR or merely to transportation?

Commenters should note that the 49 CFR 387.15 insurance requirements for highway transportation of hazardous wastes and other hazardous materials were not issued under the HMTA and thus are irrelevant to this proceeding.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, including the text of Ordinance 88-378, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Issued in Washington, DC, on May 31, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-12627 Filed 6-3-88; 8:45 am]

BILLING CODE 4910-60-M

Federal Register

Monday
June 6, 1988

Part IV

Environmental Protection Agency

40 CFR Parts 264, 265, and 270
Delay of the Closure Period for Hazardous Waste Management Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 270

[FRL-3334-2]

Delay of the Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend portions of the closure requirements under Subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste land disposal facilities. The proposed amendments would allow, under limited circumstances, a landfill or surface impoundment to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This proposed rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

DATE: Comments must be submitted on or before July 21, 1988.

ADDRESS: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-201) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket #F-88-DCPP-FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section in "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC, or Sharon Frey, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6725.

SUPPLEMENTARY INFORMATION: 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 475-9327 for appointments. The public may copy materials at the cost of $.15/page. Charges under $15.00 are waived.

Preamble Outline

I. Authority
II. Background
III. Synopsis of Proposed Rule
A. Rationale for Proposed Rule
B. Summary of Proposed Rule
IV. Section-by-Section Analysis of Proposed Rule
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B. Part 264 Standards
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a. Demonstrations for Extensions to Closure Deadlines
b. Changes to Facility Plans
c. Exposure Assessment Information
d. Permit Revisions
2. Surface Impoundments that Do Not Meet Liner and Leachate Collection System Requirements
a. Contingent Corrective Measures Plan
b. Alternatives
(1) Alternative 1—Removal of Hazardous Wastes
(2) Alternative 2—Flushing Hazardous Wastes
(a) Sludge Removal and Flushing of Liquids
(b) Relationship to Mixture Rule
(3) Alternative 3—Leaving Hazardous Wastes in Place
c. Corrective Action Requirements
(1) Disposal Impoundments
(2) Surface Impoundments at Which Wastes Are Removed
(a) Releases at the Time of the Final Receipt of Hazardous Wastes
(b) Releases after the Final Receipt of Hazardous Wastes
d. Evaluating Progress of Corrective Action
3. Notification of Closure
C. Part 270 Permit Modification Requirements
D. Conforming Changes
1. Conforming Changes to Part 265 Interim Status Requirements
a. Initial Demonstrations
b. Corrective Action
c. Applicability to New Interim Status Units
2. Other Conforming Changes to Parts 264 and 265
V. State Authorization
A. Applicability of Rules in Authorized States
B. Effect of Proposed Rule on State Authorizations
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act
List of Subjects

I. Authority

These requirements are proposed under the authority of sections 1006, 2002(a), 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6926).

II. Background

Section 3004 of RCRA Subtitle C requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications. Recognizing that a period of time would be required to issue permits to all facilities, Congress created "interim status" in section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of carrying on operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued several sets of regulations to implement RCRA section 3004. These regulations include Part 264 (which provides standards for owners and operators of TSDFs that have been issued RCRA permits) and Part 265 (which provides standards for owners and operators of interim status TSDFs) of Title 40 of the *Code of Federal Regulations* (CFR). Subpart G within these two Parts addresses requirements for closing TSDFs and maintaining them after closure if necesary. The Subpart G requirements in both of these Parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, would be affected by the promulgation of today's proposal.

The requirements at §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). Prior to that final rule, §§ 264.113(a) and 265.113(a) required the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of *hazardous* wastes (or for interim status facilities, within 90 days after approval of the closure plan, if that is later). Prior to the May 2, 1986, rules, §§ 264.113(b) and 265.113(b) also required the owner or operator to complete closure activities within 180 days after receiving the final volume of *wastes* (or approval of the closure plan). Preambles and supporting documents to the earlier rulemakings on May 19, 1980 and January 12, 1981 did not address the rationale for distinguishing between the deadlines for the final receipt of *hazardous* waste in §§ 264.113(a) and 265.113(a) and the final receipt of both hazardous and non-hazardous waste in the deadlines in §§ 264.113(b) and 265.113(b).

To make §§ 264.113(b) and 265.113(b) consistent with the deadlines in §§ 264.113(a) and 265.113(a), the Agency proposed, on March 19, 1985, that closure be completed within 180 days after the final receipt of *hazardous* wastes rather than after the final receipt of wastes (50 FR 11068). The changes to §§ 264.113(b) and 265.113(b) were promulgated as proposed on May 2, 1986 (51 FR 16422), following public comment. After promulgation of the May 2, 1986, amendments, lawsuits were filed challenging the requirement that closure be completed within 180 days after the final receipt of *hazardous* waste. The litigants, Union Carbide Corporation (Union Carbide) and the Chemical Manufacturers Association (CMA), contended that this change was inconsistent with the Congressional intent evidenced in the Hazardous and Solid Waste Amendments (HSWA) legislative history regarding closure of surface impoundments, and further that the change was unnecessary to protect human health and the environment, and that it would discourage waste minimization and other goals Congress expressed in HSWA.

Union Carbide and CMA were particularly concerned about the effect of the amended closure regulations on surface impoundments that ceased the receipt of hazardous wastes in compliance with section 3005(j) of RCRA. This section of the statute requires that all surface impoundments that had interim status on November 8, 1984, either satisfy certain minimum technological requirements (MTRs) (i.e., double liner, leachate collection system, and ground-water monitoring requirements) applicable to new surface impoundments, receive a variance from these requirements, or cease the receipt, storage or treatment of hazardous waste by November 8, 1988. The May 2, 1986, closure rule would require interim status surface impoundments that failed to meet MTRs by the November 8, 1988, deadline to close within 180 days, because November 8, by statute, would be the date of final receipt of hazardous waste for these units. Union Carbide and CMA, however, argue that the legislative history of HSWA explicitly indicates Congressional intent to allow disposal surface impoundments that stop receiving hazardous wastes to remain open and receive non-hazardous wastes after this deadline, even if they do not retrofit to satisfy the MTRs.

The legislative history of section 3005(j) of RCRA (130 *Cong. Rec.* S9182 (daily ed. July 25, 1984)) contains a brief discussion that indicates that the retrofitting requirements do not in themselves require the closure of an impoundment that ceases to receive hazardous wastes and that requiring such closure would not be proper if the management of the impoundment were protective of human health and the environment. In the preamble to the May 2, 1986, final rule, the Agency argued that, while the legislative history evidences that fact that section 3005(j) of RCRA itself does not mandate closure of an interim status surface impoundment that ceases to receive hazardous wastes, it leaves unimpaired EPA's pre-existing authority to establish by regulation additional closure requirements as necessary to protect human health and the environment. In other words, EPA concluded that the statute did not directly address the issue and did not constrain its discretion to promulgate closure regulations for surface impoundments subject to the retrofitting requirements. EPA concluded on a factual and policy-making basis that expeditiously closing hazardous waste surface impoundments after they stop receiving hazardous wastes was necessary to ensure protection of human health and the environment. The Agency primarily was concerned that, in certain circumstances, proper management of the facility might be continued which could lead to an increased possibility of releases and therefore risks to human health and the environment.

III. Synopsis of Proposed Rule

A. Rationale for Proposed Rule

Since the challenge to the May 2, 1986, final rule, EPA has been engaged in negotiations to settle the suit brought by Union Carbide and CMA. While no written settlement of this action has yet been signed, as a result of the discussions EPA now believes that it may not be necessary to require closure and termination of the receipt of nonhazardous wastes at all non-retrofitted surface impoundments. Under certain carefully controlled circumstances it may be possible for a nonretrofitted surface impoundment to continue to receive nonhazardous waste in manner that is protective of human health and the environment. EPA also believes that other types of land disposal units may be able to continue to accept nonhazardous wastes if they are similarly controlled. The types of controls that EPA deems necessary are discussed in detail in Part IV of this preamble.

There also are a number of sound policy reasons why it is desirable to allow units to delay closure to continue to receive nonhazardous waste, provided that it does not jeopardize protection of human health and the environment. First, the Agency is concerned that the existing closure deadlines could limit incentives for hazardous waste minimization. This would be inconsistent with the Ageny's overall policies and goals as well as Congressional intent expressed in HSWA. For example, a generator with on-site hazardous waste storage, treatment, or disposal capacity might refrain from recycling wastes or modifying production processes to eliminate the generation of hazardous wastes, if such actions resulted in specific units no longer receiving hazardous wastes. In this case, the current closure rules would require the closure of that unit, even if it had remaining capacity useful for the management of nonhazardous waste.

Second, the land disposal prohibitions may require that owners and operators of land disposal units stop using the units for the management of certain hazardous wastes, e.g., wastes containing banned solvents. As a consequence, these requirements might trigger closure of the units, even if capacity remains for managing other hazardous wastes or nonhazardous wastes in an environmentally protective manner. Finally, the closure regulations could act as a disincentive to the delisting of a waste stream, if such delisting resulted in a triggering of the closure requirements.

In all of these cases, the Agency recognizes that closure of the unit while the unit has remaining capacity to receive nonhazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. This is particularly likely in the case of treatment impoundments (such as wastewater treatment units) that serve as an integral part of an industrial waste management system, providing management for both hazardous and nonhazardous waste streams. The Agency continues to believe that, in general, units that cease the receipt of hazardous wastes should initiate closure in accordance with Parts 264 and 265 standards. However the Agency believes that, under certain conditions, closure activities can be deferred without increasing the risks to human health and the environment. For example, landfills which meet the permitting requirements to manage hazardous wastes should pose few additional risks to human health and the environment provided added nonhazardous wastes are compatible with previously disposed hazardous

wastes. Today's proposal attempts to promote these policy goals while continuing to protect human health and the environment by establishing specific applicability requirements, environmental controls *and*, the continued application of Subtitle C requirements to units wishing to remain open after the final receipt of hazardous wastes to receive nonhazardous wastes.

The Agency therefore is proposing to allow units that cease the receipt of hazardous wastes to delay closure, so that they may remain open to receive nonhazardous wastes provided that they meet the requirements of today's proposal in addition to current Subtitle C regulations. EPA considers these requirements discussed below to be consistent with the full set of regulatory and legislative requirements currently in place for units or facilities that accept hazardous waste.

B. Summary of Proposed Rule

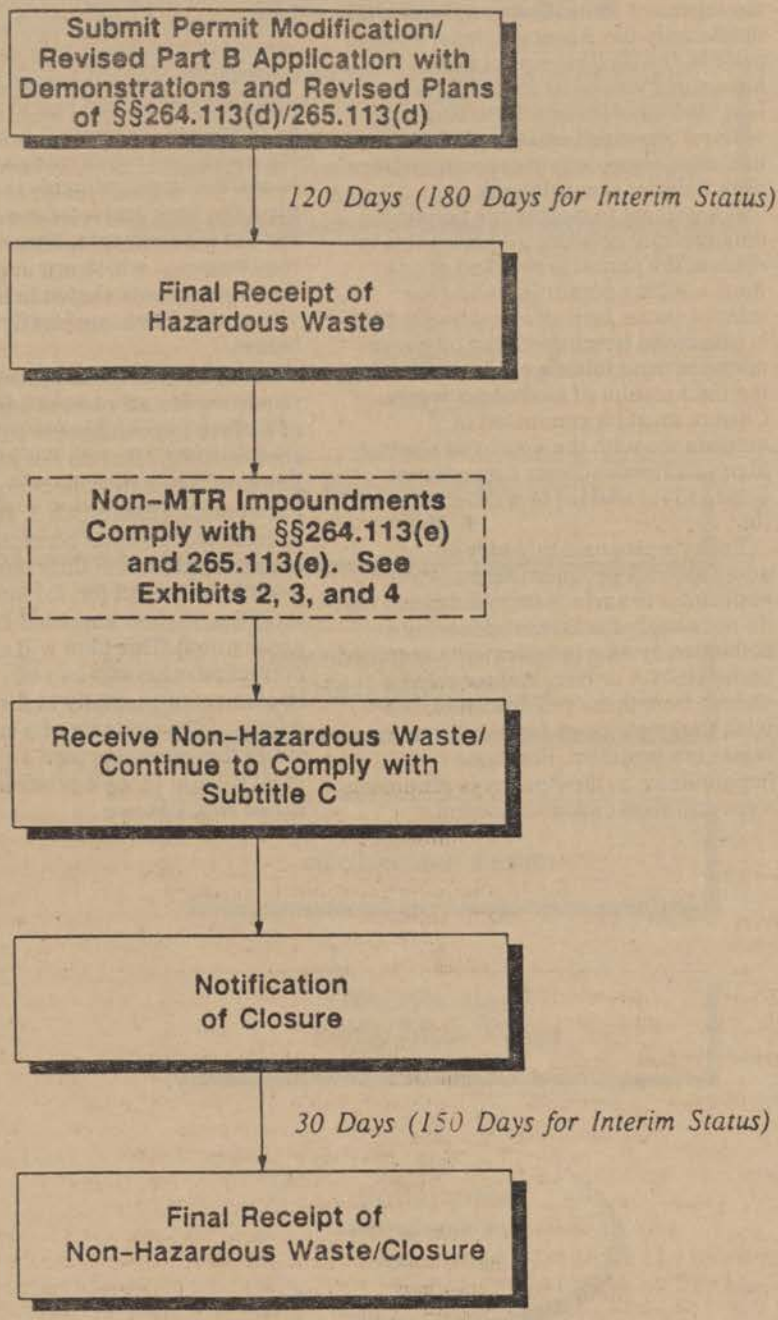
Today's proposal would allow an owner or operator of a permitted or interim status surface impoundment or landfill in compliance with applicable requirements to remain open following the final receipt of *hazardous* waste to receive only non-hazardous wastes, if he additionally satisfies the specific conditions being proposed today, and continues to conduct operations in accordance with all applicable Subtitle C interim status and permit requirements. The requirements included in today's proposal vary with the type of unit, with additional conditions imposed on surface impoundments that do not meet the Part 264 liner and leachate collection system requirements. In general, however, the facility owner or operator would be required to operate under full permit requirements of 40 CFR Part 264, including corrective action requirements. Facilities currently in interim status which meet the requirements of today's proposal may defer closure while the permit application is being reviewed. In addition, surface impoundments that did not meet the liner and leachate collection system requirements would be required to remove all hazardous waste, or, if hazardous waste were not removed, to close at the first indication of ground-water contamination.

Exhibit 1 shows requirements applicable to all owners or operators wishing to delay closure, regardless of the type of unit involved. The requirements for permitted and interim status facilities are basically the same; the differences are primarily procedural in nature. As Exhibit 1 illustrates, owners or operators wishing to keep units open would be required to seek a permit modification at least 120 days prior to the final receipt of hazardous wastes, or, for interim status facilities, to submit an amended Part B permit application (or a Part B application if not previously required) at least 180 days prior to the final receipt of hazardous wastes. (Owners or operators of units that received their final volume of hazardous wastes before the promulgation of this rule would be eligible to keep their units open if they submitted the appropriate demonstrations within 90 days after the notice of the final rule has been published in the **Federal Register**.)

BILLING CODE 6560-50-M

Exhibit 1

Requirements Applicable to All Facilities Wishing to Defer Closure



* Note: If a permit or permit modification is denied at any time, or interim status terminated for the affected unit, closure pursuant to §§ 264.113(a) and (b) or 265.113(a) and (b) must be initiated.

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The request for a permit modification or the amended Part B permit application must include a number of demonstrations, including ones showing that: (1) The unit has the existing design capacity to manage non-hazardous wastes; and (2) the non-hazardous wastes are not incompatible with any remaining wastes in the unit. As part of the permit modification or the amended Part B application, the owner or operator also must submit revised facility plans, including the waste analysis, ground-water monitoring, and closure and post-closure plans, and, if necessary, the closure and post-closure cost estimates and financial assurance to reflect changes associated with operating the unit to receive only non-hazardous wastes.

Owners or operators wishing to remain open following the final receipt of hazardous waste also must continue to comply with all Part 264 permit requirements (or Part 265 requirements until a permit has been issued), including ground-water monitoring and corrective action requirements and closure and post-closure care requirements. In addition, if the Regional Administrator determines that continued operation of the unit or facility will pose a substantial risk to human health and the environment, the unit would not be eligible to delay closure. Data collected pursuant to RCRA section 3019 and any other relevant information may be used by the Regional Administrator to make a determination of whether a substantial risk exists. Finally, units must be closed in accordance with the approved closure plan and the Subpart G regulations applicable to hazardous waste management units. Owners or operators must notify the Agency at least 30 days prior to the final receipt of non-hazardous wastes at that unit (or at least 150 days for interim status units without approved closure plans) and initiate closure activities in accordance with Subpart G regulations.

If a request to modify the permit to manage only non-hazardous wastes is denied, the permit is revoked at any time, a RCRA permit is denied for interim status facilities or interim status is otherwise terminated, the owner or operator must initiate closure following the final receipt of hazardous waste. Closure must be conducted in accordance with the approved closure plan and the deadlines currently in § 264.113 (a) and (b) or § 265.113 (a) and (b).

Today's proposal includes an additional set of requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under HSWA or have not received a waiver from these requirements, but wish to remain open for non-hazardous waste management. For these impoundments, the Agency is proposing a combination of source control, accelerated corrective measures, and strict limitations on continued operations following the detection of a release to ground water. The Agency believes that compliance with these additional requirements and limitations when coupled with cessation of the receipt of hazardous wastes at these impoundments, will ensure the protection of human health and the environment. Exhibits 2, 3, and 4 show the additional requirements applicable to surface impoundments that do not meet the liner and leachate collection system requirements. These requirements, which are in addition to the requirements shown in Exhibit 1 and discussed above, are briefly summarized below.

In addition to these general requirements, all owners and operators of surface impoundments subject to section 3005(j) that do not satisfy the liner and leachate collection system requirement (Exhibits 2, 3, and 4) must provide a contingent corrective measures plan with their request to modify the permit (or, for interim status facilities, in their amended Part B permit application). This plan will ensure that corrective measures can be implemented promptly in the event of a release. (The contents of a contingent corrective measures plan are discussed in IV.B.2.a of today's preamble.)

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Exhibit 2

Surface Impoundment/Waste Removal Alternative with Release Detected Before/At Time of Final Receipt of Hazardous Waste

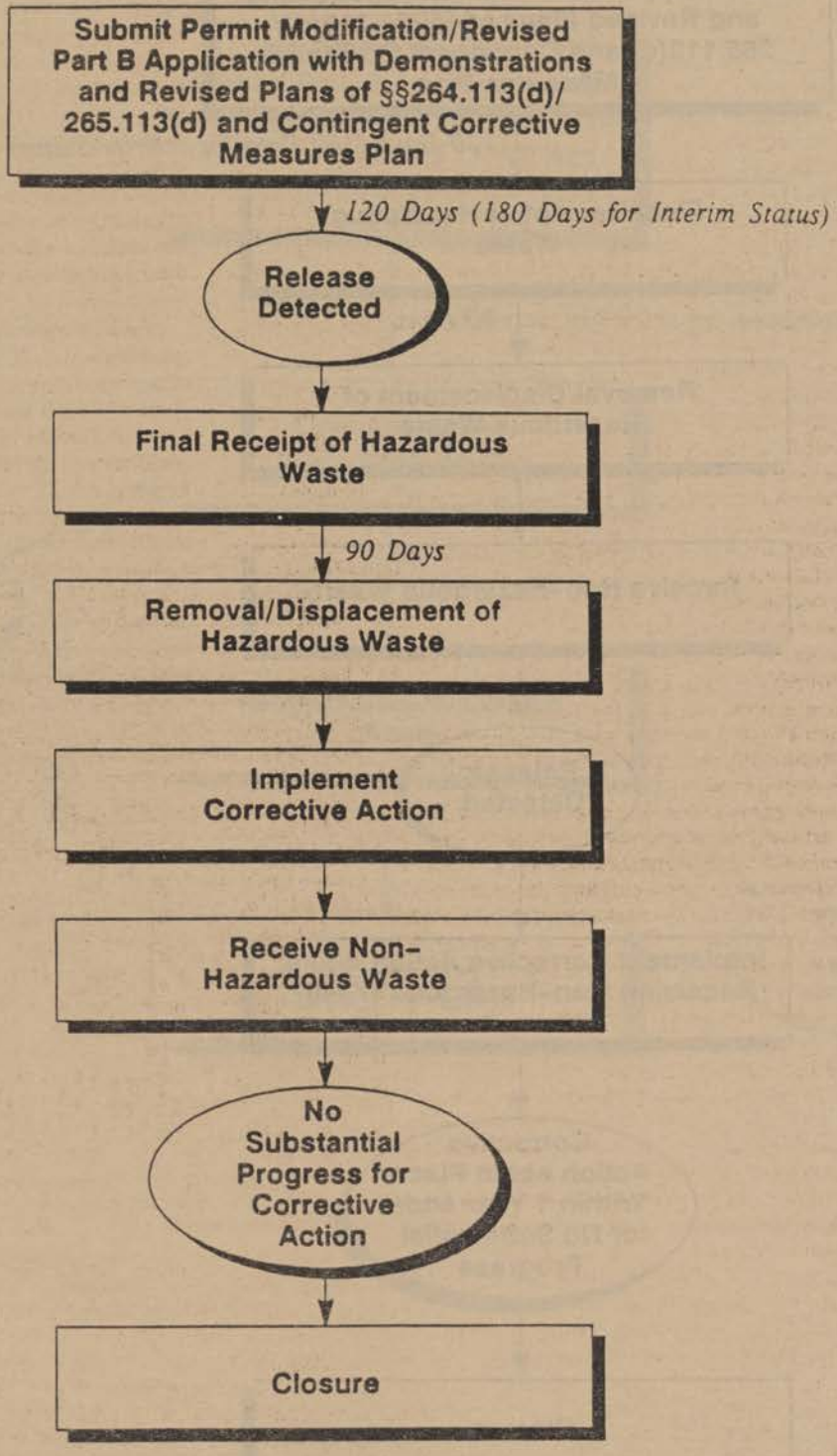


Exhibit 3

Surface Impoundment/Waste Removal Alternative with Release Detected After Final Receipt of Hazardous Waste

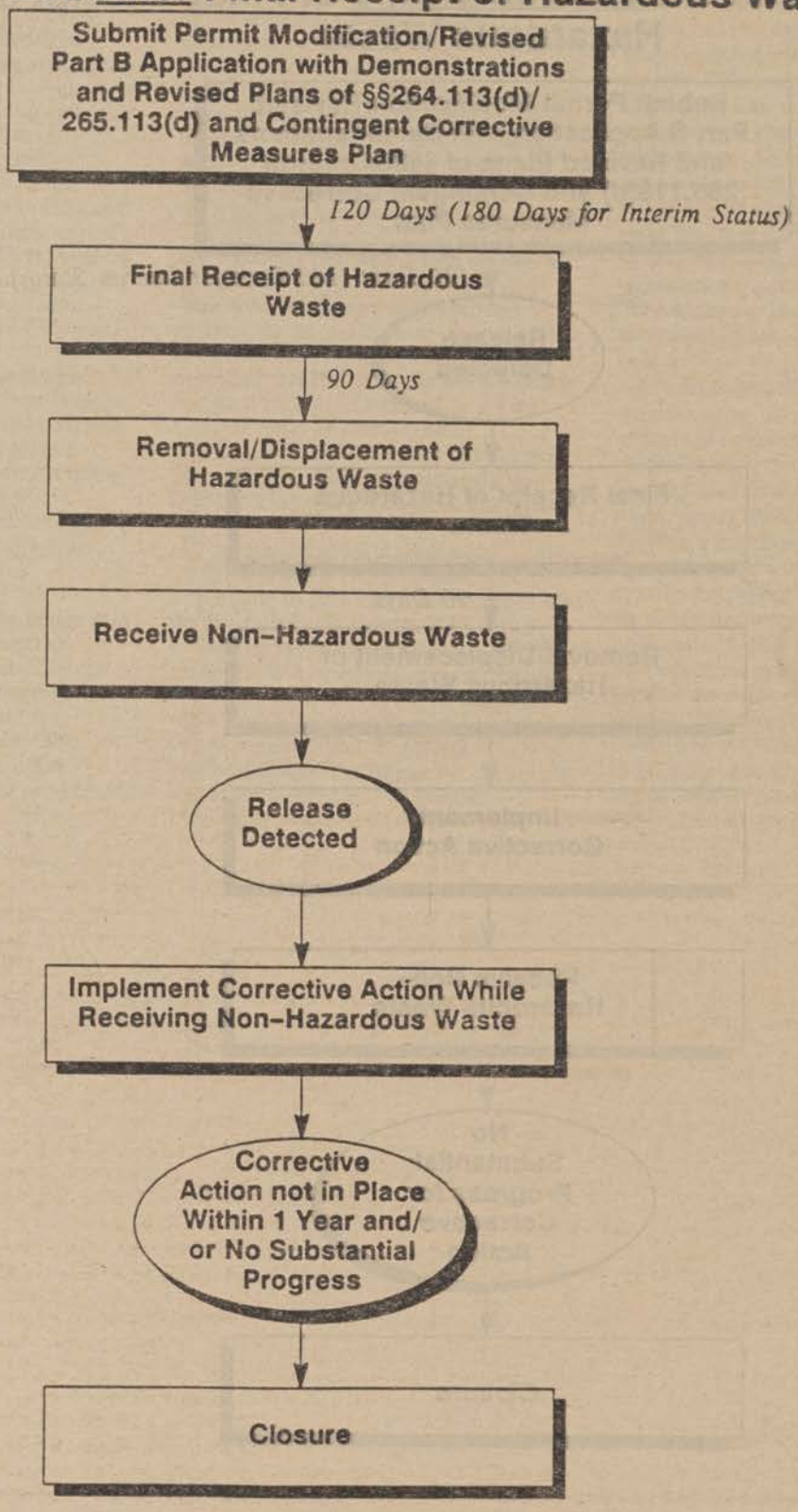
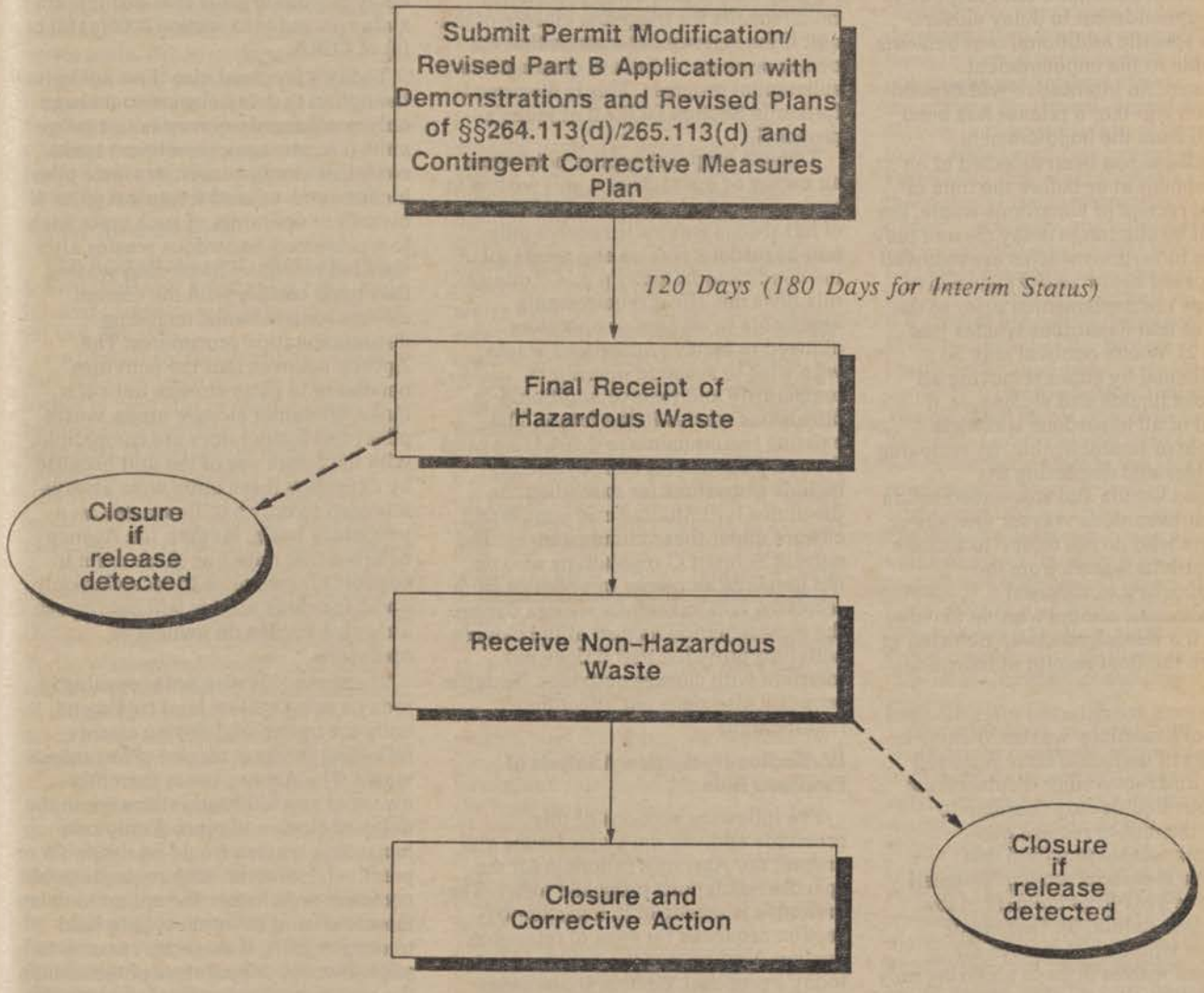


Exhibit 4

Surface Impoundment/Hazardous Wastes Remain Alternative



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With the submission of these initial demonstrations and contingent corrective measures plan, the owner or operator must indicate whether he intends to remove wastes from the impoundment or not. As summarized below and in Exhibits 2, 3, and 4, this decision will determine both eligibility of the impoundment to delay closure and the specific additional requirements applicable to the impoundment. Selection of an alternative will depend in part on whether a release has been detected from the impoundment.

If a release has been detected at an impoundment at or before the time of the final receipt of hazardous waste, the unit will be eligible to delay closure *only* if (1) the hazardous wastes are removed as discussed below *and* (2) corrective measures are implemented *prior* to the receipt of non-hazardous wastes (see Exhibit 2). Waste removal may be accomplished by either removing all hazardous liquids and sludges or, if removal of all hazardous wastes is infeasible or impracticable, by removing the sludges and displacing the hazardous liquids and suspended solids with non-hazardous wastes. Owners or operators who do not intend to remove the hazardous wastes from the impoundment (i.e., disposal impoundments) are not eligible to delay closure if a release has been detected at or before the final receipt of hazardous wastes.

If releases are detected *after* the final receipt of hazardous wastes, owners or operators of units that have removed sludges and removed or displaced the hazardous liquids may continue to operate the unit to receive non-hazardous wastes provided that corrective measures are implemented within one year from the date of the release (see Exhibit 3). Owners or operators who do not remove all hazardous wastes prior to receiving only non-hazardous wastes (i.e., disposal impoundments in Exhibit 4) must promptly initiate closure within 30 days of detection of the release in accordance with the deadlines in § 264.113(a) and (b) or § 265.113(a) and (b) if a release is subsequently detected.

Regardless of when the release is detected, the owner or operator must begin closure if he fails to make substantial progress in implementing the corrective measures and achieving the ground-water protection standard (or background levels for facilities that have no established ground-water protection standard). Substantial progress will be determined on a case-by-case basis. In general, however, the achievement of substantial progress will be measured by whether the owner or operator has met significant deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's ground-water protection standard or background levels, if applicable. The Agency also is proposing procedural requirements for triggering closure of the unit if the Agency determines that the owner or operator fails to demonstrate substantial progress. This is discussed further in Section IV.B.2.d of today's proposal.

Today's proposal applies only when an owner or operator of a unit wishes to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes and meets all of the conditions in today's rule. Today's rule does not affect requirements applicable to owners or operators allowed to receive *hazardous* waste who wish to suspend operations temporarily and receive additional *hazardous* wastes in the future. The existing requirements in § 264.113(a) and (b) and § 265.113 (a) and (b) already include provisions for extending the deadlines for initiating and completing closure under these circumstances. The current Subpart G regulations also do not preclude an owner or operator from receiving non-hazardous wastes during the closure period as part of the closure activities provided that it does not interfere with closure activities. Today's proposal also does not affect these requirements.

IV. Section-by-Section Analysis of Proposed Rule

The following sections of this preamble address the major issues and present the Agency's rationale for the specific regulations proposed today. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of today's proposal. Section B discusses the Part 264 technical requirements applicable to permitted facilities, while the Part 270 procedural requirements applicable to permitting are addressed in Section C. Section D discusses the conforming changes to Parts 264 and 265 interim status standards. The requirements proposed in Parts 264 and 265 are substantively identical, but have slightly different procedural requirements.

A. Applicability

Today's proposal is restricted to permitted and interim status landfill and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements; (2) cease to receive hazardous wastes; *and* (3) will subsequently receive only non-hazardous waste. For a unit to qualify as no longer receiving hazardous wastes, no additional hazardous wastes or wastes that generate a hazardous waste, shall be placed in the unit.[1] Today's proposal does not extend the option to delay closure to units that lost interim status pursuant to section 3005(e) (2) or (3) of RCRA.

Today's proposal also does not extend the option to delay closure to manage only non-hazardous wastes to storage units (i.e., storage or treatment tanks, container storage areas, or waste piles), incinerators, or land treatment units. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must comply with the current closure requirements, including decontamination procedures. The Agency believes that the activities necessary to close storage units (i.e., tanks, container storage areas, waste piles) and incinerators are compatible with the future use of the unit because by definition these units were always intended to only handle wastes on a temporary basis. Further, the Agency believes that requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

The Agency is also not proposing in today's rule to allow land treatment units the option of delaying closure following the final receipt of hazardous waste. The Agency is not currently aware of any likely situations when the delay of closure to receive only non-hazardous wastes would be desirable or practical. However, EPA requests public comment on whether the option to delay closure should be applicable to land treatment units. If there are reasons to allow owners or operators of these units the option to remain open following the final receipt of hazardous wastes to receive only non-hazardous wastes, they would become subject to the requirements proposed in §§ 264.113(d) or 265.113(d), including demonstrations that the management of non-hazardous wastes in the land treatment unit will not be incompatible with any prior hazardous waste management

[1] For example, when a non-listed rinsewater from an electroplating operation is discharged into a surface impoundment, a listed wastewater treatment sludge from electroplating operations is formed in the impoundment. While the waste that enters the impoundment is non-hazardous, a listed hazardous waste is generated and thus received in the impoundment. Therefore, this unit would not qualify as a unit no longer receiving hazardous wastes.

operations. Owners or operators also would continue to be subject to all applicable Parts 264 or 265 requirements under Subpart M, including the treatment demonstration requirements in § 264.272.

EPA also requests comments on whether the closure delay option offered to landfills and surface impoundments should be extended to other hazardous waste units. We also request comment on the types of requirements that would be appropriate for other types of units seeking to delay closure in order to change to non-hazardous waste operations after the final volume of hazardous waste has been received.

B. Part 264 Standards

The Agency is proposing to amend § 264.112(d) and § 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113.

As previously discussed, the current Part 264 standards require a facility owner or operator to treat, dispose of or remove all hazardous wastes within 90 days (264.113(a)) and to complete closure activities within 180 days (264.113(b)) of the last receipt of hazardous wastes. Further, 264.112(d) establishes that the date that the owner or operator expects to begin closure, and therefore must notify EPA, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Today's amendments will provide an additional justification for an extension of the closure period to allow for management of only non-hazardous wastes. Additionally, a conforming change is being made to § 264.112(d) to address final closure of units that qualify for this new closure extension.

The changes to § 264.113 supplement the existing general facility and technology-specific Part 264 standards by adding a separate set of requirements for owners or operators of hazardous waste management units that will delay closure in order to remain open to manage solely non-hazardous waste stream(s). These requirements are proposed to provide assurance that public health and the environment will be adequately protected at these units during the period prior to closure. All owners or operators wishing to delay closure are required to apply for a modification of their facility operating permits. This permit modification request must be accompanied by certain demonstrations and amended facility plans. Procedures for requesting a permit modification to delay closure, including timing requirements, are discussed in Section III.C of this preamble. Additional requirements are proposed in § 264.113(e) for surface impoundments that do not meet the liner and leachate collection system requirements in Part 264. Surface impoundment units will be subject to proposed §§ 264.113 (d) and (e) whereas landfill units will be subject to proposed § 264.113(d) only. The owner or operator must also continue to comply with existing Part 264 permit requirements.

1. General Conditions for Delay of Closure

Today's proposed rule imposes additional requirements on units wishing to remain open after the final receipt of hazardous wastes. These requirements supplement existing Subtitle C requirements. Under today's proposal an owner or operator must comply with all other applicable Part 264 requirements, including ground-water monitoring and corrective action requirements. Additional requirements are discussed below and in Section IV.B.2. A discussion of deadlines for complying with these requirements is in Section IV.C.

a. *Demonstrations for Extensions to Closure Deadlines.* Proposed §§ 264.113 (d) and (e) specify the conditions which must be met to delay closure to manage only non-hazardous wastes. First, the owner or operator must request a permit modification and, under § 264.113(d)(1) make a series of demonstrations. Sections 264.113(d)(1) (i) and (ii) propose that the owner or operator demonstrate that the unit has existing design capacity to receive non-hazardous wastes, and that there is a reasonable likelihood that the unit will receive non-hazardous wastes within one year after the final receipt of hazardous wastes. These demonstrations are consistent with the demonstrations currently required in §§ 264.113 (a) and (b) to extend the closure deadlines if an owner or operator wishes to suspend hazardous waste management operations temporarily and recommence receiving hazardous wastes at a later time.

Design capacity as specified in these sections refers to the operational design capacity included within the facility's Part A application. Since a primary purpose of the proposed rule is to allow facility owners and operators with existing waste disposal capacity to use this capacity effectively, the Agency does not believe that facilities should be allowed to expand their design capacity to accommodate even greater amounts of wastes.

In addition, to ensure that use of the unit to manage non-hazardous waste is protective of human health and the environment, the Agency is proposing to require in § 264.113(d)(1)(iii) that owners or operators must demonstrate that treatment, storage, or disposal of non-hazardous waste (including the interaction between non-hazardous wastes that may be co-managed) will not pose any potential threats to human health and the environment as a result of past and existing hazardous waste management operations. In this demonstration, owners or operators would be required to consider fully any potentially detrimental effects concerning the design, operation, closure, and post-closure of the unit due to the addition of non-hazardous wastes. Potentially detrimental effects include those due to the incompatibility of non-hazardous wastes and constituents with the hazardous wastes that previously had been disposed of in the unit. For example, detrimental effects might occur if a neutral pH metallic sludge (listed as F006) remained at the bottom of a unit that received non-hazardous waste containing relatively high acid levels. The elevated levels of acid in the non-hazardous waste would tend to solubilize the metals in the F006 sludge, resulting in a leachate with potentially significant levels of toxic metals. Potential problems that may affect a unit's ability to comply with Subtitle C requirements also must be addressed. For example, at a landfill the impacts of adding non-hazardous wastes may include subsidence, settlement of the cap, or leachate or methane gas generation.

In many cases, especially for wastewater treatment impoundments, both hazardous and non-hazardous waste streams will have been previously managed simultaneously in the unit and compatibility of operations should be relatively easy to demonstrate to the Agency. On the other hand, EPA does not believe, for example, that receipt of municipal solid waste at a landfill previously used to manage hazardous waste would ever be considered compatible given the potential for the generation and migration of methane gas, subsidence, and settling of the cap.

As discussed below, the proposal requires that the unit continue to comply with all RCRA Subtitle C permit conditions. Because a unit or facility that delays closure is handling non-hazardous wastes, such facilities may be subject to State laws regulating the management of municipal or industrial solid wastes. Therefore, the Agency expects owners and operators to conduct management of the non-hazardous wastes in a manner consistent with any applicable State and local requirements for facilities that handle non-hazardous wastes.

Finally, §§ 264.113(d)(1) (iv) and (v) require owners and operators to demonstrate that closure of the unit is incompatible with its continued operation and that the unit is (and will continue to be) in compliance with all applicable permit requirements. These requirements are consistent with current requirements for approval to extend the closure period under §§ 264.113 (a) and (b). In reviewing compliance with applicable regulations, the Agency is concerned that ground-water systems pursuant to § 264.97 be in place. The Agency in particular would expect facilities delaying closure under today's proposal to have monitoring wells in place as required by Subpart F.

b. *Changes to Facility Plans.* The Agency is proposing in § 264.113(d)(2) to require as a condition of delaying closure that owners or operators submit, with their permit modification, a request to make the appropriate changes to the waste analysis, ground-water monitoring and response, and closure and post-closure plans, and associated changes to the closure and post-closure cost estimates and financial assurance required elsewhere in Part 264. Just as facility plans must be revised to reflect substantial changes in the types of *hazardous* wastes handled or the hazardous waste management practices employed, the Agency believes that selected plans for the facility, and, in particular, the waste analysis plan, ground-water monitoring plan, and closure and post-closure plans and cost estimates, may have to be modified to reflect the changes associated with operation of the unit to receive only non-hazardous wastes.

The ground-water monitoring plan may also need to be revised to account for the presence of any hazardous constituents, such as those published in Appendix VIII of Part 261 or Appendix IX in Part 264, in the non-hazardous waste. In addition, at some facilities it may be necessary to revise the ground-water monitoring plan to address the installation of additional wells for those units that will be remaining open to receive only non-hazardous wastes in order to detect releases from those units. Revisions to the closure and post-closure plans may be necessary if the activities to be conducted differ from those previously planned (e.g., procedures for handling wastes at closure or the date of final closure, if required under § 264.112(b)(7)). To the extent that revisions to the closure or post-closure care plans increase the cost estimates, the cost estimates and the amount of financial assurance required in §§ 264.143 and 264.145 also must be increased.

c. *Exposure Assessment Information.* Under proposed § 264.113(d)(4), owners or operators of landfills and surface impoundments must include the human exposure assessment required under RCRA section 3019(a). Facilities will not be eligible to delay closure to receive non-hazardous waste if the Regional Administrator determines that the unit poses a substantial risk to human health. Such a determination will be based on data from the human exposure assessement, as well as on any other relevant information. Upon determination that a unit poses a substantial risk to human health, the unit will be required to close following the final receipt of hazardous wastes pursuant to the current deadlines in Subpart G.

d. *Permit Revisions.* Finally, the Agency is proposing in § 264.113(d)(5) to require that the request to modify the permit include revisions as appropriate to affected conditions of the permit to account for the management of only non-hazardous waste in a unit previously managing hazardous waste. Because some hazardous constituents may remain in a unit even in cases where hazardous wastes have been flushed or removed, the Agency believes that it is important for the protection of human health and the environment that information concerning the management of non-hazardous waste be included in the permits of facilities seeking to delay closure under today's proposal. In addition, this requirement is consistent with the Agency's intent that units delaying closure continue to be subject to the permitting requirements of Subtitle C. Receipt of non-hazardous waste under today's proposal, therefore, would be considered analogous to adding a hazardous waste stream to a facility during its normal operating life. Permit revisions that the Agency would consider necessary include revisions to the exposure information required under § 270.10(j) to account for the potential danger to the public due to the continued presence of hazardous constituents in the unit following the final receipt of hazardous waste. A list of the non-hazardous wastes to be managed as required for hazardous waste under §§ 270.17(a) and 270.21(a), and revised descriptions of the processes to be used in the unit for treating, storing, and disposing of wastes as required under § 270.13(h)(i) would also be required. Other required revisions might include an updated demonstration of financial assurance as required under § 270.14(b)(15) and a revised ground-water monitoring plan as required under § 270.14(c)(5) and discussed in Section IV.B.1.b above.

2. Surface Impoundments that Do Not Meet Liner and Leachate Collection System Requirements

Congress has recognized that surface impoundments may pose certain waste management problems as evidenced by the provisions of RCRA section 3005(j), which state that interim status surface impoundments in existence on November 8, 1984, must either satisfy the MTRs applicable to new units (i.e., be designed with double liners, leachate collection systems, and ground-water monitoring), receive a waiver from these requirements, or stop the receipt, storage, or treatment of hazardous wastes by November 8, 1988. These requirements are discussed in the March 28, 1986 **Federal Register** (See 51 FR 10707).

Because of this additional concern for surface impoundments that do not meet the MTRs, and Agency believes that controls beyond those already discussed above must be imposed on these units as a condition of delaying closure to receive only non-hazardous wastes where some hazardous wastes are to remain in the unit. For surface impoundments that othrewise satisfy the permit requirements (including compliance with Subpart F ground-water monitoring) but do not meet liner and leachate collection system requirements, EPA believes that additional controls are necessary to ensure that such units delaying closure under today's proposed rule afford a level of protection consistent with that of units that are retrofitted to meet these requirements. Although these units are no longer receiving additional hazardous wastes, hazardous wastes (e.g., sludges) from previous operations may be present in the unit. Because of the potential presence of hazardous wastes in these impoundments, continued operation of the units for any waste management is concern due to the likelihood of leakage, especially from unlined units. Therefore, today's rule proposes that all surface impoundments that do not comply with double liner and leachate collection system requirements in Part 264 applicable to new units and RCRA section 3005(j) must submit not only the required demonstrations and the modified facility plans discussed above, but also comply with additional requirements in § 264.113(e) to ensure protection of human health and the environment. These requirements are discussed below.

a. *Contingent Corrective Measures Plan.* In addition to the demonstrations and requirements described in IV.B.1 above, proposed § 264.113(e)(1) requires owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to submit a contingent corrective measures plan with the request to modify the permit as a condition of delaying closure unless a corrective action plan has already been submitted under § 264.99. (The requirements for initiating corrective action are discussed further in today's preamble at IV.B.2.c below.) Requiring this plan in advance of a release will ensure that if a leak does occur, corrective measures can be implemented quickly to prevent further contamination of ground water, contain existing contamination, and lead to steady progress in achieving the ground-water protection standard at the unit.

The Agency expects such a plan to include as many elements of a full corrective action program as possible and to be sufficiently detailed with respect to actual remedial activities to ensure rapid implementation in the event of a release. Because the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies that may be appropriate under several likely release scenarios. While the Agency recognizes that it would be impossible to plan for all contingencies, EPA believes that, using data on the types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies, it is possible to develop a fairly detailed set of alternative measures.

The plan should include an extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of those corrective measures that can be installed quickly to address *inter alia* releases of different types of constituents or releases at variable rates and plumes of different size and depth. The plan should also identify potential interim measures such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head, if appropriate. The range of corrective measures should be described in detail, including the equipment and the physical components required. For example, the plan should describe the type and placement of the containment measures to be used (e.g., slurry walls, low permeability barriers, etc.), the number and types of wells and how they will be used (e.g., diversion wells or wells for collecting the flow), and the proposed treatment technologies (e.g., carbon adsorption, ion exchange, chemical precipitation, etc.). The plan should also identify any site-specific problems which could affect a corrective measures program, such as underground utilities and migration of the plume under structures.

The Agency believes that much of the data for the contingent corrective measures plan should be readily available to owners or operators. Information on constituents, plume direction, location of wells, and potential human and environmental exposures is included with the Part B permit application. Additional information may also be available as a result of actions taken or ongoing to comply with corrective action requirements under either Subpart F or a RCRA section 3008(h) corrective action order or permit conditions pursuant to RCRA section 3004(u).

The preparation of the contingent corrective measures plan does not relieve the owner or operator of any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order. The measures identified in the contingent corrective measures plan are anticipated to be complementary to any long-term corrective measures that may be determined to be required following more in-depth analysis of the release and remedy evaluation. Changes to the contingent plan may be made under applicable permit modification requirements.

b. *Alternatives.* Today's proposal in section 264.113(e) offers owners or operators of surface impoundments that do not satisfy the double liner and leachate collection requirements three alternatives for delaying closure to receive non-hazardous wastes. These options offer flexibility to owners or operators to account for different types of management practices. However, regardless of the option chosen, the combined requirements are designed to assure that impoundments that do not meet double liner and leachate collection system requirements ensure protection of human health and the environment. As part of the demonstrations required in the request to modify the permit to delay closure, an owner or operator of a surface impoundment eligible to delay closure must include a plan for complying with one of the three alternatives described below.

(1) *Alternative 1—Removal of Hazardous Wastes.* Under the first alternative, proposed in section 264.113(e)(2)(i), an owner or operator of a surface impoundment must remove all hazardous liquids and hazardous sludges from the impoundment prior to the receipt of nonhazardous waste. In addition, in the event of a release to ground water, the facility would have to comply with the corrective action requirements discussed in Section IV.B.2.c below.

The Agency recognizes that for lined units, it may be necessary to leave some wastes immediately above the liner to avoid impairing the integrity of the liner. Therefore, the Agency is proposing to allow sludges to remain immediately above the liner *only* to the extent necessary to maintain the integrity of the liner. In cases where the unit is unlined, the hazardous waste must be removed down to the underlying and adjacent soil. This degree of removal will maintain the structural uniformity of the bottom of the unit. The amount of hazardous sludge that must be removed will be determined on a case-by-case basis, taking into consideration the physical and chemical characteristics of the sludge, technology available to remove the sludge, and liner material.[2] The Agency will not consider the economic practicability of sludge removal in determining the amount of sludge that must be removed. At the time of final closure, the impoundment will still be subject to Subpart G closure requirements. If the unit chooses to "clean close", additional sludge removal may be required to meet clean closure standards. This final determination will be made at the time of final closure.

As specified in proposed § 264.113(e)(4)(i), the hazardous wastes (liquids and sludges) must be removed no later than 90 days after the final receipt of *hazardous* wastes. The Regional Administrator may approve a request for a longer period of time based on need (e.g., additional time is required because of adverse weather conditions or specific operating practices), and a demonstration that an extension will not pose a threat to human health and the environment. (The requirement to remove wastes as a condition of delaying closure applies only to the

[2] The draft RCRA Guidance Document, "Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments, and Waste Piles—Design, Construction, and Operation," issued may 24, 1985, for example, suggests that a minimum of 18 inches of protective soil or equivalent is appropriate to protect liners from damage when mechanical equipment is used to remove sludge or contents of the impoundment.

hazardous wastes in the impoundment.) The deadline and the criteria for requesting an extension to the 90-day deadline are consistent with the current provisions in § 264.113(a) for removing all *hazardous* wastes at closure and for requesting an extension to that deadline. The Agency wishes to ensure that owners or operators of surface impoundments that do not satisfy the double liner and leachate collection system requirements and who choose to remove hazardous wastes do so within the same time frames were they to close their units following the final receipt of *hazardous* wastes.

(2) *Alternative 2—Flushing Hazardous Wastes*— (a) *Sludge Removal and Flushing of Liquids.* The second alternative, proposed in § 264.113(e)(2)(ii), would allow an owner or operator to delay closure if he removed the hazardous sludges as required in Alternative 1 (e.g., dredging or pumping) and removed the liquid hazardous wastes and suspended solids from the unit by flushing the unit with the non-hazardous influent. This alternative is available only where the owner or operator can demonstrate that it is infeasible or impracticable to remove all of the hazardous waste from the impoundment as discussed in Alternative 1. The owner or operator also would be required to demonstrate that the liquid wastes and suspended solids remaining in the unit did not exhibit a characteristic of hazardous wastes identified in Subpart C of Part 261. As in Alternative 1, the owner or operator also must comply with corrective action requirements discussed below.

The Agency believes that units employing biological treatment methods may be able to demonstrate that it is infeasible or impracticable to remove all of the hazardous wastes as discussed in Alternative 1. In a biological treatment impoundment, the hazardous wastes of concern include the sludge that has settled to the bottom of the unit and the liquid phase. If the hazardous liquids are removed by draining the impoundment, the following problems could arise. First, in many cases the facility's wastewater treatment system would be shut down, which could force the facility to stop some of its operations for a significant period of time while the removal activities were completed. Second, the microorganisms which had been acclimated to the facility's wastes would be destroyed and the facility would have to reacclimate a new biomass.

Under Alternative 2, at least 95 percent of the liquid and suspended hazardous wastes must be displaced by flushing with non-hazardous influent. The owner or operator must demonstrate that 95 percent of the liquid, as measured by volume, has been displaced. The Agency would consider a tracer study to be an appropriate means of making this demonstration. For example, in some impoundments, depending on the waste types and the environment, a radioisotope (e.g., deuterated marker compounds) or an easily detected and identifiable chemical compound could be introduced into the impoundment, allowing the wastes remaining in the impoundment to be measured. Use of chemical dyes to trace the flow of wastes also may be appropriate methods in some circumstances.

As specified in § 264.113(e)(4)(ii), the owner or operator must begin flushing the impoundment and removing hazardous sludges no later than 15 days after the final receipt of hazardous wastes and complete the 95 percent displacement and removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. This deadline is consistent with the deadline in § 264.113(a) for removing hazardous wastes at closure. For multi-unit treatment impoundments, 95 percent of the hazardous wastes in the last unit in the train must be displaced no later than 90 days after the final volume of hazardous wastes has been received at the first unit. The Regional Administrator may grant an extension to the 90-day deadline if the owner or operator can demonstrate that the retention time necessary to flush the unit or remove all of the sludge necessitates a longer time period and that an extension will not pose a threat to human health and the environment.

The Agency recognizes that the retention time necessary to complete the 95 percent displacement will vary significantly among units, depending on site-specific factors such as size, depth, average flow rate, and the type of treatment that is being conducted (e.g., aerobic, anaerobic, aeration, settling, facultative). The Agency believes that a 90-day deadline should be sufficient for all but the largest impoundments or for multi-unit treatment impoundments. Data on the average retention time for a number of different sizes and types of impoundments suggest that only very large impoundments (e.g., 200-acre impoundments) or treatment train impoundments comprised of several units are likely to have retention times of over 90 days. Most of the impoundments examined had average retention times of less than 50 days, suggesting that displacement and sludge removal could be completed within the proposed deadline. For units that cannot complete the displacement within the 90-day deadline, the Agency would have the authority to extend the deadline. To support an extension, EPA would expect an owner or operator to submit data on the size of the unit, the type of treatment being conducted, the average flow rate (e.g., millions of gallons per day), and documentation supporting the claim that the unit's retention time and the time required to remove the sludge would exceed 90 days.

The Agency recognizes that the 90-day deadline also may be insufficient for treatment facilities composed of multiple impoundments. For example, a treatment system comprised of an equalization pond, two anaerobic ponds, and an aerobic pond could have a combined retention time exceeding 90 days. In this case, the Agency would entertain a request for an extension of the 90-day deadline.

The Agency considered proposing that the flushing process be completed within 180 days to allow owners or operators of very large impoundments sufficient time to remove the sludges and complete the flushing process. The Agency was concerned that owners or operators not delay the flushing process and, as a result, is proposing that the flushing begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt. The Agency is requesting comments on whether 90 days is an adequate amount of time to complete the sludge removal and flushing process for most facilities and data on retention times of impoundments to support an alternative deadline, if appropriate.

(b) *Relationship to Mixture Rule.* EPA's "mixture rule" for the definition of hazardous wastes raises an interesting issue for facilities that treat hazardous wastes in a series of connected surface impoundments. Under the requirements of 40 CFR 261.3(a)(2)(iv), where a listed hazardous waste mixes with a non-hazardous waste, the entire mixture is considered to be the listed waste and must be handled as hazardous. Such mixing might occur in a surface impoundment that is delaying closure to receive non-hazardous wastes under any of the three alternatives described above. If the impoundment in which the mixing occurred was the first impoundment in a treatment train, the material it discharged to "downstream" impoundments would be considered a hazardous waste. The "downstream"

impoundments would have to retrofit to continue to receive this mixed hazardous waste stream after November 8, 1988.

Retrofitting, however, might not be required in all circumstances. The key question would be whether in fact any mixing of non-hazardous and hazardous wastes occurs in the first impoundment in the series. The Agency has stated, in somewhat analogous circumstances, that no mixing occurs in a wastewater treatment unit that manages a non-hazardous liquid waste even if that liquid generates a hazardous sludge that settles to the bottom of the same unit, unless the sludge is in some way physically dredged up and mixed with the liquid. EPA believes it would be appropriate to apply the same principle here. There should be even less opportunity for mixing here because in many cases much of the original hazardous sludge will be removed, and in all cases no additonal quantities of hazardous sludge will be generated. Consequently, if there is no further disturbance of remaining hazardous waste in an impoundment delaying closure, EPA will presume that no mixing occurs and that the non-hazardous waste does not become a hazardous waste. Subsequent surface impoundments would be able to accept this non-hazardous waste if they met the requirements proposed today.

Final closure activities, of course, may disturb and mix the wastes and as previously discussed, the hazardous waste rules apply at final closure. Sludges within all impoundments continue to be considered hazardous wastes unless delisted.

(3) *Alternative 3—Leaving Hazardous Wastes in Place.* The third alternative proposed in § 264.113(e)(3) allows owners or operators of disposal impoundments who do not intend to remove all hazardous wastes, including liners and contaminated soils, at closure, but instead will leave some hazardous wastes in place, to delay closure under only limited circumstances. Because hazardous wastes are not removed prior to the receipt of non-hazardous wastes, the Agency is proposing more stringent requirements for disposal impoundments than for impoundments at which hazardous wastes are removed. For disposal impoundments, the Agency is limiting the availability of the option to delay closure to those impoundments that do not have a statistically significant increase over background values of detection monitoring parameters or constituents or have not exceeded the facility's ground-water protection standard at the point of compliance on the date of the final receipt of hazardous wastes. This determination will be based on the most recent monitoring data as required in Part 264 Subpart F. In addition, if a release is detected after the final receipt of hazardous wastes, the owner or operator must promptly initiate closure of the disposal impoundment in accordance with the approved closure plan no later than 30 days after the detection of the release and comply with the corrective action requirements including those discussed below.

c. *Corrective Action Requirements.* All units that delay closure will remain subject to all applicable corrective action requirements. In addition, owners or operators of surface impoundments that do not meet the double liner and leachate collection system requirements must submit a contingent corrective measures plan as a condition of delaying closure. The Agency is proposing in § 264.113(e) additional conditions that apply if there is a statistically significant increase over background values of detection monitoring parameters or constituents for interim status units or if a release that exceeds the facility's ground-water protection standards at the point of compliance is detected at these impoundments. This determination will be made based on the unit's most recent monitoring data as required under Part 264 Subpart F. The purpose of the contingent corrective measures plan and the corrective action requirements in § 264.113(e) is to ensure that if a release is detected, interim corrective measures, at a minimum, are instituted quickly.

As mentioned earlier, the corrective action requirements proposed in § 264.113(e) have no effect on an owner's or operator's obligations to comply with all of the requirements in Part 264, Subpart F. Rather, the requirements in today's proposal are in addition to the corrective action requirements specified in Subpart F to ensure that the delay of closure to receive only non-hazardous wastes at surface impoundments that do not meet the double liner and leachate collection system requirements does not compromise the protection of human health and the environment. Moreover, the Regional Administrator retains the authority to require additional corrective measures as deemed necessary in the final corrective action plan. Finally, today's proposal will not affect future changes to Subpart F that are currently under consideration. For example, if the Agency revises the methods for setting the ground-water protection standards, disposal impoundments that exceed their ground-water protection standard as a result of such regulatory amendments would still be required to close. If necessary, conforming amendments will be made to today's rule to be consistent with any future changes to Subpart F.

The Agency is concerned that basing the evidence of a release from a unit on contamination of ground water alone may overlook releases that have occurred but have not yet been detected by the ground-water monitoring system. The Agency is also concerned about contamination to media besides ground water, e.g., soil contamination or leaching of hazardous constituents to surface water. While the unit remains subject to all corrective action requirements for all media, the initial determinations of whether expedited corrective action is required under today's proposal for delayed closure are based on ground-water monitoring data. The Agency is requesting comments on the approach of basing the evidence of a release on ground-water monitoring results only and whether other options may be appropriate.

The Agency is proposing more stringent corrective action requirements for disposal impoundments because of the greater risks associated at units where hazardous wastes have not been removed. The Agency is also imposing more stringent requirements on impoundments that are leaking on the date of the final receipt of hazardous waste to ensure that these units do not exacerbate any threats to human health and the environment. These requirements are discussed in detail below.

(1) *Disposal Impoundments.* As discussed above, § 264.113(e)(8) proposes that disposal impoundments must not have detected a release to ground water as a condition of delaying closure to receive only nonhazardous waste. Any disposal impoundment having a statistically significant increase over background values of monitoring parameters or constituents or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste, based on the most recent ground-water monitoring data as required under Part 264, Subpart F, is not eligible for delayed closure. If a statistically significant increase in background values is detected, or if the ground-water protection standard is exceeded, corrective action must be conducted as required under Subpart F and the unit must be closed in accordance with the approved closure

plan and other requirements in Subparts G and K.

(2) *Surface Impoundments At Which Wastes Are Removed.* The Agency is proposing in § 264.113(e) (5), (6), and (7) the corrective action requirements imposed on owners or operators who intend to remove hazardous wastes from their impoundments as a condition of delaying closure. These sections vary depending on whether or not a release has been detected by the date of the final receipt of hazardous wastes. These regulations are discussed below.

(a) *Releases at the Time of the Final Receipt of Hazardous Wastes* (Exhibit 2 in Section III.B of this preamble). The Agency is proposing in § 264.113(e) (5) and (6) to require owners or operators of surface impoundments intending to remove hazardous wastes to cease the receipt of all wastes if they have detected contamination statistically greater than background levels of detection monitoring parameters or constituents, or in excess of their ground-water protection standard at the point of compliance. The most recent monitoring data required under Subpart F will be used to make this determination by the date of the final receipt of hazardous wastes. An exception would be granted to owners or operators who remove hazardous wastes from the impoundment by flushing with non-hazardous wastes. In this case, the impoundment may continue to receive non-hazardous waste only to complete the flushing process in accordance with the timeframes established in § 264.113(e)(4)(ii).

Non-hazardous wastes may not be received at a unit with a release statistically greater than background levels or exceeding the ground-water protection standard on the date of the final receipt of hazardous waste until corrective measures have been implemented. These measures must be consistent with an approved contingent corrective measures plan or with provisions of an approved corrective action plan otherwise required in Subpart F. The specific corrective measures that must be implemented to allow a facility to receive nonhazardous wastes will be specified on a case-by-case basis in the plan. However, if an owner or operator can demonstrate that the release is not statistically greater than background levels or does not exceed the facility's ground-water protection standard, he may continue to receive non-hazardous wastes.

The Agency intends that the corrective measures to be implemented be more than studies of the extent of contamination or development of remedial alternatives. Rather, the Agency would expect containment and/or remediation activity, consistent with the activities described in the contingent corrective measures plan, to be undertaken. For example, installing removal wells and a slurry wall and starting the pumping and treating of contaminated ground water might satisfy the requirement that corrective measures be implemented.

The Agency recognizes that stopping the receipt of all wastes until corrective measures have been implemented could adversely affect the operations of some types of facilities. The Agency believes that in most cases, however, the delay should not be extensive. First, many of the units that may have to stop the receipt of wastes because a release has been detected at the time of the final receipt of hazardous wastes will have already triggered compliance monitoring and/or be engaged in a corrective action program under Subpart F prior to today's proposal. In fact, remedies may already be under review for such units. Therefore, there should not be an extensive delay before the unit is placed on a compliance schedule for corrective action and the unit can receive non-hazardous wastes. Second, because these units have detected releases, the Agency expects that in most cases these facilities will have a high priority for approval of corrective action plans. At the same time, prohibiting the continued receipt of non-hazardous waste until corrective measures have begun should provide an incentive for owners or operators to implement corrective measures as soon as possible after the approval of a corrective action plan.

The Agency considered allowing units that are leaking on the date of the final receipt of hazardous wastes to receive non-hazardous wastes if the owner or operator makes a demonstration that the receipt of non-hazardous wastes will not exacerbate threats to human health and the environment or impede the effectiveness of the corrective measures, and that these corrective measures will be implemented within one year from the final receipt of hazardous waste. It has been argued that, particularly for owners or operators who will remove the hazardous wastes by flushing with non-hazardous influent, allowing the further receipt of non-hazardous wastes at these units after flushing has been completed may not increase the environmental risks. According to the argument, allowing the continued receipt of non-hazardous wastes will further dilute certain types of constituents in the impoundment and thus may decrease the potential for threats to human health and the environment.

The Agency is not proposing this approach for a number of reasons. First, because hazardous wastes remain in the unit, it would be necessary to evaluate the impacts of allowing the receipt of non-hazardous wastes on the effectiveness of the corrective action program. Because the units in question do not satisfy liner and leachate collection system requirements, the Agency must be assured that the requirements applicable to these units provide adequate protection of human health and the environment. (This is a particular concern for facilities awaiting permit approval where characterization of ground-water flows, hydrogeologic conditions, the extent of the plume, etc., may not yet have been subject to the rigorous review that occurs during permitting.) The Agency is not convinced that it will be possible to effectively evaluate such impacts. The Agency also is uncertain about what criteria should be used to evaluate the impacts of the continued receipt of non-hazardous wastes on the effectiveness of corrective action. Finally, the Agency is concerned that the effort required to evaluate these demonstrations will be time-consuming and not an effective use of Agency resources.

The Agency is requesting comments on whether impoundments not meeting liner and leachate collection system requirements that are leaking on the date of the final receipt of hazardous wastes should be allowed to receive non-hazardous wastes prior to the institution of a corrective action program. Particularly, the Agency is soliciting information on the impacts of hydraulic head on the effectiveness of corrective action, the types of data necessary to make these determinations, deadlines for making these demonstrations, and whether this option should be available to all impoundments or only impoundments that have already received permits.

(b) *Releases After the Final Receipt of Hazardous Wastes* (Exhibit 3 in Section III.B of this preamble). Today's rule proposes in § 264.113(e)(7) to allow an owner or operator of an impoundment that does not meet liner and leachate collection system requirements and whose hazardous wastes have been removed to continue operating the unit if a release is detected after the date of the final receipt of hazardous wastes under limited circumstances. After the detection of a release, the unit only be allowed to continue to receive non-hazardous waste *only* if corrective measures consistent with the approved

contingent corrective measures plan are implemented within one year of the detection of the release, or approval of the contingent corrective measures plan, whichever is later, and if the continued receipt of non-hazardous waste will not pose a threat to human health and the environment. Again, the conditions for demonstrating that corrective measures have been established will be specified on a case-by-case basis in the corrective action plan. (As discussed earlier, the Regional Administrator retains the authority to require additional corrective measures in the final corrective action plan.)

Again, while a demonstration that corrective measures have been put in place must be more than the completion of studies, the implementation of interim measures (e.g., installing slurry walls and initiating a pump and treat program) may be sufficient. If the Regional Administrator determines that the continued receipt of non-hazardous waste during this one-year period is posing a threat to human health or the environment, he has the authority to either require that corrective measures be implemented in less than one year or to require that the receipt of non-hazardous wastes cease until corrective measures are implemented.

While it is the Agency's policy that corrective action be undertaken promptly, it recognizes that at large units or facilities a longer time could be needed to completely assess the nature and extent of the contamination and specify remedies or that delays in cleanup activities could be caused by timing issues beyond the control of the owner or operator (e.g., availability of cleanup contractors, weather conditions). The Agency considered giving the Regional Administrator the authority to grant extensions to the one-year deadline for implementing corrective measures. However, the Agency wished to avoid additional administrative burdens and delays in getting corrective measures implemented and still believes that one year should provide adequate time. The Agency is requesting comments on this one-year deadline and suggestions on other alternatives.

d. *Evaluating Progress of Corrective Action.* In § 264.113(e)(10), the Agency is proposing that impoundments that have removed all hazardous wastes and have been allowed to delay closure to receive non-hazardous waste in accordance with the requirements in § 264.113 (d) and (e)(2) must initiate closure if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

The Agency is not proposing to define "substantial progress" in today's rule. Rather, the Agency believes that this determination should be made on a case-by-case basis based on an evaluation of the progress of the corrective action program towards achieving the ground-water protection standard (or background levels if applicable). In addition, the Regional Administrator will evaluate the effect of the continued receipt of non-hazardous waste on the effectiveness of the corrective measures being taken in determining whether substantial progress towards the ground-water protection standards has been achieved. In general, the Agency would consider the failure to comply with significant deadlines in the schedule of compliance, the permit, or other enforcement orders that establish timeframes for achieving the facility's ground-water protection standard as cause for closure. The Agency does not intend failure to comply with procedural or reporting requirements that do not affect the progress of corrective action to be cause for closure; on the other hand, compliance with deadlines for procedural or reporting requirements alone will not be considered a demonstration of substantial progress.

A determination of whether the unit has demonstrated substantial progress in its corrective action program would be based, in part, on the results of the semi-annual reports required under § 264.113(e)(9). Proposed § 264.113(e)(9) requires the owner or operator to submit reports to the Regional Administrator that describe the progress of the corrective measures, including results of ground-water monitoring and the effect of the receipt of non-hazardous wastes on the effectiveness of the corrective action. The amount of time allowed for demonstrating that substantial progress toward achieving the ground-water protection standard has been achieved, will be a site-specific decision that is dependent upon the nature, extent, and magnitude of the contamination, as well as the nature of the remedial measures.

Today's rule also establishes an accelerated set of procedures for initiating closure if the owner or operator fails to demonstrate substantial progress in achieving the ground-water protection standard. The objective of these accelerated procedures is to reduce delays in initiating closure, while still providing adequate due process to the owner or operator and adequate notice to the public.

Under proposed § 264.113(a)(11), the Regional Administrator must notify the owner or operator in writing that he has failed to make substantial progress and that he will be required to close the unit in accordance with the deadline in § 264.113 (a) and (b). The Regional Administrator must provide the owner or operator a detailed statement of reasons for his determination and also publish a newspaper notice of this decision and provide a 20-day comment period. If the Regional Administrator does not receive written comments on the decision to require closure of the unit, the decision will be final five days after the close of the comment period. The Regional Administrator will then notify the owner or operator that he must submit a revised closure plan, if necessary, within 15 days of the final notice and commence closure in accordance with the deadlines in § 264.113 (a) and (b). If written comments are received, the Regional Administrator will make a final determination no later than 30 days after the end of the comment period and notify the owner or operator and the public of the decision by newspaper notice.

Because the Agency is concerned that closure be commenced as quickly as possible once it is determined that the unit is not demonstrating substantial progress towards achieving the ground-water protection standard to ensure protection of human health and the environment, today's proposal does not provide for administrative appeals of the Regional Administrator's decision to require closure. The proposed rule, however, does include a formal comment period (in addition to informal negotiations prior to the final Agency decision). In addition, the decision to require closure would constitute a final Agency decision and is therefore subject to judicial appeal. The Agency does not believe that disallowing administrative appeals will violate the due process rights of the owner or operator.

3. Notification of Closure

Section 264.112(d)(1) currently requires an owner or operator to notify the Regional Administrator at least 60 days prior to the expected date of closure, defined in § 264.112(d)(2) as no later than 30 days after the final receipt of *hazardous* waste. EPA proposes to add subsection (ii) to §264.112(d)(2) to specify that for units that have delayed closure after the final receipt of hazardous waste, the "expected date of closure" is no later than 30 days after

the final receipt of non-hazardous wastes. Therefore, an owner or operator who has delayed closure after the final receipt of hazardous waste to receive only non-hazardous waste must notify the Regional Administrator at least 60 days prior to the final receipt of non-hazardous waste.

C. Part 270 Permit Modification Requirements

For facilities with RCRA permits, the request to modify the permit to extend the closure period would be considered under the current regulations to be a major modification subject to public notice and comment and procedures in Part 124. The demonstrations discussed earlier must be submitted to the Agency for approval with a request to modify the permit at least 120 days prior to the final receipt of hazardous waste, or within 90 days after the final rule is published in the **Federal Register** as required in § 270.41, whichever is later.

If, subsequent to approval of the permit modifications, an owner or operator changes the types of non-hazardous wastes that are handled in the unit, he must again request a modification to the permit and demonstrate that the addition of these new non-hazardous wastes is also compatible with the hazardous and non-hazardous wastes in the unit and past, current and future operations.

On September 23, 1987, the Agency proposed amendments to the Part 270 procedures for modifying permits. Today's rule proposes a conforming change to the September 23, 1987, proposal to make the procedures for modifying a permit for delayed closure consistent with that scheme. The Agency is proposing to classify an extension to the closure period to receive non-hazardous waste following final receipt of hazardous waste as a Class 2 modification and to add it to Appendix I of § 270.42, "Classification of Permit Modifications." In order to request this Class 2 modification, the owner or operator must submit the demonstrations and changes to facility plans required in § 264.133 (d) and (e) and described in IV.B.1 in this preamble. If these proposed amendments to Part 270 do not become final, an extension of the closure period to receive non-hazardous waste will continue to be classified as a major permit modification.

While it has not proposed changes to Part B application requirements, the Agency wishes to make clear that Part B applications submitted in order to delay closure under today's rule will be required to contain, for the non-hazardous wastes to be received, all of the elements required in a Part B application for a facility continuing to receive hazardous waste. Such information would include closure and post-closure plans revised to account for non-hazardous wastes, revised documentation of financial assurance under §§ 264.143 and 264.145, and a revised ground-water monitoring program. The Agency considers it appropriate to have such information submitted in the Part B application because facilities delaying closure will continue to be considered hazardous waste facilities. This is consistent with the Agency's position that facilities delaying closure must continue to comply with the permitting requirements of Subtitle C.

D. Conforming Changes

The Agency is proposing conforming changes to the interim status standards in Part 265 that parallel the technical requirements in Part 264 for deferring closure to receive only non-hazardous wastes. The interim status requirements are substantially the same as those for permitted units. Today's rule also proposes conforming changes to §§ 264.13 (a) and (b) and 265.13 (a) and (b) and to §§ 264.142(a)(3) and 264.142(a)(4) and 265.142(a)(3) and 265.142(a)(4). These differences are highlighted below.

1. Conforming Changes to Part 265 Interim Status Requirements

a. *Initial Demonstrations.* Proposed § 265.113 (d)(1) requires owners or operators of interim status units, to submit amended Part B applications, or Part B applications if one was not previously required, with the revised facility plans and required demonstrations. Part B applications are required because the Agency does not believe that a facility should be allowed to remain open to receive non-hazardous waste while remaining in interim status. The Agency is particularly concerned that units that do not satisfy the double liner and leachate collection system requirements and remain open under today's proposal be subject to the stricter provisions of Part 264, especially the stricter ground-water protection requirements of Subpart F to sufficiently protect human health and the environment. Plans and demonstrations must be submitted at least 180 days prior to the final receipt of hazardous wastes. This 180-day deadline is consistent with the deadline in § 265.112(d) for notifying the Regional Administrator of closure and submitting the closure plan for review and approval. Owners or operators who already have received their final volume of hazardous wastes or will receive it in the near future will be eligible to delay closure if they submit their Part B application and the required demonstrations no later than 90 days after notice of today's final rule is published in the **Federal Register**.

As discussed above, under today's proposal, facility owners and operators would be required to operate under the full permit requirements of 40 CFR Part 264. However, because the Agency cannot guarantee that a Part B permit will be issued prior to the final receipt of hazardous wastes, the Agency is proposing to allow the owner or operator to remain open after the final receipt of hazardous wastes to receive only non-hazardous wastes prior to issuance of the permit. During this period the owner or operator must comply with all of the applicable requirements in § 265.113 (d) and (e) and continue to conduct operations in accordance with all other applicable Part 265 requirements. If the Agency subsequently denies the permit, the Part 265 closure requirements, including the closure deadlines of § 265.113 (a) and (b), become effective immediately.

We recognize that there may be concern about allowing interim status facilities to delay closure while a decision on a permit application and delay of closure is pending. However, the Agency is convinced that the applicability criteria in §265.113(d) together with the technical requirements in §265.113(e) for delaying closure and other Part 265 requirements are sufficient to preclude any increases in threats to human health and the environment during the permit review period. In the case of surface impoundments that choose to or must remove wastes to delay closure, the required activities are consistent with current Subpart G closure requirements. Therefore, even if the request to delay closure and/or an operating permit is denied, the owner or operator will have begun the closure process by removing the hazardous wastes from the impoundment. In addition, a facility awaiting a determination of a request to delay closure remains subject to all Part 265 requirements and applicable enforcement authorities, including RCRA section 3008(h) corrective action orders.

b. *Corrective Action.* The Agency is proposing slightly different triggers for corrective action requirements for interim status units than for permitted units. For interim status facilities that have not yet established a ground-water protection standard, the Agency is proposing that the corrective action

requirements in § 265.113(e) be triggered by a statistically significant increase in hazardous constituents over background levels or decrease in pH over background levels. The Agency has chosen background as the baseline to measure the presence of a release to ensure that interim status impoundments that do not satisfy liner and leachate collection system requirements and wish to delay closure to receive only non-hazarous wastes remain protective of human health and the environment. This approach is consistent with the current triggers in Part 265, Subpart F for implementing the ground-water quality assessment plan.

Interim status impoundments that do not meet the liner and leachate collection system requirements and do not remove hazardous wastes will be allowed to remain open to receive only non-hazardous waste *if* no statistically significant increase in contamination above background levels (or decrease in pH levels) as specified in accordance with Subpart F has been detected. If background levels are exceeded at any time after the request to defer closure has been granted, the owner or operator of a disposal impoundment that does not satisfy the liner and leachate collection system requirements must initiate closure of the unit in accordance with the approved closure plan. Similarly, impoundments not in compliance with liner and leachate collection system requirements that remove hazardous wastes prior to receiving only non-hazardous wastes are subject to accelerated corrective action requirements consistent with the Part 264 requirements described above. Again, as discussed earlier, these corrective measures requirements are in addition to requirements in Subpart F or those included in a RCRA section 3008(h) corrective action order.

c. *Applicability to New Interim Status Units.* The requirements in today's proposal also apply to owners or operators of units that receive interim status as a result of new regulations (e.g., additional listings of hazardous wastes). For example, HSWA section 3005(j) requires that surface impoundments that receive interim status after November 8, 1984, because of new regulations, such as the promulgation of additional listings or characteristics for the identification of hazardous wastes, must satisfy the MTRs within four years of the promulgation that subjected the unit to RCRA Subtitle C. These owners or operators will be given sufficient notice that they will become subject to Subtitle C requirements; therefore requiring that the Part B application be submitted no later than 180 days prior to the final receipt of hazardous wastes as a condition of delaying closure to receive only non-hazardous waste should not impose an undue burden.

2. Other Conforming Changes to Parts 264 and 265

The Agency is proposing a conforming change to §§ 264.13 (a) and (b) and 265.13 (a) and (b) to require that the waste analysis plan be revised to account for the presence of any non-hazardous wastes managed pursuant to §§ 264.113 (d) and (e) and 265.113 (d) and (e). Today's rule also revises §§ 264.142(a) (3) and (4) and 265.142(a) (3) and (4) to specify that an owner or operator may not account for salvage value or incorporate a zero cost in the closure cost estimate for handling non-hazardous waste at closure, consistent with the current limitations in §§ 264.142 and 265.142 for hazardous wastes.

V. State Authorization

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. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely 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 in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated 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 section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those 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, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Proposed Rule on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). The standards proposed today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. If the State does modify its program, EPA must approve the modification for the State requirements to become Subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

VI. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being proposed today are designed to reduce the burden of the RCRA regulations and are not likely to result in a significant increase in costs. Thus, this proposal is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20608, marked: Attention—Desk Officer for EPA. Should EPA promulgate a final rule, the Agency will respond to comments by OMB or the public regarding the information collection provisions of this rule.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The amendments proposed today are more flexible than the existing regulations and thus result in no additional costs. The viability of small entities, thereby, should not be adversely affected.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR Chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.13 paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (b)(1) are revised to read as follows:

§ 264.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes if applicable under § 264.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 264.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

3. In § 264.112, paragraph (d)(2) is revised to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

4. Section 264.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with

paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in Parts 270 and 124 of this title and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 264.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after **Federal Register** notice of this regulation, whichever is later; and

(4) The request to modify the permit is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The request to modify the permit includes revisions, as appropriate, to affected conditions of the permit to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under § 264.99; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s); or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(8) of this section if a release is detected that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit, or exceeds the facility's ground-water protection standard at the point of compliance, if applicable, as specified under Subpart F of this part.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4)(i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that an extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase over background values for detection monitoring parameters or constitutents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has

been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective action measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraphs (e)(2)(ii) and (e)(4)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required in paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in Subpart F of this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements of Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall:

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

5. In § 264.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), that might have economic value.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for Part 265 continues to read as follows:

Authority: Section 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

7. In § 265.13, paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (b)(1) are revised to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the

hazardous wastes or non-hazardous wastes if applicable under § 265.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste or non-hazardous waste if applicable under § 265.113(d) will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

8. In § 265.112, paragraph (d)(2) is revised to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the onwer or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

9. Section 265.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding (d) and (e) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complied with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows: (1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and (2) the demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended Part B application, or a Part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the Part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous waste will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this Part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The Part B application includes an amended waste analysis plan, groundwater monitoring and response program, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The Part B application and the demonstrations referred to in paragraph (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 180 days prior to the date on which the facility owner or operator receives the known final volume of hazardous wastes, or no later than 90 days after **Federal Register** notice of this regulation, whichever is later; and

(4) The Part B application is accompanied by the human exposure assessment required under RCRA section 3019, and the Regional Administrator does not determine, based on this information or information from other sources, that the unit poses a substantial risk to human health and the environment; and

(5) The Part B application is amended, as appropriate, to account for the management of only non-hazardous wastes in a unit which previously managed hazardous wastes.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection systems requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004 (o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the Part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for demonstrating compliance with one of the options described in paragraphs (e)(2) and (e)(3) of this section; and

(2) Remove all hazardous wastes from the unit by either:

(i) Removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable; or

(ii) Where removal in accordance with paragraph (e)(2)(i) of this section is infeasible or impracticable, displacing at least 95 percent of the liquid and suspended solid hazardous wastes (as measured volumetrically) by flushing with non-hazardous wastes, removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if applicable, and demonstrating that the liquids and suspended solids remaining in the unit do not exhibit a characteristic of hazardous waste identified in Subpart C of Part 261; or

(3) Leave the hazardous wastes in place following the final receipt of hazardous wastes and comply with the requirements in paragraph (e)(8) of this section if a release from the unit is detected that is a statistically significant increase (or decrease in the case of pH) over background levels.

(4) The activities referred to in paragraph (e)(2) of this section must be completed as follows:

(i) For units meeting the requirements of paragraph (e)(2)(i) of this section, no later than 90 days after the final receipt of hazardous wastes; or

(ii) For units meeting the requirement of paragraph (e)(2)(ii) of this section, the process of displacing and removing the hazardous wastes must begin no later than 15 days after the final receipt of hazardous wastes and be completed no later than 90 days after the final receipt of hazardous wastes.

(iii) The Regional Administrator may approve an extension to the deadlines in paragraph (e)(4) (i) or (ii) of this section if the owner or operator demonstrates that the removal or displacement of hazardous wastes will, of necessity, take longer than the allotted periods to complete and that extension will not pose a threat to human health and the environment.

(5) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this Part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(i) of this section, the owner or operator must cease the receipt of all wastes at the unit until corrective measures in accordance with an approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(6) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels has been detected in accordance with the requirements in Subpart F of this part prior to the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2)(ii) of this section, the owner or operator must cease the receipt of all wastes following the displacement of hazardous wastes as specified in paragraph (e)(2)(ii) of this section until corrective action measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section have been implemented.

(7) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F on this part after the final receipt of hazardous wastes at a surface impoundment subject to the requirements in paragraph (e)(2) of this section, the owner or operator of the unit must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later. The Regional Administrator may require the owner or operator to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(8) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements in Subpart F of this part at a surface impoundment subject to the requirements in paragraph (e)(3) of this section, the owner or operator must conduct corrective action in accordance with the requirements in Subpart F of this part and begin closure of the unit no later than 30 days after the detection of the release in accordance with the approved closure plan and the deadlines in paragraphs (a) and (b) of this section.

(9) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(10) The Regional Administrator may require the owner or operator of a surface impoundment subject to the requirements in paragraph (e)(2) of this section to commence closure of the unit if the owner or operator fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(11) If the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(10) of this section he shall

(i) Notify the owner or operator in writing that substantial progress has not been made and he must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with

the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (d)(11) (iii) and (iv) of this section are not subject to administrative appeal.

10. In § 265.142, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), that might have economic value.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, 3019 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended (42 U.S.C. 6905, 6912, 6925, 6939, and 6794).

§ 270.42 [Amended]

12. In § 270.42, the list of permit modifications in Appendix I.D.1 is amended by adding the following:

* * * * *

Modifications	Class
D. Closure:	
1. Changes to the closure plan: * *	
(g) Extension of the closure period to allow a landfill or surface impoundment unit to receive non-hazardous wastes after final receipt of hazardous wastes under §§ 264.113(d) and (e)	2
* * * * *	

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June 6, 1988

Part V

Environmental Protection Agency

40 CFR Parts 232 and 233
Clean Water Section 404 Program Definition and Permit Exemptions; Section 404 State Program Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 232 and 233

[FRL-3214-1]

Clean Water Act Section 404 Program Definitions and Permit Exemptions; Section 404 State Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are hereby issuing final rules containing 404 program definitions and 404(f)(1) exemptions and the procedures and criteria used in approving, reviewing and withdrawing approval of State 404 programs. Part 232 contains definitions and exemptions related to both the Federal and State-run 404 program and Part 233 deals with State programs only. The revisions in these rules will provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Clean Water Act (the Act).

EFFECTIVE DATES: This final rule is effective on July 6, 1988. In accordance with 40 CFR 23.2, this regulation shall be considered issued for purposes of judicial review at 1:00 p.m., Eastern time on June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lori Williams, Office of Wetlands Protection (A–104F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–5043.

SUPPLEMENTARY INFORMATION: This final rule contains the 404 program definitions and 404(f)(1) permit exemptions in addition to the procedures and criteria used in approving, reviewing and withdrawing approval of 404 State programs. Part 232 basically recodifies the existing 404 program definitions and 404(f)(1) permit exemptions in a new, separate part of eliminate any confusion about their applicability. Part 232 applies to both the Federal and State programs. Part 233 revises the procedures and criteria used in approving, reviewing and withdrawing approval of 404 State programs. These final rules provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Act.

This rule was proposed on October 2, 1984 at 49 FR 39012. The notice invited public comments for a 60-day period ending December 3, 1984. On December 10, 1984 (49 FR 48064), the comment period was extended to January 2, 1985. Thirty-eight comments were received—15 State agencies, 10 environmental groups, 6 industry groups, 4 Federal agencies, and 3 others.

The comments covered the full range of views, ranging from those which indicated that more streamlining is required to those which indicated that the proposed regulations increased flexibility at the expense of environmental protection.

In addition to the more significant revisions described in the preamble, we have made minor editorial and content changes from the proposal. We have also renumbered the sections in Part 233 to close the large gaps in numbering in the proposal.

It is the agency's intent that 40 CFR Part 124 no longer applies to 404 State programs. We will be publishing technical, conforming regulations in the near future.

The following summarizes the major comments and EPA's response to them.

Response to Comments and Explanation of Changes

Part 232—404 Program Definitions, Exempt Activities Not Requiring 404 Permits

Section 232.2(b): In response to comment, we have revised the proposed definition of "application" for clarity.

Section 232.2 (e) and (f): The definition of "discharge of dredged material" and "discharge of fill material" were modified for consistency with the Corps regulations (33 CFR 323.2 (d) and (f)).

Section 232.2(j): We received comment that our definition of "general permit" is different from the Corps' definition (33 CFR 323.2(n)). The proposed definition was taken from the Act (404(e)(1)) and, therefore, has been retained in the final regulation.

Section 232.2(i): Under Section 404 of the Act, the Corps (and States approved by EPA) issue permits for discharges of dredged and fill material into waters of the U.S. Under Section 402, EPA (and States approved by EPA) issue permits for discharges of all other pollutants into waters of the U.S. In January 1986 the Corps and EPA entered into a Memorandum of Agreement (MOA) to resolve a longstanding difference over the appropriate Clean Water Act program to regulate certain discharges of solid wastes into waters of the U.S. The Corps issued its definition of "fill material" in 1977, which provided that only those solid wastes discharged with the primary purpose of replacing an aquatic area or of changing the bottom elevation of a waterbody are regulated under the Corps' 404 program. These discharges include discharges of pollutants intended to fill a regulated wetland to create fast land for development. The Corps' definition excludes pollutants discharged with the primary purpose to dispose of wastes which, under the Corps' definition, would be regulated under Section 402. Under EPA's definition of "fill material," all such solid waste discharges would be regulated under Section 404, regardless of the primary purpose of the discharger. The difference complicated the regulatory program for some solid wastes discharged into waters of the U.S.

The MOA provides an interim arrangement between the agencies for controlling these discharges. In the longer term EPA and Army agree that consideration given to the control of discharges of solid waste both in waters of the U.S. and upland should take into account the results of studies being implemented under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). The main focus of the interim arrangement is to ensure an effective enforcement program under Section 309 of the Act of controlling discharges of solid and semi-solid wastes into waters of the U.S. for the purpose of dispoal of waste. When warranted, EPA will normally initiate section 309 action to control such unauthorized discharges. If it becomes necessary to determine whether Section 402 or 404 applies to an ongoing or proposed discharge, the determination will be based upon criteria in the agreement, which provide, *inter alia*, for certain homogeneous wastes to be regulated under the Section 402 Program and certain heterogeneous wastes to be regulated under the Section 404 Program, subject to certain criteria. This agreement does not affect the regulatory requirements for materials discharged into waters of the U.S. for the primary purpose of replacing an aquatic area or of changing the bottom elevation of a water body. Discharges listed in the Corps definition of "discharge of fill material" (33 CFR 323.2(1)) remain subject to Section 404 even if they occur in association with discharges of waste meeting the criteria in the agreement for Section 402 discharges.

Unless extended by mutual agreement, the MOA will expire at such time as EPA has accomplished specified steps in its implementation of RCRA. In the meantime, these regulations simply repromulgate EPA's existing definition of fill material.

Section 232.2 (q) and (r): Several comments were directed toward the

definitions of "waters of the United States" and wetlands." The commentors suggested that these definitions exceed the original intent of Congress.

The legislative history of the Act, from both 1972 and 1977, emphasizes Congress' intent that the jurisdiction of the Act over waters of the United States reflect the maximum extent permissible under the Commerce Clause of the Constitution. The specific definition of wetlands used in these regulations was originally promulgated in 1977 (prior to the 1977 Amendments to the Act) and has been approved in numerous courts, most recently by the Supreme Court in *U.S.* v. *Riverside Bayview Homes Inc.* (106 S.Ct. 455 (Dec. 4, 1985)). The overall definition of waters of the United States has also been approved by the courts, both in its current articulation and in earlier versions. Therefore, we see no need to change these definitions to narrow their coverage.

Several questions have arisen about this application of this definition to isolated waters which are or could be used by migratory birds and endangered species. As the Agency explained in an opinion by the General Counsel dated September 12, 1985, if evidence reasonably indicates that isolated waters are or would be used by migratory birds or endangered species, they are covered by EPA's regulation. Of course, the clearest evidence would be evidence showing actual use in at least a portion of the waterbody. In adition, if a particular waterbody shares the characteristics of other waterbodies whose use by and value to migratory birds as well established, and those characteristics make it likely that the waterbody in question would also be used by migratory birds, it would also seem to fall clearly within the definition (unless, of course, there is other information that indicates the particular waterbody would not in fact be so used). Endangered species are, almost by definition, rare. Therefore, in the case of endangered species, if there is no evidence of actual use of the waterbody (or similar waters in the area) by the species in question, one could actually assume that the waterbody was not susceptible to use by such species, notwithstanding the particular characteristics of the waterbody. However, in each case a specific determination of jurisdiction would have to be made, and would turn on the particular facts.

For clarity and consistency, we are adding the following language from the preamble to the Corps' regulations published on November 13, 1986 (51 FR 41217). This language clarifies some cases that typically are or are not considered "waters of the United States."

"Waters of the United States" typically include the following waters:

- Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or
- Which are or would be used as habitat by other migratory birds which cross State lines; or
- Which are or would be used as habitat for endangered species; or
- Used to irrigate crops sold in interstate commerce.

For clarification it should be noted that we generally do not consider the following waters to be "waters of the United States." However, EPA reserves the right on a case-by-case basis to determine that a particular waterbody within these categories of waters is a water of the United States. Pursuant to agreements with EPA, the permitting authority also has the right to determine on a case-by-case basis if any of these waters are "waters of the United States."

Non-tidal drainage and irrigation ditches excavated on dry land.

- Artificially irrigated areas which would revert to upland if the irrigation ceased.
- Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

Section 232.3: The 1977 Clean Water Act provided for specific exemptions (404(f)(1)) from permitting requirements. EPA's 1980 Consolidated Permit Regulations promulgated regulations spelling out the scope of the exempted activities. The October 2, 1984, publication proposed several substantive revisions to the 404(f)(1) exemptions, as well as organizational changes. This rulemaking finalizes the organizational changes, but finalizes only one of the proposed substantive revisions. That revision substitutes "one year from discovery" for the previous "one year from formation" in § 232.2(d)(3)(i)(D), which exempts as minor drainage certain discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages. This rule also includes the revised irrigation ditch provision which was the subject of a separate rulemaking (40 CFR 233.35(a)(3), December 20, 1984). Additionally, we have made the note following § 232.3(b) more explicit to clarify that a conversion of wetlands to non-wetlands is (and has been) considered a "change in use." Apart from these changes, it appears, based on the comments received, that the regulated sector is familiar with the existing language and that no additional clarification or improvement is now needed.

One commenter suggested that the Best Management Practices (BMPs) for the exemption from permitting for construction or maintenance of farm roads, forest roads or temporary roads for moving mining equipment are complex and difficult to administer and should be left to negotiation between the State and EPA for inclusion in the Memorandum of Agreement (§ 233.13). These BMPs are the same BMPs that are required for exemption from Federal permitting requirements. These BMPs were promulgated in 1980 and have not been the subject of significant comment or complaint since then. A discharger under an approved State program should meet the same requirements as under the Federal program.

Part 233—State Section 404 Program Assumption Regulations

We received several comments expressing concern that the proposed regulations would weaken Federal responsibilities, such as those in the Fish and Wildlife Coordination Act, Endangered Species Act, and National Environmental Policy Act. When a State assumes the 404 permitting responsibility, these statutes usually no longer apply, since these statutes only apply to Federal actions. When a State assumes the program, the permit decision is a State action, not a Federal action. However, a Federal oversight role is clearly established by section 404(j) of the Act. Therefore, the altered Federal role after program approval is a function of the statutory scheme, not these regulations.

Section 233.1: Several comments were received on partial State programs, ranging from the view that partial programs should not be allowed to the

view that it is desirable to approve partial programs. The commentors identified partial programs in terms of geographic extent or scope of activities regulated. EPA interprets the Act as requiring State programs to have full geographic and activities jurisdiction (subject to the limitation in section 404(g)). While specific authorization for partial programs under section 402 was enacted in the Water Quality Act of 1987, no similar provision was added for section 404. Accordingly, partial 404 programs are not approvable. Because of the special status of Indians, a lack of State authority to regulate activities on Indian lands will not cause the State's program to be considered a partial program.

We encourage States to begin working with the Federal land-owning agencies (i.e., Forest Service, Bureau of Land Management, and National Park Service to name a few) early in the program development stage. This should eliminate or reduce any confusion that may develop, since subsequent to program approval, the State will assume 404 permitting responsibility in these lands.

In response to comments, we have clarified that States may have a program that is more stringent or extensive than what is required for an approvable program. Under State law, and not as part of its approved program, States may also regulate discharges into those waters over which the Corps retains jurisdiction. Those parts of the State's program that go beyond the scope of Federal requirements for an approvable program are not subject to Federal oversight or federally enforceable. Of course, while States may impose more stringent requirements they may not compensate for making one requirement more lenient than required under these regulations by making another requirement more stringent than required.

Section 233.3: One commentor requested that we limit confidentiality only to that information that does not relate to adverse effects on the aquatic environment. As these regulations conform to EPA's general regulations on confidentiality of information (40 CFR Part 2), we did not make the requested change.

Section 233.4: In the preamble to the proposed rulemaking, we specifically sought comment on the conflict of interest section. Several comments were received on this topic, the vast majority of which supported the need for a conflict of interest provision. However, several commentors did suggest that some flexibility should be added into this section.

The current language is derived from the requirements for an approvable NPDES program. However, State 404 programs should not be held to the same conflict of interest standards as State NPDES programs because of factual differences between the two programs. NPDES discharges are usually long term discharges, often from certain specific types of industrial or municipal dischargers. Discharges authorized by section 404 typically tend to be one time, of shorter duration, and by a wider range of dischargers than NPDES, ranging from private citizens to large corporations, from small fills for boat docks or erosion prevention to major development projects. Therefore, an absolute ban on anyone with a financial interest in a permit from serving on a board that approves permits is likely to be more difficult to comply with under the 404 program than under the NPDES program because under the NPDES criteria, so many people would be considered to be financially interested in 404 permits that the pool of potential 404 board members would be unreasonably small. In addition, because of the nature and size of the discharge, 404 dischargers will often have less at stake financially than 402 dischargers.

Therefore, we have simplified the conflict of interest section from what was proposed. The final rule does not prohibit a person with an interest in a 404 permit decision from generally participating on a board which makes decisions on permit issuance or denial. However, anyone with a direct personal or pecuniary interest in a particular permit decision *must* make such interest known and must *not* participate in that permit decision. This new language allows more latitude in who may serve on a board, but still provides that there not be a conflict of interest or appearance of conflict of interest in any particular permit decision. This language effectuates the basic intent of the NPDES criteria, by ensuring that board members are disinterested decisionmakers.

Section 233.10: In response to comment, we have clarified our original intent that copies of State statutes and regulations submitted as part of a State's submission include statutes and regulations concerning the State's applicable administrative procedures.

Section 233.11: Several comments addressed the need for additional information in the program description. These commentors were concerned that there may be insufficient information available to determine a program's adequacy. These regulations reflect EPA's view that a complete program description is essential for determining the adequacy of a State's program. A State's program must be at least as stringent and extensive as the Federal program. In response to these comments, we have specified certain information that must be included in the scope and structure of the State's program. The description of the scope and structure of the State's program must include a detailed description of the extent of the State's jurisdiction, scope of the activities regulated as well as the scope of permit exemptions (if any), anticipated coordination, and the environmental permit review criteria.

Section 233.11(h) clarifies the requirements for a description of the State's jurisdiction. As part of the program description, the State must describe separately the waters it will assume after program approval and the waters retained by the Corps. This should make it easier for the public to understand the split jurisdiction between the State and the Corps.

We do not concur with the comment that, in addition to a description of funding and manpower available for program administration, the program description should include formal assurance from the Governor that the level of funding is sufficient to provide for an effective program. However, we have reinstated the existing requirement that the State provide an estimate of the anticipated workload. This should provide the information needed to determine if the State has sufficient manpower to adequately administer a good program. If there is insufficient funding or manpower for an adequate program, this will become evident either in review of the program submission or in the annual review of an approved program.

Section 233.13: In response to comment, we have specified that, if more than one State agency has responsibility for program administration, all the involved State agencies must be parties to the Memorandum of Agreement (MOA) between the State and EPA's Regional Administrator. This requirement is in the existing regulations, but had been eliminated in the proposal. Restoring this requirement ensures that all State agencies responsible for program implementation are fully aware of their responsibilities.

One commenter suggested we use the MOA to establish procedures to withdraw a permit from State processing prior to any State action on the application. We do not agree with this suggestion. Except for one situation provided for in Section 404(j), only the

State may issue a permit for discharges in State regulated waters.

We do not agree with the comment that the proposal fails to ensure adequate coordination of EPA and State enforcement activities, as it requires the MOA to address State and EPA roles and coordination on compliance monitoring and enforcement activities. The purpose of formalizing this aspect of the State's program in an MOA is to assure adequate coordination on compliance monitoring and enforcement activities. As part of the State's program submission, this MOA is subject to public comment. If there is any question on the adequacy of a particular program, it should become apparent during Federal agency and public review.

Many commentors expressed concern about the provision for waiver of Federal review. Many were concerned that the waiver provision would be abused and that environmental protection of the resources would suffer. Several commentors were concerned that inappropriate categories would be waived. We feel that use of this waiver provision will reduce workload and paperwork and focus Federal resources where they are most needed and appropriate. Specific waivers will be available for public review and comment prior to program approval.

This final regulation eliminates a separate section on sharing of information (former 40 CFR 233.29), since the MOA with the Regional Administrator is already required to address State submittal of information to EPA and EPA access to State records, reports and files relevant to the program. We feel this adequately serves the purpose of 40 CFR 233.29.

Section 233.14: In response to comments, we have, as in the previous section, now specified that all State agencies responsible for program administration must be parties to the Memorandum of Agreement between the State and the Secretary.

EPA has also added a note encouraging States to use this MOA to establish procedures for joint processing of Federal and State permits. Several comments requested that joint processing be made mandatory. While we agree that joint permit processing may be very beneficial to the regulated public, we cannot make this a condition to an approvable program. However, we will continue to strongly encourage States to look into the possibility of joint processing.

In response to comment, we have retained the existing requirement that, if States plan to assume existing Corps general permits, this MOA must include procedures for transferring the support files for these general permits from the Corps to the State. This will facilitate State oversight of such general permits.

One commentor was concerned that the regulations eliminated a provision for procedures to ensure the State did not approve permits on the basis of incomplete applications transferred by the Corps. This provision was deleted as unnecessary. Once a State assumes the program, it is responsible for fulfilling all permitting requirements, including public notice. The regulation requires that sufficient information be available to meet the information requirements for public notice and for assessing the impacts of the discharge. Therefore, the State must either deny incomplete applications or take steps to get the complete information.

Section 233.15: The Act establishes a 120-day time clock for EPA decision on a State's request for program approval. The final regulation clarifies that this statutorily mandated time period starts on EPA's receipt of a complete program submission. If the State significantly changes its submission during the review period, the time clocks starts over upon EPA's receipt of the revised submission. The review period may be extended upon agreement of the State and EPA.

We cannot agree to the suggestion that the regulation lengthen the public comment period and notice of public hearing for decision on a State program. The Act is very specific on the timeframe for this decision. If a decision is not made within the 120 days timeframe, the State's program is automatically approved. EPA cannot make a decision within the mandated 120 days of receipt if these time frames are extended. Of course, as noted earlier, a State may agree to extend the time period for program approval; in that event, additional time could be provided for public participation within that State.

EPA will make its decision to approve or disapprove the State's program within the statutorily mandated timeframe. However, if approved, the State's program will not be effective until the notice of approval is published in the **Federal Register.**

Many comments were received on the delegation of authority to the Regional Administrator to approve/disapprove State programs. Most commentors were concerned about national consistency among the States' programs. The Delegation Manual, which formalizes this delegation of authority, requires that the Regional Administrator approving a State program must obtain the concurrence of two EPA headquarters offices—Office of Water and Office of General Counsel. This should ensure the desired national consistency.

EPA has added language to make it explicit that programs shall be approved or disapproved based on whether the State's program fulfills the requirements of this regulation and the Act.

This rule also clarifies that EPA will use existing State, Corps, FWS and NMFS mailing lists as the basis for mailing notices about the State's request for program approval.

A summary of significant comments received and response to these comments will be prepared by the Regional Administrator prior to decision on a State's program. Since there are already specific requirements for public notice and public hearing, there is no need for (and we have deleted the requirement for) the responsiveness summary itself to describe the public participation activities or matters presented to the public.

Section 233.16: This rule clarifies that it is the State's obligation to keep the Regional Administrator informed of any proposed or actual changes to the State's approved program.

We rejected the suggestion that if a State must amend or enact new legislation to comply with any modification in Federal regulation, the change must be promulgated within one year of the modification. A two year time period was chosen because many State legislatures do not meet every year. A one-year deadline for these States would be impossible to meet.

We also do not agree with the suggestion that minor revisions to an approved State program should undergo as much review and/or coordination as substantial program revisions. As the name (minor revision) implies, these program changes will not have a significant impact on the program or the environment. Of course, if there is question in EPA's mind about whether a proposed revision is minor or substantial, the revision shall be considered substantial and undergo full review specified for an original application.

Section 233.21: Several commentors questioned the legality of State issued general permits. Sections 404 (g), (h) and (j) of the Act authorize this type of State permit.

Many commenters were received on general permits. States have the option of assuming administration of Corps' existing general permits. If they choose to exercise this option, the State is responsible for ensuring discharges comply with any existing permit conditions and any reporting, monitoring

or predischarge requirements. The Corps shall provide the State copies of the support files for any general permits assumed by the State.

One commentor questioned the advisability of EPA approving transfer of some existing Corps general permits to a State. EPA cannot ignore Sections 404 (g)(1) and (h)(5) which provide for a State to assume existing general permits. If a State with an approved State program proposes renewal of any permits that have not worked well, EPA will comment/object to these proposed permits, as appropriate.

Several commentors expressed satisfaction with the Corps' existing general permits. These commentors expressed concern about the States not assuming such existing general permits and about their opportunity for participation in such a decision. It is the State's prerogative not to assume any of the existing general permits. However, if, at the time of initial program assumption, the State does not intend to assume existing Corps general permits, this will be noted within the program submission and will be subject to public comment and public hearing as part of the approval process. Failure to assume existing Corps general permits does not constitute a partial program, since the State will process individual permit applications for those discharges previously authorized by general permit. Any Corps general permit not assumed by the State will remain in effect, for purposes of the Clean Water Act, until its normal expiration date, unless revoked or modified sooner by the Corps under its procedures. If subsequent to program approval the State decides to revoke or modify a general permit it has assumed, the normal revocation procedures will apply.

Many comments were received on predischarge notification requirements for general permits. Some commenters agreed that notification should be determined on a permit-by-permit basis; others felt that such notification should be required on all general permits. This rule adopts the proposal that notification requirements be established on a permit-by-permit basis. For instance, prenotification or reporting may be required in areas where there is a likelihood for individual or cumulative adverse effect on the environment because of discharges conducted under a general permit. All draft general permits will be reviewed by EPA and the other Federal review agencies as well as the general public. If during the review of a particular draft general permit, EPA determines that notification provisions are appropriate to ensure compliance with the 404(b)(1) Guidelines, we will so state in the Federal comments to the State. This ensures that notification requirements will be included where in fact appropriate.

The Department of the Interior requested that we require a 30-day prenotification requirement on any discharge pursuant to a general permit that may impact units of the National Park System, National Wildlife Refuge System, National Fish Hatchery, Reclamation project lands, Indian Reservation and Trust lands, and public lands under the jurisdiction of the Bureau of Land Management. We do not feel at this time that there is a basis for automatically requiring such prenotification. If there is a need for prenotification for a particular permit, it may be specified through the Federal comment on the draft permits and will therefore be included in the issued general permit, in accordance with § 233.50.

Several commentors requested that we retain limits on any single operation conducted under a general permit. We agree that this is appropriate. Subsection 233.21(c) (1) and (2) require each general permit to have limits on the size and location and type of fill for any single operation, sufficient to ensure minimal adverse environmental effects when performed separately and minimal cumulative adverse effects, as required by Section 404(e).

One commentor was concerned that we had deleted all the standard permit conditions (§ 233.23) for general permits. Section 233.21(c) (1) and (2) recapture the main items of § 233.23(c)(1) such as specific description of activities authorized including limitations for any single operation and precise description of geographic area to which the general permit applies including any limitations where operations may be conducted. The only part of § 233.23 (Permit conditions) that does not apply for general permits is § 233.23(c)(1), which is not applicable because it refers to items that are pertinent only to individual permits (e.g. name and address of permittee).

Several commentors suggested that the Director should show cause for invoking discretionary authority to require an individual permit. This regulation specifies that discretionary authority may be based on concerns for the aquatic environment including compliance with these regulations and the 404(b)(1) Guidelines. Section 510 of the Act preserves the Director's right to impose more stringent requirements, i.e., to invoke discretionary authority for other reasons under State law. Once the Director notifies a discharger that he will exercise discretionary authority to require an individual permit, the activity is no longer authorized under the general permit. If the activity continues after notification, the discharger is subject to enforcement action.

Section 233.22: In response to comments requesting more specific permit conditions, we have clarified that emergency permits, to the extent possible, should incorporate all applicable permit conditions (§ 233.23), including restoration of the site. We have also retained the provision that emergency permits shall be limited to duration of time needed to complete the authorized emergency action.

We do not agree with the comment that the Regional Administrator must show cause to terminate an emergency permit. The Regional Administrator never terminates permits. The Director may terminate an emergency permit if he determines such an action is necessary to protect human health or the environment.

Section 233.23: Each permit shall have conditions which assure compliance with all applicable statutory and regulatory requirements. If any of these requirements change, the permit conditions must be modified as needed to assure compliance with the revised requirements.

In response to comments, we have added a requirement that the permit contain conditions which assure that the discharge will be conducted in a manner which minimizes adverse impacts on the physical, chemical and biological integrity of the waters of the United States. This is a reiteration of the requirements in the 404(b)(1) Guidelines (§ 230.10(a)). Restoration and mitigation may be considered as mechanisms for reducing adverse impacts in appropriate circumstances.

One commentor expressed concern about the proposed deletion of the permit condition referring to BMP's approved by a Statewide 208(b)(4) agency. If a State has an approved 208 program, these requirements would be covered by § 233.23(a), which requires the Director to establish conditions which assure compliance with all applicable statutory and regulatory requirements, so there is no need for a separate reference to the BMP's.

In response to comment, we have retained the requirement for a permit condition explaining that a permit violation is a violation of the Act as well as of State statutes or regulations, as this reminder may enhance compliance.

We also have expanded § 233.23(c)(6) to require the permittee to provide the Director information to determine whether cause exists for permit revocation or termination as well as modification.

We concur with the comment that the Director or his authorized representative should have proper identification before they can enter the premises or inspect any records. We believe this is reasonable and have added this to the final regulation.

One commentor requested that the regulation require more specific identification of the disposal site. We feel that between the existing requirements for permit application, public notice and permit conditions, the disposal site will be adequately identified. However, as a safeguard, we have added that the description of the project on the issued permit must include a description of the purpose of the discharge.

Section 233.24 (Effect of a permit). This section has been deleted as unnecessary. The statements in this section were simply facts which do not need to be included in regulations to be in effect.

Section 233.30: Many comments were received on the State application form. A number expressed concern that there would not be enough information available to evaluate the potential impacts of the discharge activity. We have accordingly revised this section to generally reflect the same application information requirements contained in the Corps' current regulations (33 CFR Part 325). Under this approach, State assumption of the program should not result in any change in either the kind of information available for review or the burden upon the applicant to supply the information. In addition, a requirement for certification that all information contained in the application is true and accurate has been added to § 233.30(b)(4).

Several commentors requested that we include the publicity and pre-application consultation requirements in the regulations. As noted in the preamble to the proposed rule, we agree that publicity and preapplication consultation are beneficial; however, they are not required for an approvable program. We will continue to encourage States to include them in their programs.

Section 233.31: In response to comment, this section has been simplified from proposed § 233.61; it now simply requires coordination with other States whose waters may be impacted by the discharge and coordination with Federal and Federal-State water related planning and review processes, without attempting to list such processes. These planning and review processes may include, but are not limited to, coastal zone management plans, 208 areawide plans, Continuing Planning Process (§ 303(e)), and advanced identification (40 CFR 230.80). The coordination procedures will likely vary from State to State. The State's anticipated coordination shall be included in the program description. EPA will carefully scrutinize the anticipated coordination to assure it is adequate.

Comments were received suggesting that we require States to incorporate into their programs information developed by FWS' National Wetlands Inventory (NWI). While we agree that this information would be very useful in administering a State's program and encourage States to take advantage of it, it should not be mandatory for States to incorporate this information in their programs. The NWI was not developed for regulatory purposes. Additionally, the FWS did not use EPA's definition of wetlands in the NWI; therefore, the "NWI wetlands" and the "404 wetlands" may not always coincide.

Several commentors were concerned that the lack of specificity of coordination requirements would weaken State programs. While these regulations do not list specific entities (agencies) that must be coordinated with, we will carefully evaluate the coordination aspects of each State's program prior to decision on approval/disapproval. While we anticipate that the State's permitting agency will coordinate with State fish and game agencies, this is not required by the Fish and Wildlife Coordination Act (FWCA). Once a State assumes the 404 permitting responsibility, that Act no longer applies in the permitting process since permitting becomes a State (not Federal) action. The FWCA will still require coordination with FWS whenever a State-issued permit is issued to a Federal agency or facility. However, it must also be remembered that States must assure compliance with the 404(b)(1) Guidelines which provide for protection of fish and wildlife resources. EPA is responsible for soliciting comments from the Corps, FWS, and NMFS, and commenting to the States.

Section 233.32: Many comments were received on proposed § 233.62 (public notice), some in support of and others opposed to shortening the public comment period. The final rule provides for a public comment period at least comparable to that under the Federal program. The existing Corps' regulations (33 CFR Part 325.3) specify a public notice period of "A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing." Today's rules specify "* * * a reasonable period of time, normally 30 days," and allows approving a program that allows less than a 30 day public comment period if the Regional Administrator determines that "sufficient public notice is provided for." The Regional Administrator must carefully consider all aspects of a State's program in regard to public involvement, including how extensive the State's mailing list is, whether notice is published in area newspapers, what the actual length of the comment period is, whether the shorter time period is for all projects or just certain categories of discharge. We anticipate that comment periods would not be shorter than 20 days, and we will carefully scrutinize any that are less than 30 days.

Several comments on the content of the public notices were also received. These comments objected to the lack of specificity of the information required to be included in the public notice. In response to these comments, the information requirements for public notice have been changed. These regulations incorporate much of the language in the Corps' existing regulations (33 CFR 325.3.) Therefore, there should be no net change in the information available to evaluate a proposed discharge from the existing Federal program to an approved State program.

We have modified the requirement on who must automatically be mailed notice of a permit application. While the notification may vary depending on the type and location of the project, certain notifications, such as the local governmental agency, should be routine. Other notifications that may be useful include historic preservation and coastal zone management offices.

In response to comments, we have also clarified that anyone may request to be put on a mailing list to receive copies of public notices.

One commentor suggested that we make it clear that information obtained in response to the public notice will be taken into consideration as part of the environmental assessment to determine if an environmental impact statement (EIS) should be prepared. We have not included this language since, once a State assumes the permitting responsibility, the National Environmental Policy Act (NEPA) no longer applies. NEPA applies to Federal actions. When a State assumes the program, the permit decision is a State action, not a Federal action. While many States have a State law equivalent to

NEPA, it is not the function of these regulations to address EIS requirements under such State laws.

Section 233.33: This provision has been rewritten to clarify how the transcript of public hearings will be made available to the public.

Section 233.34: Several commentors expressed concern that requiring the State to prepare a written determination for each permit is excessive paperwork. We do not concur with this view; we feel that a written determination is needed for each permit decision to ensure proper evaluation and to facilitate subsequent review. Therefore, these regulations contain the requirement that the Director must prepare a written determination for each permit application outlining the decision and the rationale for the decision. Of course, in accordance with § 230.6 of the Guidelines, the level of detail may be tailored to the circumstances.

Any State environmental review criteria must be at least equivalent to the 404(b)(1) Guidelines for an approvable program. The 404(b)(1) Guidelines were the subject of an Advanced Notice of Proposed Rulemaking (ANPRM) (47 FR 36798) published August 23, 1982, to solicit comments and examples of alleged problems with these Guidelines. At this time, EPA has not found sufficient basis for revising the Guidelines. Therefore, States must assure compliance with the current Guidelines, as required in section 404(h)(1)(A)(i).

We do not concur with the suggestion that we establish specific deadlines for State decision on an application. The only deadlines in this regulation are those which relate to the statutorily mandated timeframes for Federal review of an application.

Section 233.35: The final regulation simply requires signature by both the applicant and the Director, and does not specify the sequence in which they sign. However, EPA anticipates that, if the project is controversial or if the permit conditions are restrictive, the Director may wish to require the applicant to sign the permit to indicate acceptance of its terms prior to the Director's signature.

Section 233.36: These regulations simplify the procedures for modification, suspension and revocation of permits. State procedures to handle these situations shall be approved if there is opportunity for public comment, coordination with the Federal review agencies, and opportunity for public hearing. Language has been added (§ 233.36(b)) specifying that permit modification must be in compliance with § 233.20 (Prohibitions).

The 402 State program regulations handle modifications differently than these 404 State Program Regulations. 40 CFR 122.62 provides an exclusive list of grounds which justify the modification of a 402 State permit. Section 233.36 does not. This difference between the two programs is appropriate for the following reasons. First, the 402 program has a long history of litigation concerning reopener and the five year maximum permit term; the 404 program does not. Second, the 402 program generally regulates continuous discharges; consequently, there is great concern with balancing the permittee's need for certainty and continuity against the program's need to impose more stringent standards. The 404 program, however, tends to regulate short-term discharges, and thus the permittee's need for continuity is much less than it is in the 402 program. Consequently, the 404 programs may facilitate permit modification by States where the 402 program can not.

One commenter expressed concern about use of abbreviated review procedures for modification of permits for minor modification of project plans that do not "significantly" change the character, scope and/or purpose of the project or result in significant change in environmental impact. The commenter was concerned that the use of the word "significant" was too vague and allowed a procedural loophole to avoid public and agency review. The key word in this sentence is "*minor*" modification. Things that will be evaluated in making the decision on whether the project modification is minor are whether there is any change in project purpose, or any change that increases the amount of dredged or fill material, or any change that enlarges the scope of the project. We anticipate that, if there is any question about the need for public and agency review of a project modification, the State will initiate full review procedures.

Section 233.37: In the preamble to the proposed regulation (49 FR 39015) we noted that the requirements concerning who must sign may not necessarily be appropriate for the 404 program. The language in the proposal was the result of a settlement agreement (*NRDC* v. *EPA*, and consolidated cases [No. 80–1607 (D.C. Circuit)]). All the comments received on this subject agreed that the proposed signature requirements are appropriate for NPDES discharges, but are too inflexible and are not really appropriate for 404 discharges, since most 404 discharges are a one time discharge and on a relatively small scale. We concur with these comments. Therefore, this final regulation incorporates the signatory requirements contained in the Corps' current regulations (33 CFR 325.1). Thus, there will be no change from the existing Section 404 requirements when a State assumes the program.

The certification that all statements contained in the application or other documents are true and accurate and that there are penalties for submitting false information has been removed from this section to § 233.30 (Application for a permit). Section 233.41(a)(3)(iii) also addresses this certification in that it provides for authority to seek criminal fines against any person who knowingly makes false statements in any application, record, report, plan or other document filed or required to be maintained under the Act, these regulations or the approved State program.

Section 233.38: One commentor requested that if a State permit application has been submitted in a timely manner, an existing Federal permit should be continued beyond its expiration date until a State permit is issued. The provision in the Administrative Procedures Act for continuing Federal permits does not apply in this setting. Therefore, such continuation may be accomplished only through State law. These regulations allow but do not require the State to have such authority. We cannot mandate that this be a requirement for an approvable program.

Section 233.40: The compliance evaluation provision has been rewritten from the existing regulation to simplify it and to provide additional flexibility. We continue to believe that compliance evaluation is an important component of an effective Section 404 program. Therefore, the previous provisions (40 CFR 233.27 (1984)) should be considered as guidance in interpreting the new streamlined language.

We do not agree with the comment that State agency authority to "* * * enter any site or premises subject to regulation" is excessive or may violate civil rights. This provision does not override applicable warrant requirements or other safeguards. Of course, if State requirements so constrain the State's right of entry that the State lacks meaningful authority to inspect, the program would not be approvable. (We are not presently aware of any States where there would be this problem, however.)

Section 233.41: Many comments were received on the proposed alternative requirements for authority to assess civil and criminal fines of a specific amount. The comments ranged from approval of

the alternative concept to concern about weakening State enforcement capability. This regulation promulgates the proposed subsection allowing approval of a State program without the specific monetary penalty authority if it has a demonstrably effective alternative enforcement mechanism.

We are interested in ensuring that State programs have strong enforcement capability, since it is not desirable for EPA to constantly overfile in State enforcement actions. Because the Act does not specify that a State must have penalties equal to the Federal penalties or at any other particular level for an approvable program, EPA has substantial discretion in deciding what is sufficient State enforcement authority. These regulations establish monetary penalties for which the State must have the authority to assess; they need not be assessed by the State for every violation. These amounts are approximately half those EPA is authorized to assess.

If a State cannot fulfill these monetary penalty requirements, it can still have an approved program if EPA is satisfied that it has "an alternate, demonstrably effective method of ensuring compliance." However, even under the alternative enforcement program provision, States must still have the authority to assess both civil and criminal penalties, although the amounts may not equal those required by § 233.41(a)(i)–(iii).

Before approving any alternate enforcement mechanism, the Regional Administrator (RA) will carefully evaluate the State's proposed alternative enforcement mechanism to ascertain the effectiveness of the proposed alternative. The State's program must have a clear history of demonstrated effective deterrence, while also having direct punitive value. Programs will have to be in effect for at least one year prior to formal application for program approval in order to have a sufficient track record for evaluating effectiveness.

An effective, strong restoration program is the type of enforcement program that would be given serious consideration as an alternative under this provision. Being of a solid nature, 404 discharges tend to stay where originally placed, making restoration of illegally filled areas more feasible for 404 discharges as compared to 402 discharges. Most 404 discharges are a one time discharge, of relatively short duration, and on a relatively small scale. This lends more credence to restoration working as an alternative enforcement mechanism which can serve to protect the environment, deter future violations, and penalize the violator.

A key aspect that the RA must consider in determining effectiveness is whether the alternative program has an equivalent deterrence effect as would assessment of monetary penalties. The alternative approach must be strong enough to cause a violator to cease any and all illegal activities. It must also deter others from violating the State's permit program. How effective the alternative mechanism will be in preventing and restoring any environmental damage will also be considered by the RA in making a decision on approval/denial of a State's alternative enforcement program.

The enforcement authority which a State must have in order for a Section 404 program to be approved is essentially the same enforcement authority it must have to administer an NPDES program under the Act. If a State lacks authority to recover penalties of the levels required under § 233.41(a)(3)(i)–(iii), EPA will review a State's authority to assess penalties in light of the State's ability to provide other incentives to compliance and deterrence to noncompliance. EPA intends that penalties for violations of Section 404 programs will provide general and specific deterrence. Penalties assessed in State administered programs should persuade the violator to take precautions against falling into noncompliance again, deter violations by others, and restore economic equity to regulated parties who have complied with Section 404 requirements. Penalties assessed in a State program should, at a minimum, recapture the economic benefit that a violator has wrongfully obtained. In support of its application for program approval, a State may provide information regarding its authority to obtain money judgments from Section 404 violators under equitable theories such as restitution and unjust enrichment.

Any proposed alternative enforcement mechanism will be available for public comment as part of the State's program submission. We are concerned about national consistency in administration and effectiveness of State programs. Therefore, we must stress that approval of an alternate enforcement mechanism will not be undertaken lightly. States should continue to try to meet the existing monetary penalty requirements.

In these regulations we have added a reporting requirement for States using the alternative enforcement authority. Under final § 233.41(d) the State must keep the Regional Administrator informed of all enforcement actions carried out under the alternative provision. The manner of reporting will be established as part of the State's submission in the Memorandum of Agreement with the Regional Administrator. This reporting requirement will enable EPA to closely monitor the effectiveness of the State's enforcement program and to determine any need for EPA overfiling in State enforcement cases and/or action under Section 309.

In response to comment, we have retained the requirement that the burden of proof for State enforcement cases shall be no greater than the burden of proof required of EPA.

One commentor suggested that any intervention in a State enforcement action must include some showing of justification. This regulation adopts the proposal which allows intervention "* * * by any citizen having an interest which is or may be adversely affected." We feel this adequately answers the suggestion.

One commentor requested that EPA prescribe procedures for any affected person to initiate legal action in State or Federal court against the Director, the permittee, or anyone operating in noncompliance with a State program. This would be comparable to the citizen suit provision in Section 505 of the Act. While such a provision might strengthen a State program, there is no such statutory requirement for an approvable program. However, we do anticipate that many States will have some form of citizen suit provisions.

Subpart F—Oversight Policy

Many Federal environmental programs were designed by Congress to be administered at the State level wherever possible. EPA's policy has been to transfer the administration of national programs to State governments to the fullest extent possible, consistent with statutory intent and good management practice. The clear intent of this design is to use the strengths of Federal and State governments in a partnership to protect public health and the nation's air, water, and land. State governments are expected to assume primary responsibility, while EPA is to provide consistent environmental leadership at the national level, develop general program frameworks, establish standards as required by the legislation, assist States in preparing to assume responsibility for program operation, provide technical support to States in maintaining high quality programs, and ensure national compliance with environmental quality standards.

The relationship between EPA and the States under assumption of the Section 404 Program is intended to be a partnership. Both EPA and the States have continuing roles and responsibilities under assumed State 404 programs. EPA remains responsible to the President, the Congress and the public for progress toward meeting national environmental goals and for ensuring that the Clean Water Act is adequately enforced. Thus, EPA's policy to transfer management responsibilities for environmental programs to State governments carriers with it a corresponding EPA responsibility to assure the objectives of the Federal law are achieved.

Evaluation of approved State 404 programs will generally focus on overall program performance and identifying patterns of problems. However, there will be some cases where EPA (and other Federal agency) participation in an individual State permit decision will be appropriate. Section 404(j) specifically provides for Federal comment on individual permit applications.

However, based on our general policy and our specific experience with Michigan's Section 404 program, the provision for waiver of Federal review (§ 404(k)) will be exercised to focus permit-specific oversight primarily on proposed discharges with potentially serious adverse environmental impacts. Review of Michigan's assumed program clearly illustrates that Federal review was waived in the vast majority of cases. In 1985, approximately 1% of the permit applications received Federal review; in 1986, approximately 1.5%.

We expect to issue guidance on Federal oversight of approved State programs under these regulations. This will include guidance on identifying and describing categories of activities eligible and appropriate for waiver of Federal review, emphasizing reasonable waiver initially, followed by increasing waiver over time based on experience with the State 404 Program. Thus, as experience demonstrates that a State is effectively administering its approved program, so as to comply with all national requirements, it is expected that additional waivers will be developed, replacing more individual permit review with periodic programmatic review. This periodic review will usually be conducted on an annual basis, but may be more frequent, as necessary or appropriate. EPA intends that other Federal agencies with responsibility under Section 404 will have an opportunity to participate in State program review activities and in the determination of what changes to such review would be appropriate.

Section 233.50: Several commentors expressed concern that too much time is allowed for Federal review of State permit applications. The final regulations retain the proposed time frames because they are based on Section 404(j) of the Act. However, the regulations do allow for the times to be shortened by mutual agreement of the Federal agencies and the State.

Several commentors questioned why EPA receives the public notice from the State and distributes the notice to the Federal agencies. The Act establishes EPA as the Federal focus of contact with the State. However, if the State, with the goal of streamlining, wants to provide copies of the public notice directly to all the Federal agencies, this can be accommodated within the Memorandum of Agreement with the Regional Administrator (§ 233.13). In either case, the comments from the Federal review agencies will be forwarded to EPA to consolidate the Federal comment to the State.

In addition to the public notice and draft general permit, the Regional Administrator shall forward to the Corps, FWS, and NMFS any other information pertinent to making an informed comment that the States makes available to him.

This regulation eliminates the requirement that States prepare draft individual permits. Draft general permits must be prepared (§ 404(j) refers to a copy of each proposed general permit) but there is no comparable statutory requirement for draft individual permits. Moreover, draft permits are not prepared as part of the current Federal program. Public review of individual permit applications is currently based on the public notice; public review subsequent to State assumption will also be based on public notice. Therefore, there will be no substantial change from existing procedures.

One commentor questioned why the public notice was circulated to EPA for Federal review instead of the permit application (§ 404(j)). The public notice usually contains all the pertinent information in the permit application (§ 233.32(d)). Under the Corps administered program, public and Federal review is normally based on the public notice; therefore, there will be no significant change from current practice. In addition, under either the Federal and State programs, EPA can request a copy of a particular application if it has a need for it.

In response to comment, we have reinstated the provision that if the Regional Administrator notified the Director within 30 days of receipt of the public notice that there is no comment, he may reserve the right to object within 90 days of receipt of the notice based on new information brought out by the public during the comment period or at a hearing.

Contrary to several comments received, the regulation already provides that the State shall provide a copy of every issued permit to the Regional Administrator (§ 233.50(a)(4)). These issued permits will be reviewed for compliance with the requirements for an approvable program, as part of EPA's overall oversight.

One commentor suggested that our provision for the Regional Administrator to consolidate comments for the Federal agencies conflicted with Section 404(h)(1)(H). However, Section 404(j) specifically assigns this coordination/consolidation role to EPA's Regional Administrator. This section clearly establishes EPA's Regional Administrator as the Federal focus for approved State programs. After "full consideration" of the comments of the Federal review agencies, EPA will prepare and transmit the Federal comment on a permit application to the State. If appropriate and/or useful, EPA may transmit copies of the other Federal agencies' comment to the State as part of the official Federal comment. Those agencies are, of course, also free to furnish information copies of their comments to the State at the same time they submit them to EPA.

Section 233.51: This section received many comments, which range from the view that Federal review has been waived far too much to one that Federal review has not been waived for enough categories of discharge. Other than the few categories never eligible for waiver, waivers will be developed on a State-by-State basis. Each State has unique resources that must be considered in developing categories or discharge eligible for waiver. These categories will be developed in consultation with the Federal review agencies and will be open to public comment. We anticipate that use of this waiver mechanism will reduce unnecessary paperwork and direct the Federal presence to where it is most needed and appropriate.

The proposed rule specified that general permits are not eligible for waiver of Federal review. The proposal intended that *draft* general permits are not eligible for waiver of review. This has been clarified in the final rule.

In response to comment, we have reinstated the provision that discharges into National and historical monuments

are not eligible for waiver of Federal review, in light of the special Federal interest in them.

We anticipate that existing Corps nationwide permits will be used as a basis for developing categories to discharge eligible for waiver of Federal review. Previous Federal agencies' comments (or no comment) can also be used in determining activities eligible for waiver of Federal review. Where EPA has used the advanced identification procedure with the Corps or the State under 40 CFR 230.80, or on its own initiative under Section 404(c) (40 CFR Part 231), the results of that process will be used to determine those areas and categories of discharge that should be, and/or those that should not be, considered for waiver of Federal review.

Categories of activities eligible for waiver of Federal review in a particular State will be developed after consultation with the Corps, FWS, and NMFS. These categories will be described in the State's submission for program approval and therefore will be subject to public comment. Activities for which Federal review is waived are also subject to annual review. If, at any time, any of these categories of activities are deemed inappropriate for continued waiver, they can (and will) be withdrawn from the waiver provision and become subject to individual review.

Section 233.52: In response to comments, we have added a requirement that the State's draft annual report to be made available for public inspection.

The annual report is a mandatory, not a discretionary, requirement for an approved program. In response to comment, we have added to the information that shall be included in the annual report the number of suspected unauthorized activities reported to the State and the nature of the State's action on these reported activities; added that the State shall report the number of violations identified as well as the number and nature of enforcement actions taken; and the number of permit applications received but not yet processed.

Contrary to comment on the annual reporting requirements, the regulation does require the Director to respond, in the final report, to the Regional Administrator's comments and questions about the draft report.

Section 233.53: One commentor suggested that program withdrawal should be initiated only where a State's program, on the whole, has repeatedly failed to comply with the requirements for an approvable program. This commentor suggested that continued problems with any one of the criteria specified in § 233.53(b) (2) and (3) is not sufficient grounds for program withdrawal. We cannot concur with this suggestion. While we do agree that program withdrawal will not be taken lightly and that program approval will not be withdrawn for minor reasons, continued non-performance of any of the criteria specified can be grounds for initiating program withdrawal. Each of the criteria listed is a vital part of an approved program and continued non-performance of any of these would result in a program that no longer fulfills the requirements for an approved program.

These regulations provide that the Administrator shall respond in writing to any petition to commence withdrawal proceedings. One commentor suggested that this exceeded the public involvement requirements. We believe that such written response is nonetheless good policy and publish the rule as proposed.

Executive Order 12291

Since these rules are revisions which provide regulatory relief by, for the most part, increasing flexibility in State program design and administration, we have determined that they are not a major rule requiring a Regulatory Impact Analysis under Executive Order 12291. This rule has been reviewed by the Office of Management and Budget in accordance with the requirements of Executive Order 12291.

Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Since this revision to 40 CFR Part 233 will reduce paperwork, reporting requirements and application information requirements, this final rule will be beneficial to small entities. Thus, no Regulatory Flexibility Analysis is needed.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers:

2090–011.
2090–012.
2090–013.
2090–015.

List of Subjects in 40 CFR Parts 232 and 233

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water pollution control, Indian lands, Intergovernmental relations, Water supply, Waterways, Navigation, Penalties, Wetlands.

Dated: May 27, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, 40 CFR Part 232 is amended as set forth below.

1. Part 232 is added to read as follows:

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

Sec.
232.1 Purpose and scope of this part.
232.2 Definitions.
232.3 Activities not requiring permits.

Authority: 33 U.S.C. 1344.

§ 232.1 Purpose and scope of this part.

Part 232 contains definitions applicable to the Section 404 program for discharges of dredged or fill material. These definitions apply to both the Federally operated program and State administered programs after program approval. This part also describes those activities which are exempted from regulation. Regulations prescribing the substantive environmental criteria for issuance of Section 404 permits appear at 40 CFR Part 230. Regulations establishing procedures to be followed by the EPA in denying or restricting a disposal site appear at 40 CFR Part 231. Regulations containing the procedures and policies used by the Corps in administering the 404 program appear at 33 CFR Parts 320–330. Regulations specifying the procedures EPA will follow, and the criteria EPA will apply in approving, monitoring, and withdrawing approval of Section 404 State programs appear at 40 CFR Part 233.

§ 232.2 Definitions.

(a) *Administrator* means the Administrator of the Environmental Protection Agency or an authorized representative.

(b) *Application* means a form for applying for a permit to discharge dredged or fill material into waters of the United States.

(c) *Approved program* means a State program which has been approved by the Regional Administrator under Part 233 of this chapter or which is deemed

approved under Section 404(h)(3), 33 U.S.C. 1344(h)(3).

(d) *Best management practices* (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States from discharges of dredged or fill material. BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with the Section 404(b)(1) Guidelines (40 CFR Part 230), effluent limitations or prohibitions under Section 307(a), and applicable water quality standards.

(e) *Discharge of dredged material* means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal site. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Act even though the extraction and deposit of such material may require a permit from the Corps or the State Section 404 program. The term does not include *de minimus*, incidental soil movement occurring during normal dredging operations.

(f) *Discharge of fill material* means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses, causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

(g) *Dredged material* means material that is excavated or dredged from waters of the United States.

(h) *Effluent* means dredged material or fill material, including return flow from confined sites.

(i) *Fill material* means any "pollutant" which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

(j) *General permit* means a permit authorizing a category of discharges of dredged or fill material under the Act. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

(k) *Owner or operator* means the owner or operator of any activity subject to regulation under the 404 program.

(l) *Permit* means a written authorization issued by an approved State to implement the requirements of Part 233, or by the Corps under 33 CFR Parts 320–330. When used in these regulations, "permit" includes "general permit" as well as individual permit.

(m) *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

(n) *Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(o) *Secretary* means the Secretary of the Army acting through the Chief of Engineers.

(p) *State regulated waters* means those waters of the United States in which the Corps suspends the issuance of Section 404 permits upon approval of a State's Section 404 permit program by the Administrator under Section 404(h). The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto. All other waters of the United States in a State with an approved program shall be under jurisdiction of the State program, and shall be identified in the program description as required by Part 233.

(q) *Waters of the United States* means:

(1) All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) All interstate waters including interstate wetlands.

(3) All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce.

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (g)(1)-(4) of this section;

(6) The territorial sea; and

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)–(6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(r) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§ 232.3 Activities not requiring permits.

Except as specified in paragraphs (a) and (b) of this section, any discharge of dredged or fill material that may result from any of the activities described in paragraph (c) of this section is not prohibited by or otherwise subject to regulation under this Part.

(a) If any discharge of dredged or fill material resulting from the activities listed in paragraph (c) of this section contains any toxic polutant listed under Section 307 of the Act, such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a Section 404 permit.

(b) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraph (c) of this section

must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernable alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

[Note.—For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with constuction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of Section 404 wetland to a non-wetland is a change in use of an area of waters of the U.S. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.]

(c) The following activities are exempt from Section 404 permit requirements, except as specified in paragraphs (a) and (b) of this section:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (d) of this section.

(ii)(A) To fall under this exemption, the activities specified in paragraph (c)(1) of this section must be part of an established (i.e., ongong) farming, silviculture, or ranching operation, and must be in accordance with definitions in paragraph (d) of this section. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

(B) Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a Section 404 permit whether or not it was part of an established farming, silviculture or ranching operation.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, wiers, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under Section 208(b)(4) of the Act which meets the requirements of Section 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the United States shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the United States;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the United States shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(d) For purpose of paragraph (c)(1) of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or

forest crops to aid and improve their growth, quality, or yield.

(2) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(3)(i) Minor drainage means:

(A) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a Section 404 permit;

(B) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(C) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production or rice, cranberries, or other wetland crop species.

[Note.—The provisions of paragraphs (d)(3)(i) (B) and (C) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.]

(D) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exemption.

(ii) Minor drainage in waters of the United States is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adequate to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming).

In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(4) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing, as described above, will never involve a discharge of dredged or fill material.

(5) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(e) Federal projects which qualify under the criteria contained in Section 404(r) of the Act are exempt from Section 404 permit requirements, but may be subject to other State or Federal requirements.

2. Authority citation for Part 233 continues to read as follows:

Authority: 33 U.S.C. 1344.

3. Part 233 is amended by revising Subparts A, B, C, E, and F and by redesignating Subpart D as G and the section number is changed from "233.42" to "233.60" and by adding a new Subpart D to read as follows:

PART 233–404 STATE PROGRAM REGULATIONS

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Subpart A—General

§ 233.1 Purpose and scope.

(a) This Part specifies the procedures EPA will follow, and the criteria EPA

will apply, in approving, reviewing, and withdrawing approval of State programs under Section 404 of the Act.

(b) Except as provided in § 232.3, the State program must regulate all discharges of dredged or fill material into State regulated waters. Partial State programs are not approvable under Section 404. A State's decision not to assume existing Corps general permits does not constitute a partial program. The discharges previously authorized by general permit will be regulated by State individual permits. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. The Secretary will administer the program on Indian lands if the State does not have authority to regulate activities on Indian lands.

(c) Nothing in this Part precludes a State from adopting or enforcing requirements which are more stringent or from operating a program with greater scope, than required under this Part. Where an approved State program has a greater scope than required by Federal law, the additional coverage is not part of the Federally approved program and is not subject to Federal oversight or enforcement.

Note.—State assumption of the Section 404 program is limited to certain waters, as provided in section 404(g)(1). The Federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill material into those waters over which the Secretary retains Section 404 jurisdiction.

(d) Any approved State Program shall, at all times, be conducted in accordance with the requirements of the Act and of this Part. While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose.

§ 233.2 Definitions.

The definitions in Parts 230 and 232 as well as the following definitions apply to this Part.

(a) *Act* means the Clean Water Act (33 U.S.C. 1251 et seq.).

(b) *Corps* means the U.S. Army Corps of Engineers.

(c) *FWS* means the U.S. Fish and Wildlife Service.

(d) *Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution.

(e) *NMFS* means the National Marine Fisheries Service.

(f) *State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. For purposes of this regulation, the word State also includes any interstate agency requesting program approval or administering an approved program.

(g) *State Director* (*Director*) means the chief administrative officer of any State or interstate agency operating an approved program, or the delegated representative of the Director. If responsibility is divided among two or more State or interstate agencies, Director means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

(h) *State 404 program* or *State program* means a State program which has been approved by EPA under Section 404 of the Act to regulate the discharge of dredged or fill material into certain waters as defined in § 232.2(p).

§ 233.3 Confidentiality of information.

(a) Any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal and a final determination as to that claim will be made in accordance with the procedures of 40 CFR Part 2 and paragraph (c) of this section.

(b) Any information submitted to the Director may be claimed as confidential in accordance with State law, subject to paragraphs (a) and (c) of this section.

(c) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee,

(2) Effluent data,

(3) Permit application, and

(4) Issued permit.

§ 233.4 Conflict of interest.

Any public officer or employee who has a direct personal or pecuniary interest in any matter that is subject to decision by the agency shall make known such interest in the official records of the agency and shall refrain from participating in any manner in such decision.

Subpart B—Program Approval

§ 233.10 Elements of a program submission.

Any State that seeks to administer a 404 program under this Part shall submit to the Regional Administrator at least three copies of the following:

(a) A letter from the Governor of the State requesting program approval.

(b) A complete program description, as set forth in § 233.11.

(c) An Attorney General's statement, as set forth in § 233.12.

(d) A Memorandum of Agreement with the Regional Administrator, as set forth in § 233.13.

(e) A Memorandum of Agreement with the Secretary, as set forth in § 233.14.

(f) Copies of all applicable State statutes and regulations, including those governing applicable State administrative procedures.

§ 233.11 Program description.

The program description as required under § 233.10 shall include:

(a) A description of the scope and structure of the State's program. The description should include extent of State's jurisdiction, scope of activities regulated, anticipated coordination, scope of permit exemptions if any, and permit review criteria;

(b) A description of the State's permitting, administrative, judicial review, and other applicable procedures;

(c) A description of the basic organization and structure of the State agency (agencies) which will have responsibility for administering the program. If more than one State agency is responsible for the administration of the program, the description shall address the responsibilities of each agency and how the agencies intend to coordinate administration and evaluation of the program;

(d) A description of the funding and manpower which will be available for program administration;

(e) An estimate of the anticipated workload, e.g., number of discharges.

(f) Copies of permit application forms, permit forms, and reporting forms;

(g) A description of the State's compliance evaluation and enforcement programs, including a description of how the State will coordinate its enforcement strategy with that of the Corps and EPA;

(h) A description of the waters of the United States within a State over which the State assumes jurisdiction under the approved program; a description of the waters of the United States within a State over which the Secretary retains

jurisdiction subsequent to program approval; and a comparison of the State and Federal definitions of wetlands.

Note.—States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps retains authority under Section 404(g) of the Act.

(i) A description of the specific best management practices proposed to be used to satisfy the exemption provisions of Section 404(f)(1)(E) of the Act for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.

§ 233.12 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independence legal counsel), that the laws and regulations of the State, or an interstate compact, provide adequate authority to carry out the program and meet the applicable requirements of this Part. This statement shall cite specific statutes and administrative regulations which are lawfully adopted at the time the statement is signed and which shall be fully effective by the time the program is approved, and, where appropriate, judicial decisions which demonstrate adequate authority. The attorney signing the statement required by this section must have authority to represent the State agency in court on all matters pertaining to the State program.

(b) If a State seeks approval of a program covering activities on Indian lands, the statement shall contain an analysis of the State's authority over such activities.

(c) The State Attorney General's statement shall contain a legal analysis of the effect of State law regarding the prohibition on taking private property without just compensation on the successful implementation of the State's program.

(d) In those States where more than one agency has responsibility for administering the State program, the statement must include certification that each agency has full authority to administer the program within its category of jurisdiction and that the State, as a whole, has full authority to administer a complete State Section 404 program.

§ 233.13 Memorandum of Agreement with Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement executed by the Director and the Regional Administrator. The Memorandum of Agreement shall become effective upon approval of the State program. When more than one agency within a State has responsibility for administering the State program, Directors of each of the responsible State agencies shall be parties to the Memorandum of Agreement.

(b) The Memorandum of Agreement shall set out the State and Federal responsibilities for program administration and enforcement. These shall include, but not be limited to:

(1) Provisions specifying classes and categories of permit applications for which EPA will waive Federal review (as specified in § 233.51).

(2) Provisions specifying the frequency and content of reports, documents and other information which the State may be required to submit to EPA in addition to the annual report, as well as a provision establishing the submission date for the annual report. The State shall also allow EPA routinely to review State records, reports and files relevant to the administration and enforcement of the approved program.

(3) Provisions addressing EPA and State roles and coordination with respect to compliance monitoring and enforcement activities.

(4) Provisions addressing modification of the Memorandum of Agreement.

§ 233.14 Memorandum of Agreement with the Secretary.

(a) Before a State program is approved under this Part, the Director shall enter into a Memorandum of Agreement with the Secretary. When more than one agency within a State has responsibility for administering the State program, Directors of each of the responsible agencies shall be parties of the Memorandum of Agreement.

(b) The Memorandum of Agreement shall include:

(1) A description of waters of the United States within the State over which the Secretary retains jurisdiction, as identified by the Secretary.

(2) Procedures whereby the Secretary will, upon program approval, transfer to the State pending 404 permit applications for discharges in State regulated waters and other relevant information not already in the possession of the Director.

Note.—Where a State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue Section 404 permits, the State is encouraged to establish in this MOA procedures for joint processing of Federal and State permits, including joint public notices and public hearings.

(3) An identification of all general permits issued by the Secretary the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program, and a plan for transferring responsibility for these general permits to the State, including procedures for the prompt transmission from the Secretary to the Director of relevant information not already in the possession of the Director, including support files for permit issuance, compliance reports and records of enforcement actions.

§ 233.15 Procedures for approving State programs.

(a) The 120 day statutory review period shall commence on the date of receipt of a complete State program submission as set out in § 233.10 of this Part. EPA shall determine whether the submission is complete within 30 days of receipt of the submission and shall notify the State of its determination. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(b) If EPA determines the State significantly changes its submission during the review period, the statutory review period shall begin again upon the receipt of a revised submission.

(c) The State and EPA may extend the statutory review period by agreement.

(d) Within 10 days of receipt of a complete State Section 404 program submission, the Regional Administrator shall provide copies of the State's submission to the Corps, FWS, and NMFS (both Headquarters and appropriate Regional organizations.)

(e) After determining that a State program submission is complete, the Regional Administrator shall publish notice of the State's application in the Federal Register and in enough of the largest newspapers in the State to attract statewide attention. The Regional Administrator shall also mail notice to persons known to be interested in such matters. Existing State, EPA, Corps, FWS, and NMFS mailing lists shall be used as a basis for this mailing. However, failure to mail all such notices shall not be grounds for invalidating approval (or disapproval) of an otherwise acceptable (or unacceptable) program. This notice shall:

(1) Provide for a comment period of not less than 45 days during which interested members of the public may express their views on the State program.

(2) Provide for a public hearing within the State to be held not less than 30

days after notice of hearing is published in the **Federal Register**;

(3) Indicate where and when the State's submission may be reviewed by the public;

(4) Indicate whom an interested member of the public with questions should contact; and

(5) Briefly outline the fundamental aspects of the State's proposed program and the process for EPA review and decision.

(f) Within 90 days of EPA's receipt of a complete program submission, the Corps, FWS, and NMFS shall submit to EPA any comments on the State's program.

(g) Within 120 days of receipt of a complete program submission (unless an extension is agreed to by the State), the Regional Administrator shall approve or disapprove the program based on whether the State's program fulfills the requirements of this Part and the Act, taking into consideration all comments received. The Regional Administrator shall prepare a responsiveness summary of significant comments received and his response to these comments. The Regional Administrator shall respond individually to comments received from the Corps, FWS, and NMFS.

(h) If the Regional Administrator approves the State's Section 404 program, he shall notify the State and the Secretary of the decision and publish notice in the **Federal Register**. Transfer of the program to the State shall not be considered effective until such notice appears in the **Federal Register**. The Secretary shall suspend the issuance by the Corps of Section 404 permits in State regulated waters on such effective date.

(i) If the Regional Administrator disapproves the State's program based on the State not meeting the requirements of the Act and this Part, the Regional Administrator shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State's program which are necessary to obtain approval. If the State resubmits a program submission remedying the identified problem areas, the approval procedure and statutory review period shall begin upon receipt of the revised submission.

§ 233.16 Procedures for revision of State programs.

(a) The State shall keep the Regional Administrator fully informed of any proposed or actual changes to the State's statutory or regulatory authority or any other modifications which are significant to administration of the program.

(b) Any approved program which requires revision because of a modification to this Part or to any other applicable Federal statute or regulation shall be revised within one year of the date of promulgation of such regulation, except that if a State must amend or enact a statute in order to make the required revision, the revision shall take place within two years.

(c) States with approved programs shall notify the Regional Administrator whenever they propose to transfer all or part of any program from the approved State agency to any other State agency. The new agency is not authorized to administer the program until approved by the Regional Administrator under paragraph (d) of this section.

(d) Approval of revision of a State program shall be accomplished as follows:

(1) The Director shall submit a modified program description or other documents which the Regional Administrator determines to be necessary to evaluate whether the program complies with the requirements of the Act and this Part.

(2) Notice of approval of program changes which are not substantial revisions may be given by letter from the Regional Administrator to the Governor or his designee.

(3) Whenever the Regional Administrator determines that the proposed revision is substantial, he shall publish and circulate notice to those persons known to be interested in such matters, provide opportunity for a public hearing, and consult with the Corps, FWS, and NMFS. The Regional Administrator shall approve or disapprove program revisions based on whether the program fulfills the requirements of the Act and this Part, and shall publish notice of his decision in the **Federal Register**. For purposes of this paragraph, substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.

(4) Substantial program changes shall become effective upon approval by the Regional Administrator and publication of notice in the **Federal Register**.

(e) Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to a State's program, he may request and the State shall provide a supplemental Attorney General's statement, program description, or such other documents or information as are necessary to evaluate the program's compliance with the requirements of the Act and this Part.

Subpart C—Permit Requirements

§ 233.20 Prohibitions.

No permit shall be issued by the Director in the following circumstances:

(a) When permit does not comply with the requirements of the Act or regulations thereunder, including the Section 404(b)(1) Guidelines (Part 230 of this Chapter).

(b) When the Regional Administrator has objected to issuance of the permit under § 233.50 and the objection has not been resolved.

(c) When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the Administrator under Section 404(c) of the Act, or when the discharge would fail to comply with a restriction imposed thereunder.

(d) If the Secretary determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

§ 233.21 General permits.

(a) Under Section 404(h)(5) of the Act, States may, after program approval, administer and enforce general permits previously issued by the Secretary in State regulated waters.

Note: If States intend to assume existing general permits, they must be able to ensure compliance with existing permit conditions an any reporting monitoring, or prenotification requirements.

(b) The Director may issue a general permit for categories of similar activities if he determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Any general permit issued shall be in compliance with the Section 404(b)(1) Guidelines.

(c) In addition to the conditions specified in § 233.23, each general permit shall contain:

(1) A specific description of the type(s) of activities which are authorized, including limitations for any single operation. The description shall be detailed enough to ensure that the requirements of paragraph (b) of this section are met. (This paragraph supercedes § 233.23(c)(1) for general permits.)

(2) A precise description of the geographic area to which the general permit applies, including limitations on the type(s) of water where operations may be conducted sufficient to ensure that the requirements of paragraph (b) of this section are met.

(d) Predischarge notification or other reporting requirements may be required by the Director on a permit-by-permit basis as appropriate to ensure that the general permit will comply with the requirement (section 404(e) of the Act) that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

(e) The Director may, without revoking the general permit, require any person authorized under a general permit to apply for an individual permit. This discretionary authority will be based on concerns for the aquatic environment including compliance with paragraph (b) of this section and the 404(b)(1) Guidelines (40 CFR Part 230.)

(1) This provision in no way affects the legality of activities undertaken pursuant to the general permit prior to notification by the Director of such requirement.

(2) Once the Director notifies the discharger of his decision to exercise discretionary authority to require an individual permit, the discharger's activity is no longer authorized by the general permit.

§ 233.22 Emergency permits.

(a) Notwithstanding any other provision of this Part, the Director may issue a temporary emergency permit for a discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

(b) Emergency permits shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of § 233.23.

(1) Any emergency permit shall be limited to the duration of time (typically no more than 90 days) required to complete the authorized emergency action.

(2) The emergency permit shall have a condition requiring appropriate restoration of the site.

(c) The emergency permit may be terminated at any time without process (§ 233.36) if the Director determines that termination is necessary to protect human health or the environment.

(d) The Director shall consult in an expeditious manner, such as by telephone, with the Regional Administrator, the Corps, FWS, and NMFS about issuance of an emergency permit.

(e) The emergency permit may be oral or written. If oral, it must be followed within 5 days by a written emergency permit. A copy of the written permit shall be sent to the Regional Administrator.

(f) Notice of the emergency permit shall be published and public comments solicited in accordance with § 233.32 as soon as possible but no later than 10 days after the issuance date.

§ 233.23 Permit conditions.

(a) For each permit the Director shall establish conditions which assure compliance with all applicable statutory and regulatory requirements, including the 404(b)(1) Guidelines, applicable Section 303 water quality standards, and applicable Section 307 effluent standards and prohibitions.

(b) Section 404 permits shall be effective for a fixed term not to exceed 5 years.

(c) Each 404 permit shall include conditions meeting or implementing the following requirements:

(1) A specific identification and complete description of the authorized activity including name and address of permittee, location and purpose of discharge, type and quantity of material to be discharged. (This subsection is not applicable to general permits).

(2) Only the activities specifically described in the permit are authorized.

(3) The permittee shall comply with all conditions of the permit even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of the Act as well as of State statute and/or regulation.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit.

(5) The permittee shall inform the Director of any expected or known actual noncompliance.

(6) The permittee shall provide such information to the Director, as the Director requests, to determine compliance status, or whether cause exists for permit modification, revocation or termination.

(7) Monitoring, reporting and recordkeeping requirements as needed to safeguard the aquatic environment. (Such requirements will be determined on a case-by-case basis, but at a minimum shall include monitoring and reporting of any expected leachates, reporting of noncompliance, planned changes or transfer of the permit.)

(8) Inspection and entry. The permittee shall allow the Director, or his authorized representative, upon presentation of proper identification, at reasonable times to:

(i) Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,

(ii) Have access to and copy any records that must be kept under the conditions of the permit,

(iii) Inspect operations regulated or required under the permit, and

(iv) Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(9) Conditions assuring that the discharge will be conducted in a manner which minimizes adverse impacts upon the physical, chemical and biological integrity of the waters of the United States, such as requirements for restoration or mitigation.

Subpart D—Program Operation

§ 233.30 Application for a permit.

(a) Except when an activity is authorized by a general permit issued pursuant to § 233.21 or is exempt from the requirements to obtain a permit under § 232.3, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit a permit application to the Director. Persons proposing to discharge dredged or fill material under the authorization of a general permit must comply with any reporting requirements of the general permit.

(b) A complete application shall include:

(1) Name, address, telephone number of the applicant and name(s) and address(es) of adjoining property owners.

(2) A complete description of the proposed activity including necessary drawings, sketches or plans sufficient for public notice (the applicant is not generally expected to submit detailed engineering plans and specifications); the location, purpose and intended use of the proposed activity; scheduling of the activity; the location and dimensions of adjacent structures; and a list of authorizations required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(3) The application must include a description of the type, composition, source and quantity of the material to be discharged, the method of discharge, and the site and plans for disposal of the dredged or fill material.

(4) A certification that all information contained in the application is true and accurate and acknowledging awareness of penalties for submitting false information.

(5) All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application.

(c) In addition to the information indicated in § 233.30(b), the applicant will be required to furnish such additional information as the Director deems appropriate to assist in the evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(d) The level of detail shall be reasonably commensurate with the type and size of discharge, proximity to critical areas, likelihood of long-lived toxic chemical substances, and potential level of environmental degradation.

Note: EPA encourages States to provide permit applicants guidance regarding the level of detail of information and documentation required under this subsection. This guidance can be provided either through the application form or on an individual basis. EPA also encourages the State to maintain a program to inform potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters.

§ 233.31 Coordination requirements.

(a) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any State(s) other than the State in which the discharge occurs, the Director shall provide an opportunity for such State(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted by the Director, he shall notify the affected State and the Regional Administrator prior to permit issuance in writing of his failure to accept these recommendations, together with his reasons for so doing. The Regional Administrator shall then have the time provided for in § 233.50(d) to comment upon, object to, or make recommendations.

(b) State Section 404 permits shall be coordinated with Federal and Federal-State water related planning and review processes.

§ 233.32 Public notice.

(a) Applicability.

(1) The Director shall give public notice of the following actions:

(i) Receipt of a permit application.

(ii) Preparation of a draft general permit.

(iii) Consideration of a major modification to an issued permit.

(iv) Scheduling of a public hearing.

(v) Issuance of an emergency permit.

(2) Public notices may describe more than one permit or action.

(b) Timing.

(1) The public notice shall provide a reasonable period of time, normally at least 30 days, within which interested parties may express their views concerning the permit application.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing.

(3) The Regional Administrator may approve a program with shorter public notice timing if the Regional Administrator determines that sufficient public notice is provided for.

(c) The Director shall give public notice by each of the following methods:

(1) By mailing a copy of the notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his rights to receive notice for any classes or categories of permits):

(i) The applicant.

(ii) Any agency with jurisdiction over the activity or the disposal site, whether or not the agency issues a permit.

(iii) Owners of property adjoining the property where the regulated activity will occur.

(iv) All persons who have specifically requested copies of public notices. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(v) Any State whose waters may be affected by the proposed discharge.

(2) In addition, by providing notice in at least one other way (such as advertisement in a newspaper of sufficient circulation) reasonably calculated to cover the area affected by the activity.

(d) All public notices shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity(ies) regulated by the permit.

(2) The name, address, and telephone number of a person to contact for further information.

(3) A brief description of the comment procedures and procedures to request a public hearing, including deadlines.

(4) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged.

(5) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area.

(6) A paragraph describing the various evaluation factors, including the 404(b)(1) Guidelines or State-equivalent criteria, on which decisions are based.

(7) Any other information which would significantly assist interested parties in evaluating the likely impact of the proposed activity.

(e) Notice of public hearing shall also contain the following information:

(1) Time, date, and place of hearing.

(2) Reference to the date of any previous public notices relating to the permit.

(3) Brief description of the nature and purpose of the hearing.

§ 233.33 Public hearing.

(a) Any interested person may request a public hearing during the public comment period as specified in § 233.32. Requests shall be in writing and shall state the nature of the issues proposed to be raised at the hearing.

(b) The Director shall hold a public hearing whenever he determines there is a significant degree of public interest in a permit application or a draft general permit. He may also hold a hearing, at his discretion, whenever he determines a hearing may be useful to a decision on the permit application.

(c) At a hearing, any person may submit oral or written statements or data concerning the permit application or draft general permit. The public comment period shall automatically be extended to the close of any public hearing under this section. The presiding officer may also extend the comment period at the hearing.

(d) All public hearings shall be reported verbatim. Copies of the record of proceedings may be purchased by any person from the Director or the reporter of such hearing. A copy of the transcript (or if none is prepared, a tape of the proceedings) shall be made available for public inspection at an appropriate State office.

§ 233.34 Making a decision on the permit application.

(a) The Director will review all applications for compliance with the 404(b)(1) Guidelines and/or equivalent State environmental criteria as well as any other applicable State laws or regulations.

(b) The Director shall consider all comments received in response to the public notice, and public hearing if a hearing is held. All comments, as well as the record of any public hearing, shall be made part of the official record on the application.

(c) After the Director has completed his review of the application and consideration of comments, the Director will determine, in accordance with the record and all applicable regulations, whether or not the permit should be issued. No permit shall be issued by the Director under the circumstances described in § 233.20. The Director shall prepare a written determination on each application outlining his decision and rationale for his decision. The determination shall be dated, signed and included in the official record prior to final action on the application. The official record shall be open to the public.

§ 233.35 Issuance and effective date of permit.

(a) If the Regional Administrator comments on a permit application or draft general permit under § 233.50, the Director shall follow the procedures specified in that section in issuing the permit.

(b) If the Regional Administrator does not comment on a permit application or draft general permit, the Director shall make a final permit decision after the close of the public comment period and shall notify the applicant.

(1) If the decision is to issue a permit, the permit becomes effective when it is signed by the Director and the applicant.

(2) If the decision is to deny the permit, the Director will notify the applicant in writing of the reason(s) for denial.

§ 233.36 Modification, suspension or revocation of permits.

(a) *General.* The Director may reevaluate the circumstances and conditions of a permit either on his own motion or at the request of the permittee or of a third party and initiate action to modify, suspend, or revoke a permit if he determines that sufficient cause exists. Among the factors to be considered are:

(1) Permittee's noncompliance with any of the terms or conditions of the permit;

(2) Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at the time;

(3) Information that activities authorized by a general permit are having more than minimal individual or cumulative adverse effect on the environment, or that the permitted activities are more appropriately regulated by individual permits;

(4) Circumstances relating to the authorized activity have changed since the permit was issued and justify changed permit conditions or temporary or permanent cessation of any discharge controlled by the permit;

(5) Any significant information relating to the activity authorized by the permit if such information was not available at the time the permit was issued and would have justified the imposition of different permit conditions or denial at the time of issuance;

(6) Revisions to applicable statutory or regulatory authority, including toxic effluent standards or prohibitions or water quality standards.

(b) *Limitations.* Permit modifications shall be in compliance with § 233.20.

(c) *Procedures.* (1) The Director shall develop procedures to modify, suspend or revoke permits if he determines cause exists for such action (§ 233.36(a)). Such procedures shall provide opportunity for public comment (§ 233.32), coordination with the Federal review agencies (§ 233.50), and opportunity for public hearing (§ 233.33) following notification of the permittee. When permit modification is proposed, only the conditions subject to modification need be reopened.

(2) Minor modification of permits. The Director may, upon the consent of the permittee, use abbreviated procedures to modify a permit to make the following corrections or allowance for changes in the permitted activity:

(i) Correct typographical errors;

(ii) Require more frequent monitoring or reporting by permittee;

(iii) Allow for a change in ownership or operational control of a project or activity where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;

(iv) Provide for minor modification of project plans that do not significantly change the character, scope, and/or purpose of the project or result in significant change in environmental impact;

(v) Extend the term of a permit, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date and does not result in any increase in the amount of dredged or fill material allowed to be discharged.

§ 233.37 Signatures on permit applications and reports.

The application and any required reports must be signed by the person who desires to undertake the proposed activity or by that person's duly authorized agent if accompanied by a statement by that person designating the agent. In either case, the signature of the applicant or the agent will be understood to be an affirmation that he possesses or represents the person who possesses the requisite property interest to undertake the activity proposed in the application.

§ 233.38 Continuation of expiring permits.

A Corps 404 permit does not continue in force beyond its expiration date under Federal law if, at that time, a State is the permitting authority. States authorized to administer the 404 Program may continue Corps or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the discharge is being conducted without a permit from the time of expiration of the old permit to the effective date of a new State-issued permit, if any.

Subpart E—Compliance Evaluation and Enforcement

§ 233.40 Requirements for compliance evaluation programs.

(a) In order to abate violations of the permit program, the State shall maintain a program designed to identify persons subject to regulation who have failed to obtain a permit or to comply with permit conditions.

(b) The Director and State officers engaged in compliance evaluation, upon presentation of proper identification, shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program.

(c) The State program shall provide for inspections to be conducted, samples to be taken and other information to be gathered in a manner that will produce evidence admissible in an enforcement proceeding.

(d) The State shall maintain a program for receiving and ensuring proper consideration of information submitted by the public about violations.

§ 233.41 Requirements for enforcement authority.

(a) Any State agency administering a program shall have authority:

(1) To restrain immediately and effectively any person from engaging in any unauthorized activity;

(2) To sue to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover civil penalties and to seek criminal remedies, as follows:

(i) The agency shall have the authority to assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any Section 404 permit condition in an amount of at least $5,000 per day of such violation.

(ii) The agency shall have the authority to seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under Section 404 in the amount of at least $10,000 per day of such violation.

(iii) The agency shall have the authority to seek criminal fines against any person who knowingly makes false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act, these regulations or the approved State program, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit, in an amount of at least $5,000 for each instance of violation.

(b)(1) The approved maximum civil penalty or criminal fine shall be assessable for each violation and, if the violation is continuous, shall be assessable in that maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Act.

(c) The civil penalty assessed, sought, or agreed upon by the Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA may, when authorized by Section 309 of the Act, commence separate action for penalties.

(d)(1) The Regional Administrator may approve a State program where the State lacks authority to recover penalties of the levels required under paragraphs (a)(3)(i)–(iii) of this section only if the Regional Administrator determines, after evaluating a record of at least one year for an alternative enforcement program, that the State has an alternate, demonstrably effective method of ensuring compliance which has both punitive and deterrence effects.

(2) States whose programs were approved via waiver of monetary penalties shall keep the Regional Administrator informed of all enforcement actions taken under any alternative method approved pursuant to paragraph (d)(1) of this section. The manner of reporting will be established in the Memorandum of Agreement with the Regional Administrator (§ 233.13).

(e) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention of right in any civil or administrative action to obtain remedies specified in paragraph (a)(3) of this section by any citizen having an interest which is or may be adversely affected, or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to State procedures;

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

Subpart F—Federal Oversight

§ 233.50 Review of and objection to State permits.

(a) The Director shall promptly transmit to the Regional Administrator:

(1) A copy of the public notice for any complete permit applications received by the Director, except those for which permit review has been waived under § 233.51. The State shall supply the Regional Administrator with copies of public notices for permit applications for which permit review has been waived whenever requested by EPA.

(2) A copy of a draft general permit whenever the State intends to issue a general permit.

(3) Notice of every significant action taken by the State agency related to the consideration of any permit application except those for which Federal review has been waived or draft general permit.

(4) A copy of every issued permit.

(5) A copy of the Director's response to another State's comments/recommendations, if the Director does not accept these recommendations (§ 233.32(a)).

(b) Unless review has been waived under § 233.51, the Regional Administrator shall provide a copy of each public notice, each draft general permit, and other information needed for review of the application to the Corps, FWS, and NMFS, within 10 days of receipt. These agencies shall notify the Regional Administrator within 45 days of their receipt if they wish to comment on the public notice or draft general permit. Such agencies should submit their evaluation and comments to the Regional Administrator within 50 days of such receipt. The final decision to comment, object or to require permit conditions shall be made by the Regional Administrator. (These times may be shortened by mutual agreement of the affected Federal agencies and the State.)

(c) If the information provided is inadequate to determine whether the permit application or draft general permit meets the requirements of the Act, these regulations, and the 404(b)(1) Guidelines, the Regional Administrator may, within 30 days of receipt, request the Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record, or other information, including a supplemental application, that the Regional Administrator determines necessary for review.

(d) If the Regional Administrator intends to comment upon, object to, or make recommendations with respect to a permit application, draft general permit, or the Director's failure to accept the recommendations of an affected State submitted pursuant to § 233.31(a), he shall notify the Director of his intent within 30 days of receipt. If the Director has been so notified, the permit shall not be issued until after the receipt of such comments or 90 days of the Regional Administrator's receipt of the public notice, draft general permit or Director's response (§ 233.31(a)), whichever comes first. The Regional Administrator may notify the Director within 30 days of receipt that there is no comment but that he reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) If the Regional Administrator has given notice to the Director under paragraph (d) of this section, he shall submit to the Director, within 90 days of receipt of the public notice, draft general permit, or Director's response (§ 233.31(a)), a written statement of his

comments, objections, or recommendations; the reasons for the comments, objections, or recommendations; and the actions that must be taken by the Director in order to eliminate any objections. Any such objection shall be based on the Regional Administrator's determination that the proposed permit is (1) the subject of an interstate dispute under § 233.31(a) and/or (2) outside requirements of the Act, these regulations, or the 404(b)(1) Guidelines. The Regional Administrator shall make available upon request a copy of any comment, objection, or recommendation on a permit application or draft general permit to the permit applicant or to the public.

(f) When the Director has received an EPA objection or requirement for a permit condition to a permit application or draft general permit under this section, he shall not issue the permit unless he has taken the steps required by the Regional Administrator to eliminate the objection.

(g) Within 90 days of receipt by the Director of an objection or requirement for a permit condition by the Regional Administrator, the State or any interested person may request that the Regional Administrator hold a public hearing on the objection or requirement.

The Regional Administrator shall conduct a public hearing whenever requested by the State proposing to issue the permit, or if warranted by significant public interest based on requests received.

(h) If a public hearing is held under paragraph (g) of this section, the Regional Administrator shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition, and notify the Director of this decision.

(1) If the Regional Administrator withdraws his objection or requirement for a permit condition, the Director may issue the permit.

(2) If the Regional Administrator does not withdraw the objection or requirement for a permit condition, the Director must issue a permit revised to satisfy the Regional Administrator's objection or requirement for a permit condition or notify EPA of its intent to deny the permit within 30 days of receipt of the Regional Administrator's notification.

(i) If no public hearing is held under paragraph (g) of this section, the Director within 90 days of receipt of the objection or requirement for a permit condition shall either issue the permit revised to satisfy EPA's objections or notify EPA of its intent to deny the permit.

(j) In the event that the Director neither satisfies EPA's objections or requirement for a permit condition nor denies the permit, the Secretary shall process the permit application.

§ 233.51 Waiver of review.

(a) The MOA with the Regional Administrator shall specify the categories of discharge for which EPA will waive Federal review of State permit applications. After program approval, the MOA may be modified to reflect any additions or deletions of categories of discharge for which EPA will waive review. The Regional Administrator shall consult with the Corps, FWS, and NMFS prior to specifying or modifying such categories.

(b) With the following exceptions, any category of discharge is eligible for consideration for waiver:

(1) Draft general permits;

(2) Discharges with reasonable potential for affecting endangered or threatened species as determined by FWS;

(3) Discharges with reasonable potential for adverse impacts on waters of another State;

(4) Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the Act) or hazardous substances in reportable quantities (Section 311 of the Act);

(5) Discharges located in proximity of a public water supply intake;

(6) Discharges within critical areas established under State or Federal law, including but not limited to National and State parks, fish and wildlife sanctuaries and refuges, National and historical monuments, wilderness areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.

(c) The Regional Administrator retains the right to terminate a waiver as to future permit actions at any time by sending the Director written notice of termination.

§ 233.52 Program reporting

(a) The starting date for the annual period to be covered by reports shall be established in the Memorandum of Agreement with the Regional Administrator (§ 233.13.)

(b) The Director shall submit to the Regional Administrator within 90 days after completion of the annual period, a draft annual report evaluating the State's administration of its program identifying problems the State has encountered in the administration of its program and recommendations for resolving these problems. Items that shall be addressed in the annual report include an assessment of the cumulative impacts of the State's permit program on the integrity of the State regulated waters; identification of areas of particular concern and/or interest within the State; the number and nature of individual and general permits issued, modified, and denied; number of violations identified and number and nature of enforcement actions taken; number of suspected unauthorized activities reported and nature of action taken; an estimate of extent of activities regulated by general permits; and the number of permit applications received but not yet processed.

(c) The State shall make the draft annual report available for public inspection.

(d) Within 60 days of receipt of the draft annual report, the Regional Administrator will complete review of the draft report and transmit comments, questions, and/or requests for additional evaluation and/or information to the Director.

(e) Within 30 days of receipt of the Regional Administrator's comments, the Director will finalize the annual report, incorporating and/or responding to the Regional Administrator's comments, and transmit the final report to the Regional Administrator.

(f) Upon acceptance of the annual report, the Regional Administrator shall publish notice of availability of the final annual report.

§ 233.53 Withdrawal of program approval.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to the Secretary by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator and the Secretary 180 days notice of the proposed transfer. The State shall also submit a plan for the orderly transfer of all relevant program information not in the possession of the Secretary (such as permits, permit files, reports, permit applications) which are necessary for the Secretary to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator and the Secretary shall evaluate the State's transfer plan and shall identify for the State any additional information needed by the Federal government for program administration.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of transfer in the Federal

Register and in a sufficient number of the largest newspapers in the State to provide statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA, Corps and State mailing lists.

(b) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Issuance of permits which do not conform to the requirements of this Part; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) When the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed, or to implement alternative enforcement methods approved by the Administrator; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 233.13.

(c) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program:

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on the Administrator's initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part as set forth in subsection (b) of this section. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal review of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing, shall specify the allegations against the State which are to be considered at the hearing, and shall be published in the **Federal Register**. Within 30 days after publication of the Administrator's order in the **Federal Register**, the State shall admit or deny these allegations in a written answer.

The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definition of "Administrative Law Judge," "Hearing Clerk," and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the proceedings.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.*

(i) The following provisions of 40 CFR Part 22 [Consolidated Rules of Practice] are applicable to proceedings under this paragraph:

(A) Section 22.02—(use of number/gender);

(B) Section 22.04—(authorities of Presiding Officer);

(C) Section 22.06—(filing/service of rulings and orders);

(D) Section 22.09—(examination of filed documents);

(E) Section 22.19 (a), (b) and (c)—(prehearing conference);

(F) Section 22.22—(evidence);

(G) Section 22.23—(objections/offers of proof);

(H) Section 22.25—(filing the transcript; and

(I) Section 22.26—(findings/conclusions).

(ii) The following provisions are also applicable:

(A) Computation and extension of time.

(*1*) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(*2*) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (*i*) upon timely motion of a party to the proceeding, for good cause shown and after consideration of prejudice to other parties, or (*ii*) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(*3*) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

(B) Ex parte discussion of proceeding. At no time after the issuance of the order commencing proceedings shall the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any other person who is likely to advise these officials in the decisions on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

(C) Intervention.

(*1*) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the

foregoing sentence and paragraph (b)(3)(ii)(C)(*3*) of this section, within ten (10) days after service of the motion for leave to intervene.

(*2*) However, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is published in the **Federal Register.**

(*3*) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (*i*) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (*ii*) the movant will be adversely affected by a final order; and (*iii*) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(*4*) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D) Motions. (1) *General.* All motions, except those made orally on the record during a hearing, shall (*i*) be in writing; (*ii*) state the grounds therefore with particularity; (*iii*) set forth the relief or order sought; and (*iv*) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by paragraph (b)(4) of this section.

(*2*) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(*3*) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(*4*) *Record of proceedings.* (*i*) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(*ii*) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street SW., Washington, DC 20460;

(*iii*) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(*iv*) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(*v*) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(*vi*) Every submission shall be accompanied by acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service; and

(*vii*) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(*5*) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making an oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(*6*) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and prehearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties, and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the Act and this Part, his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the Act and regulations, he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the state fails to take appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S. 704.

(d) Withdrawal of authorization under this section and the Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions taken by the State prior to withdrawal.

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Federal Register

Monday
June 6, 1988

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 35 et al.
Lead-Based Paint Hazard Elimination; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 35, 200, 510, 511, 570, 882, 886, 941, 965, and 968

[Docket No. R-88-1382, FR-2447]

Lead-Based Paint Hazard Elimination

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: In response to amendments to the Lead-Based Paint Poisoning Prevention Act ("LPPPA") by section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242 approved February 5, 1988) (1987 Act), HUD is amending its regulations regarding the elimination of hazards due to lead-based paint in Public and Indian Housing. This final rule amends 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, 24 CFR Part 941, Public Housing Development, Subpart H in 24 CFR Part 965, PHA-owned or Leased Projects-Maintenance and Operation and 24 CFR Part 968, Comprehensive Improvement Assistance Program ("CIAP")

HUD has also changed the definition of "applicable surfaces" to include all interior and exterior painted surfaces and changed the construction cut-off dates to 1978 for other HUD programs, including certain FHA Single Family and Multifamily Housing Programs, Section 8 Housing Assistance Payments Program for Substantial Rehabilitation, Section 8 Existing Housing Certificate, Section 8 Moderate Rehabilitation Program, Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan and Rental Rehabilitation Programs. Additional changes to these programs will be initiated after HUD conducts the demonstration program discussed below.

This final rule also revises regulations for rehabilitation under section 203(k) of the National Housing Act. This rule permits an escrow procedure in the case of rehabilitation work in dwellings financed under section 203(k). In response to public comments, this rule also permits an escrow procedure in those circumstances where exterior defective paint surfaces cannot be abated due to adverse weather conditions.

EFFECTIVE DATE: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director of Policy, Office of Public and Indian Housing, (202) 755-6713, Room 4118, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is amending its current regulations implementing section 302 of the LPPPA (42 U.S.C. 4822) in response to recent amendments contained in section 566 of the Housing and Community Development Act of 1987. Consistent with the legislative history of section 566 (S. 825, 100th Cong., 1st Sess., *Cong. Rec.* S 18615, 18618 (December 21, 1987)), this rule relates primarily to Public and Indian Housing, although the definition of applicable surface in all program regulations is amended to include all interior and exterior painted surfaces, and construction cut-off dates in all programs are amended to include housing constructed prior to 1978. Certain program regulations are individually amended to include the construction cut-off date of 1978 in this rule (see Section VI below) while other programs incorporate by reference Part 35 (*e.g.*, Urban Homesteading, Emergency Shelter Grants) which is also amended to include housing construction prior to 1978. Additional regulations to these programs may be proposed after HUD conducts the demonstration program mandated by section 566.

Section 566 required publication of a proposed rule by April 5, 1988 (see 53 FR 1164, April 5, 1988) and publication of a final rule to be effective by June 6, 1988. Given this rulemaking schedule and the 1988 Congressional recess schedules, the Department has interpreted the statutory rulemaking schedule as an expression of Congressional intent to exempt this rulemaking from the prepublication review and delayed effective date requirements contained in section 7(o) (2) and (3) of the Department of Housing and Urban Development Act.

This preamble is divided into six sections: (1) Background (discussion of statutory and regulatory requirements and the HUD demonstration program; (2) Recent Studies of the Lead-Based Paint Problem (the Centers for Disease Control's January 1985 Statement on Preventing Lead Poisoning in Young Children and the Environmental Protection Agency's Air Quality Criteria for Lead), (3) Proposed Public and Indian Housing Rulemaking and Comments; (4) Summary Final Requirements for Public and Indian Housing's Program; (5) Proposed Regulations for Rehabilitation Under Section 203(k) of the National Housing Act, Comments and Final Regulations; and (6) Section-by-Section Review of Regulations.

A. Statutory and Regulatory Requirements

HUD's authority to issue this rule is based on section 302 of the LPPPA. Added in 1973, and amended in 1987 by section 566 of the Housing and Community Development Act of 1987, this section requires the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The statute further prescribes that such procedures shall "as a minimum provide for * * * appropriate measures to eliminate as far as practicable immediate hazards due to the presence of accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than seven years of age resides or is expected to reside"; and, further, that the procedures must apply to housing constructed prior to 1978.

Under new section 302(b), the procedures established by the Secretary for the detection and abatement of lead-based paint poisoning hazards in any housing, including housing assisted under section 8 of the United States Housing Act of 1937 "shall be based upon criteria that measure the condition of the housing; and shall not be based upon criteria that measure the health of the residents of the housing."

For public housing assisted under section 9 of the United States Housing Act of 1937, new section 302(d) requires (1) testing of each vacant dwelling prior to rerenting, (2) a random sample of all occupied dwellings, and (3) testing of each dwelling in any housing in which there is a dwelling determined (through testing of vacant dwellings prior to rerenting or from the random sample of all occupied dwellings) to have lead-based paint hazards. The Secretary is required to complete the testing of the public housing described dwellings before the expiration of five years from the date of the publication of final regulations required by section 566. The inspections are to be prioritized on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary is to

require abatement to eliminate the lead-based paint poisoning hazards in housing in which the test results equal or exceed 1 mg/cm². If the test results equal or exceed a level of 1 mg/cm², the results shall be provided to any potential purchaser or tenant of the housing. The Secretary is also to periodically review and reduce the level below 1 mg/cm² to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level.

B. HUD Demonstration Program

New section 302(d)(2) requires HUD to carry out an abatement demonstration program with respect to single family and multifamily properties owned by HUD. HUD is to utilize a sufficient variety of abatement methods in a sufficient number of areas and circumstances to demonstrate their relative cost-effectiveness and their applicability to various types of housing. Not later than 18 months after the effective date of regulations required by section 566, HUD is to transmit to Congress its findings and recommendations for legislation. HUD is to examine the most reliable technology available for detecting lead-based paint; the most efficient and cost-effective methods for abatement; safety considerations in testing; over accuracy and reliability of laboratory testing of physical samples, X-ray fluorescence machines ("XRFs") and other available testing procedures; availability of qualified samplers and testers; and an estimate of the amount, characteristics and regional distribution of housing in the United States that contains lead-based paint hazards at differing levels of contamination.

Not later than nine months after the completion of the demonstration program, HUD, based on the demonstration, is to prepare and transmit to Congress a comprehensive and workable plan, including any recommendations for changes in legislation, for the prompt and cost-effective inspection and abatement of privately owned single family and multifamily housing, including housing assisted under section 8 of the United States Housing Act of 1937.

The demonstration authorized by section 566 is expected to contribute significantly to the store of knowledge on safe and effective abatement. For the Public and Indian housing program, HUD does not intend to wait for the results of the demonstration before testing and abatement guidelines are published because: (1) It is necessary to test now to assure completion of the above described testing within a five-year time frame; (2) work to be performed under the modernization program would create lead-based paint hazards with the breaking of painted surfaces; (3) it is cost-effective to do testing in conjunction with modernization so that required abatement may be merged into the modernization work efficiently, rather than be performed independently later; and (4) defective paint creates ongoing hazards which must be addressed during normal maintenance inspections. HUD will publish testing and abatement guidelines as soon as possible. These guidelines will be based on the very extensive experience of those who have been involved in lead-based paint programs and the public comments. Benefits resulting from the demonstration progam can be incorporated into such guidelines as they are made available.

II. Recent Studies of Lead Poisoning Problem

A. Centers for Disease Control's January 1985 Statement

In January 1985, the Centers for Disease Control (CDC) issued a second revision to its statement entitled "Preventing Lead Poisoning in Young Children". Based on new research findings on lead toxicity, CDC redefined elevated blood lead level ("EBL") at a lower blood lead level (from 30 to 25 ug/dl, micrograms of lead per deciliter of whole blood) and updated its recommendations on lead-based paint hazard abatement. CDC is currently considering even lower blood lead levels.

B. EPA Air Quality Criteria for Lead

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The documentation considers all sources of lead including lead-based paint. EPA has finalized this document and has prepared an addendum which discusses recent papers and scientific literature concerning the relationship between blood lead levels and blood pressure.

III. Proposed Public and Indian Housing Rulemaking and Comments

A proposed rule regarding elimination of hazards due to lead-based paint in Public and Indian Housing was published on April 5, 1988 (53 FR 11164). In response to section 566 of the 1987 Act, this rule proposed amendment of 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures; 24 CFR Part 941, Public Housing Development; Subpart H of 24 CFR Part 965, PHA-owned or Leased Projects—Maintenance and Operation; and 24 CFR Part 968, Comprehensive Improvement Assistance Program ("CIAP"). The proposed rule discussed the six main components for addressing the hazards of lead-based paint in Public and Indian Housing: (1) Maintenance Obligations; (2) Unit Turnover Procedures; (3) Emergency Procedures Involving Children With EBLs; (4) Comprehensive and Homeownership Modernization Procedures; (5) Other Family Project Procedures; and (6) Development/Acquisition Requirements. HUD solicited comments on all aspects of Public and Indian Housing's lead-based paint poisoning prevention requirements and specifically requested information for the development of HUD testing, abatement, inspection certification, and relocation guidelines.

Comments were received on all aspects of Public and Indian Housing's lead-based paint poisoning prevention requirements as well as general concerns regarding regulating lead-based paint hazard elimination. HUD also received significant technical information which will be helpful in the publication of the above-referenced guidelines. Fifty-eight comments were received from commenters including thirty-five public housing authorities ("PHAs") (predominantly southern PHAs), environmental groups, trade associations, state and local health departments, independent laboratories, a private law firm, a legal services organization, Federal agencies, a Congressman, manufacturers of XRFs and contractors.

This section will first discuss the general concerns of proposed rule commenters and then specific Public and Indian Housing issues. Comments regarding the proposed regulations for rehabilitation under section 203(k) of the National Housing Act are discussed in Section V of this preamble.

A. General Concerns

1. Feasibility Considerations

There were a number of general concerns regarding regulating lead-based paint hazard elimination. At least thirteen commenters concluded that the proposed regulations were impossible to execute. Many regarded section 566 of the 1987 Act as impractical and impossible to administer. A significant majority of the PHA commenters emphasized the hardship the regulations

and statutory amendments caused for PHAs. Other commenters indicated that similar problems will arise in other HUD programs if similar principles are applied. Four commenters suggested that the proposed regulations wasted resources of PHAs. Ten commenters believed that the proposed regulation would increase the hazards of lead-based paint. The specific comments justifying these conclusions are largely contained in the discussion below of Public and Indian Housing's Lead-Based Paint Program issues. Ultimately, the majority of commenters, especially PHAs, called for the postponement of the public housing regulation. Many commenters suggested a delay in the effective date of the regulations until testing and abatement guidelines are available. Several commenters advised further development of the approach to eliminating the hazards of lead-based paint was warranted. Other commenters did not believe a viable program could be designed without a significant infusion of funding and improved testing and abatement technology. In addition to delaying the implementation of the requirements in section 566 of the 1987 Act, commenters suggested expanding the testing period for Public and Indian Housing beyond the five year statutory period.

Alternate approaches were suggested by the commenters. Several commenters suggested that HUD should review the current regulation for effectiveness, gain more expertise by consulting with the scientific and medical communities, the National Institute of Building Sciences, National Bureau of Standards, the Environmental Protection Agency, and other interested groups including PHAs and trade associations, and seriously use the demonstration program as a tool for developing a better lead-based paint program. One commenter stated that HUD failed to make the lead-based paint situation clear to Congress, and three commenters suggested that HUD should seek Congressional modification of the LPPPA.

Six commenters questioned whether there was a severe lead-based paint problem in Public and Indian Housing and pointed to other sources of lead poisoning. Many commenters expressed concerns about other emergency conditions in PHA housing and anticipated a decline in the general condition of PHA housing.

Although many valid comments have been presented and described, HUD believes it must follow the Congressional mandate expressed in section 566 of the 1987 Act and must publish effective final regulations. After the demonstration program (detailed in Section I.B. above), HUD will transmit to Congress its findings and recommendations for legislation. These comments and this rulemaking experience will be instrumental in developing the Congressionally required report and in preparing future regulations.

2. Discretion and liability

Many PHAs were concerned as to the extent of their discretion and liability under the proposed regulation. In describing the requirements for the Public and Indian Housing program in Section IV of this preamble, HUD has attempted to clarify those limited areas of PHA discretion. Commenters also requested guidance on PHA liability and insurance needs regarding the discretionary areas. HUD believes it is for PHA counsel and advisors to assess the PHA liability and need for insurance.

HUD has learned that the majority of insurance companies writing general liability coverage for PHAs/IHAs have adopted, as a standard policy form, the 1986 Commercial General Liability policy wording and are issuing this form on new and renewal policies with 1988 effective dates. The new policy form does not provide bodily injury or property damage coverages arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants. Pollutants include any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, soot, (from a nonhostile fire) vapor, fumes, acids, chemicals and waste. The lead in lead-based paint is a "pollutant." Insurance companies are very much aware of this hazard in PHA/IHA projects and many insurers are excluding all claims that are caused by the lead-based paint. Insurance companies are taking the same position when insuring a Section 8 landlord.

All PHAs/IHAs are urged to contact their insurance agent/broker for a clear interpretation of the coverage afforded by their liability insurance policy.

Commenters were concerned who will determine what constitutes "practicability" or "practicality" under the LPPPA and in the individual housing programs. It is HUD's opinion that Section 566 essentially eliminated most of the discretion under the LPPPA for the Secretary and program participants and substituted Congressional mandates obviating the need for practicability analyses.

3. Housing v. Health Approach

Section 566 of the 1987 Act requires HUD to establish procedures based upon criteria that measures the condition of the housing (housing approach) rather than measuring the health of the residents of the housing (health approach). Only one commenter suggested a return to the health approach; however, HUD can not statutorily use a health approach.

Four commenters noted that HUD must amend other program regulations (such as Section 8 and insured single family programs) to reflect the housing approach. The proposed regulation stated that HUD plans to amend the other program regulations (in addition to the definitional changes and construction cut-off dates) after the demonstration program (see Section I of preamble). This plan is supported by the legislative history for section 566 of the 1987 Act (S. 825, 100th Cong., 1st Sess., *Cong. Rec.* S 18615, 18618 (December 21, 1987)). Many commenters expressed concerns regarding the potential treatment and impact on these other programs. HUD will especially review these comments in preparing the Congressional reports and drafting future proposed lead-based paint regulations for the other HUD programs.

4. Elderly Housing

Eight commenters expressed confusion and disagreement over the coverage of elderly housing. HUD does not intend to apply the revised Public and Indian Housing program requirements to elderly projects or 0-bedroom units (see definition of family project, 24 CFR 965.702). Guided by the exception in the 1987 Act for elderly housing and 0-bedroom units, HUD does not expect children who are less than seven years of age to reside in elderly projects or 0-bedroom units.

5. Notice and Comment Procedures

Five commenters stated that the proposed regulation provided only minimal notice and did not allow sufficient time for the development of public comments (normally sixty days). Section 566 of the 1987 Act permitted only sixty days for final rulemaking. As a result HUD had to shorten the comment period to meet this statutory deadline.

A few commenters noted that a few of section 566's requirements already appeared in CIAP Notice 88-7. Public and Indian Housing issued that notice in order to provide PHAs with early notice of the effect of section 566 and to coordinate the upcoming regulations with the FY 1988 CIAP processing schedule.

6. Environmental Impact

One PHA questioned whether HUD's Finding of No Significant Impact ("FONSI") on the environment was justified. The FONSI detailed the proposed regulation and concluded that the proposed regulation would benefit the environment and would reduce the hazards of lead-based paint. The FONSI is available for inspection during regular business hours in the Office of the Rules Docket clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

7. Definitions

The proposed rule defined applicable surfaces to include all interior and exterior painted surfaces of residential structures. A majority of commenters agreed with HUD's inclusion of all interior and exterior painted surfaces. Four commenters, however, suggested that HUD limit the coverage of exterior surfaces to a four or five feet level and the Environmental Protection Agency and National Institute of Environmental Health Sciences suggested including maintenance areas normally inaccessible to tenants because lead-based paint dust from these rooms may contaminate tenant areas. One commenter suggested that the "as far as practicable" language in the LPPPA allows HUD to exclude areas inaccessible to children.

Section 566 of the 1987 Act provides that HUD's procedures are to eliminate as far as practicable immediate hazards due to the presence of *"accessible intact, intact, and nonintact interior and exterior painted surfaces* that may contain lead in any such housing in which any child who is less than seven years of age resides or is expected to reside" (emphasis added). Congress has made it clear that it intends to include all intact and nonintact interior and exterior painted surfaces that may contain lead, and HUD has drafted the rule in that fashion.

Five commenters requested a clarification concerning the terms "project" and "building". HUD intends to use these terms in the same way as it does for the CIAP program. Project refers to the units or buildings undergoing comprehensive or homeownership modernization or projects (except elderly projects) assisted under section 9 of the U.S. Housing Act of 1937. A building is used in the typical sense to describe structural parts of a project.

One commenter suggested that immediate hazard should be defined. HUD believes the program-specific regulations (*e.g.*, 24 CFR Part 965, Subpart H) collectively serve as a definition of immediate hazard.

One commenter was confused by the use of both the terms abatement and treatment. HUD used these terms interchangeably. The final rule predominantly uses the term treatment to avoid any confusion.

8. Notification

One commenter suggested that the regulation should be modified to provide for a hazard notice in the language of the tenant. HUD intends to prepare a revised uniform notification for use in all of its programs. HUD intends to also provide a Spanish version with this notification. Other translations will be prepared as needed by the organization authorized to administer the HUD-associated housing program (*e.g.*, PHAs).

Another comment was to modify the rule to provide that notice be given to the "official" tenant since many families may reside in the same apartment for extended periods without notice to the PHA. HUD does not believe this modification is necessary because the terms tenant, tenant family and family are used consistently throughout the Public and Indian Housing regulations and includes only the tenants covered by the lease.

9. Lead Level

Two commenters suggested that HUD should reduce the lead level to .7 mg/cm^2. Other commenters suggested a review of the lead level or use of local levels. Section 566 of the 1987 Act sets a 1 mg/cm^2 level which is to be periodically reviewed by the Secretary and reduced to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level. As part of the demonstration program, HUD will be reviewing the XRF, new technology and the lead level. Additionally, redesignated § 965.710 (formerly 24 CFR 965.706) requires compliance with local law governing lead-based paint testing.

10. Construction Cut-off Date

Many commenters noted that the regulation followed section 566 of the 1987 Act and imposed a 1978 construction cut off date. However, one commenters noted that this change along with the new definition of applicable surfaces would result in at least a 100% increase in the number of surfaces covered and corresponding costs. HUD believes that the 1978 construction cut-off date is not discretionary.

B. Public and Indian Housing Issues

1. Routine Maintenance Requirements (section 965.704)

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA is to visually inspect units for defective paint surfaces as part of routine periodic unit inspections and treat the defective area within a reasonable period of time. Four commenters suggested that the routine maintenance procedures should be combined with CIAP procedures. HUD disagrees because of the nature of the work (maintenance vs. modernization), funding mechanisms and scope of the abatement and surfaces to be treated.

2. Unit Turnover/Vacant Unit Procedures (section 965.705)

Applicable surfaces in family projects are to be tested at unit turnover. Nineteen commenters were concerned with these procedures. Many commenters suggested there would be additional cost, fewer available testers, increased opportunities for vandalism, an increase in the number of vacancies, the need for additional rehabilitation, difficult tenant choices for available units and cost inefficiencies. Some commenters suggested the regulation was unworkable, unnecessary and would have a negative impact on the performance funding system.

HUD has clarified the proposed regulation; however, vacant unit testing at unit turnover is mandated by section 566 of the 1987 Act.

3. Emergency Procedures (Section 965.706)

In addition to the maintenance obligations, unit turnover and random testing requirements discussed in section IV of this preamble, emergency procedures apply to situations involving EBL children. Most commenters agreed with HUD's emergency procedures; however four commenters asked what a PHA should do if a lead-free apartment does not exist in the PHA's stock and who will pay for such housing outside PHA stock. HUD suggests that temporary lead-free housing should be secured by the PHA (at its cost) for the family with the EBL child. HUD will address the relocation issue in the abatement guidelines.

4. CIAP Procedures (Sections 968.5, 968.9(e))

Many commenters suggested that many other emergencies would be left uncorrected because of the lead-based paint requirements and ultimately only lead-based paint testing and abatement

would be funded because of budgetary reductions. Many commenters urged HUD to secure more CIAP funding and assist PHAs with their funding and planning problems. One commenter suggested that all lead-based paint activities be included in the Group 1 funding level. PHAs indicated that the new testing requirements will have a negative impact on the 1988 CIAP funding cycle and urged HUD to withdraw CIAP Notice 88–7.

In order to complete the statutory required testing within five years, HUD believes that it must impose the requirements immediately and allow 1988 funds to be used to begin the process. For this reason, HUD does not intend to withdraw CIAP Notice 88–7 or change its funding procedures. HUD has attempted to describe in more detail the CIAP funding procedures for lead-based paint testing and abatement.

5. Testing

Thirty-two commenters raised issues regarding the reliability and availability of the XRF testing equipment and the testers. In its previous lead-based paint rulemaking in 1985–1987, HUD reviewed these issues. HUD is also required to examine these issues as part of the demonstration program. HUD will utilize these comments as part of its examination of the problem for the Congressional report.

Twenty-four commenters requested testing guidelines as soon as possible. Many commenters submitted sample testing procedures which will be useful in preparing HUD guidelines. As part of the guidelines, commenters suggested that HUD consider the issues of independent third party testing (conflicts of interest created by having the same group test and abate), regular retesting, testing after abatement, testing priorities (*e.g.*, by units), contracting guidelines for testing and cost estimates for the XRF and staff. HUD will consider these issues in drafting the guidelines.

Two commenters suggested that paint manufacturers should share in the testing and abatement costs. Section 566 of the 1987 Act only provides for existing Federal funding sources. HUD does not foresee any sharing of costs with paint manufacturers.

One commenter considered the testing and abatement to be discriminatory because similar testing and abatement is not required in other HUD programs. After the demonstration, other HUD programs will need to redesign their testing and abatement requirements.

Five commenters stated that HUD should conduct testing with its own personnel and equipment or contract with a testing service. HUD does not believe this is a practicable alternative at this time.

The random sampling requirements including scattered site and 100% testing (*e.g.*, PHAs are required to test all surfaces in all units in the CIAP project if one unit in the random sample includes lead-based paint) requirements generated six comments. Comments were split between increasing or reducing the percentage of units (including scattered site units) to be tested and the need for 100% testing if lead-based paint was found in the sample. The random testing in the proposed regulation is being retained because decreased sample sizes would lower the statistical confidence and stringency levels of the tests. Sample size increases, on the other hand, would impose extra costs on the PHAs while providing less than proportionate increases in statistical precision levels. HUD believes the 100% testing requirement should be maintained because it is more cost-effective to test than to automatically require abatement of all units.

6. Abatement

Twenty five commenters requested abatement guidelines. Many commenters submitted information on abatement methods, hazards (disposal problems, hazards to workmen, lead dust hazards and lead-contaminated soil), costs and relocation procedures. This information will be helpful in preparing the HUD guidelines.

7. Five Year Period for Testing

Two commenters considered the five year testing requirement (and corresponding abatement requirements) to be unrealistic and impracticable. Section 566 of the 1987 Act requires Public and Indian Housing to be tested within five years from the date of publication of final regulations.

8. Inspection Certification

Twenty-four commenters urged HUD to prepare inspection certification guidelines because PHAs do not feel competent in making the judgment without professional standards, training and a certification program to qualify inspectors. HUD plans to issue guidelines regarding qualified inspectors, final inspection and certification after abatement as part of HUD's testing and abatement guidelines.

9. Funding

Seventeen commenters stated that the testing and abatement is too costly and that a massive infusion of funding is needed or the CIAP program would fail. Commenters asked for more details on Group 2 funding availability and application procedures. Five commenters suggested a set-aside for testing and abatement. Other commenters were concerned about the competition for funding and whether PHAs are expected to fund this activity from regular operating budgets. Two commenters noted that parallel procedures in the Section 8 program would result in high costs for landlords. HUD has described in more detail its plan for funding these activities below in Section IV.

Two commenters were concerned with the funding of development program costs. It should be noted that the total development cost cap is an administratively imposed limit that can be relaxed by HUD if necessary to pay for elimination of lead-based paint. HUD Regional Administrators are authorized to raise the total development cost cap by 5 per cent which should be adequate to pay for development work related to lead-based paint.

10. Training

Along with the need for guidelines, five commenters suggested that HUD should conduct training regarding the guidelines. HUD will assess this need after the guidelines are developed.

11. Monitoring and Enforcement

Six commenters suggested that there should be monitoring and enforcement requirements including penalties for failure to complete testing within the five year period and binding or mandatory guidelines especially for abatement and clean-up.

HUD plans to modify its PIH Field Monitoring Handbook (7460.7 REV.) and CIAP Handbook 7485.1 REV–3) to reflect the revised lead-based paint testing/abatement monitoring and performance review objectives. On-site HUD inspections of PHAs will incorporate review of lead-based paint testing/abatement performance.

12. Waivers

Two commenters suggested that HUD should provide for an appeals process for extensions of time to complete lead-base paint testing and abatement. HUD only has the discretion to grant waivers of non-statutory lead-based paint requirements. This is reflected in 24 CFR 35.70.

IV. Summary of Final Requirements for Public and Indian Housing's Program

This rule amends the Public and Indian Housing Lead-Based Paint Poisoning Prevention program in response to the amendments made by

section 566 of the 1987 Act. In addition to responding to the amendments concerning detection and abatement procedures and measurement criteria, this rule is designed to assure that all public housing assisted under section 9 of the United States Housing Act of 1937 (*i.e.*, public housing receiving operating subsidies (including those PHAs which received special funds for the cost of insurance and audit expenses)) is tested as described in section 566 prior to the expiration of five years from the date of the publication of these final regulations. Section 566 and these final regulations require the inspection of each vacant dwelling prior to rerenting and a random sample of all remaining occupied dwellings. If lead-based paint hazards are detected during these inspections, all units in a building will be inspected if one unit is found to have lead-based paint. HUD will maintain the current regulatory 1978 construction cut-off date. HUD is revising the definition of applicable surfaces in § 968.702 to parallel the LPPPA amendments and include all intact and nonintact exterior and interior painted surfaces of a residential structure. The definition of family project is also amended to reflect the statutory coverage of all housing assisted under section 9 of the United States Housing Act of 1937 and in which children under seven years of age reside or are likely to reside.

Public and Indian Housing's lead-based paint poisoning prevention requirements have the following six main components for addressing the hazards of lead-based paint:

(1) Maintenance obligations (24 CFR 965.704);

(2) Unit turnover procedures (24 CFR 965.705);

(3) Emergency procedures involving children with EBLs (24 CFR 965.706);

(4) Comprehensive and homeownership modernization procedures (24 CFR 968.9(e));

(5) All other family projects (24 CFR 968.9(e)(1)(iii)); and

(6) Development/acquisition requirements (24 CFR 941.208(g)).

Each of these components are discussed below.

Maintenance Obligations

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall continue to visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of defective paint spots by scraping and repainting the defective area is the required treatment. Treatment shall be completed within a reasonable period of time.

Unit Turnover Procedures

Applicable surfaces in family projects are to be tested at unit turnover (24 CFR 965.705). If the building has been randomly tested and all applicable surfaces in the random sample contain no hazardous levels of lead, no further testing is required. A qualified inspector shall certify in writing the precise results of the test. HUD will prepare guidelines regarding qualified inspectors. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD are to be utilized to the extent available. Testing is to be performed by using an XRF; however, laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. All units shall be tested in any building in which a unit is determined, at unit turnover, to have lead-based paint test results equal or exceeding a level of 1 mg/cm ^{2}.

If the test results equal or exceed a level of 1 mg/cm ^{2}, the results shall be provided to the tenant family and any potential purchaser. If testing finds lead-based paint and the incoming tenant family has a child under seven years of age, the tenant family shall be offered a post-1978 unit, or a unit which either has been abated to the requirements of this section or found to contain no lead-based paint.

If lead-based paint is found on applicable surfaces, such surfaces are to be treated in accordance with § 35.24(b)(2)(ii). Treatment is to consist of covering or removal of the applicable surfaces containing lead-based paint. Covering methods include but are not limited to adding a layer of wallboard or permanent wallcovering. Paint removal may be accomplished by such methods as scraping, heat treatment or chemicals. Removal (of the paint), covering (or encapsulation) or replacement of the substrate (or trim) surface are the preferred methods. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment.

If defective but not leaded paint surfaces are found, covering or removal of defective paint spots by scraping and repainting the defective area is the required treatment. Treatment is to be completed before occupancy.

Final inspection and certification are required after treatment by a qualified inspector. The final inspection shall certify that abatement of lead-based paint hazards was completed in accordance with the abatement specifications and need not be presented as an indication that the lead-based paint has been removed from the premises. This will allow for the fact that encapsulation (or covering) techniques do not result in the removal of lead-based paint and will ensure that any future work done in the unit will take this into account. This will also permit the unit to be deemed to have been abated if the abatement was done according to these requirements, even though an unremovable residue may remain in or on the surface. The certification should be precise as to the nature of the abatement.

Testing and abatement guidance will be published in the **Federal Register** as notices. As part of this guidance, HUD will also describe acceptable qualifications for inspectors who perform XRF testing or comparable approved testing or sampling techniques and certify as to the precise results of such testing. HUD will defer to appropriate requirements for such inspectors where they are established by states or localities.

Emergency Procedures Involving Children with EBLs

In addition to the maintenance obligations, unit turnover and random testing requirements discussed in this Part, emergency procedures (24 CFR 965.706) must also apply to situations involving EBL children. In the case of a current resident EBL child, or a resident Ebl child or non-resident EBL child using a PHA-owned or operated child care facility, these procedures require the PHA to test all surfaces in the unit and/or PHA-owned and operated child care facilities used by the EBL child for lead-based paint and to abate (where positive) the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by PHA and HUD. Surfaces not tested during an EBL emergency will be tested as part of the random testing. In the case of a current resident family with an EBL child, the PHA may assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated.

Existing regulations (which have not been amended) require testing to be completed within five days after

notification to the PHA of the identification of the EBL child. Other testing procedures are identical to § 965.705 discussed above. Abatement actions are amended to include all applicable surfaces. The order of priority has not been amended (*i.e.*, units, PHA owned or operate child care facilites, interior common areas and exteriors). The abatement methods are the same as those in § 965.705 discussed above.

Certain miscellaneous program regulations are also amended. The PHA recordkeeping requirements in § 965.709 are amended to reflect the effective date of this regulation. The recordkeeping provision is designed to prevent duplicative testing or treatment. The tenant protection requirements in § 965.707 require PHAs to follow such tenant protection/relocation actions as shall be prescribed by HUD. Where debris, dust or fumes are going to be created during the abatement process, children under seven years of age and pregnant women should be relocated during the abatement process. Specific Guidance for relocation will be published as part of the abatement guidelines in a notice in the **Federal Register.**

Comprehensive and Homeownership Modernization Procedures

These procedures include family projects constructed prior to 1978 or substantially rehabilitated prior to 1978. Homeownership units constructed prior to 1978 or substantially rehabilitated prior to 1978 are also included. These procedures apply to the above-described family projects and homeownership units (1) undergoing comprehensive or homeownership modernization, (2) involving applications for comprehensive or homeownership modernization and (3) all other family projects not covered by (1) or (2). As of the effective date of this regulation, such family projects or homeownership units (assisted under section 9 of the United States Housing Act of 1937) must be randomly tested for lead-based paint and abated where lead-based paint hazards are found.

Lead-based paint testing and abatement must be accomplished simultaneously with comprehensive or homeownership modernization projects. In order to meet the statutory five-year inspection deadline, HUD requires comprehensive plans for CIAP (as described in § 968.5) to be amended to include the five-year schedule for lead-based paint testing and abatement. Random testing as described in § 968.9(e)(2) should be scheduled and prioritized by age of project and projects known to have lead-based paint from unit turnover testing or presence of previous EBLs. Any previous testing or abatement work which does not meet the requirements of this rule is to be tested and abated in accordance with these requirements.

The procedures for random testing are amended to include all interior and exterior surfaces and clarify random sampling of scattered site projects. Testing methods, tenant protection, lead-based paint debris disposal, recordkeeping and state and local law as described in §§ 965.705, 965.707, 965.708, 965.709 and 965.710 shall be followed. Abatement as described in § 965.705 is also to be followed.

Development/Acquisition Requirements

HUD has amended its development/acquisition regulations for Public and Indian Housing to avoid acquiring properties with lead-based paint hazards and to enhance the decisionmaking process with respect to cost and new construction considerations. All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on applicable surfaces (including defective paint surfaces) as described in 24 CFR 968.9(e)(2). If lead-based paint is found, the cost of testing and abatement shall be considered when (1) making the cost comparison to justify new construction as well as (2) meeting maximum total development cost limitations. If units containing lead-based paint are acquired, compliance with 24 CFR Part 35 and 24 CFR Part 965, Subpart H, is required. Abatement as described in 24 CFR 965.705 shall be completed prior to occupancy.

Funding

If state and local funds are unavailable, PHAs may continue to use CIAP funds (section 14 of the United States Housing Act of 1937, 42 U.S.C. 1437) for testing and abatement of EBL units, PHA owned or operated child care facilitate used by EBL children and interior common areas and exteriors where necessary and appropriate. The Group 1 (CIAP emergency condition) funding preference continues to be limited to provide for activities involving EBLs. Additionally, under section 14 of the United States Housing Act of 1937, a new funding eligibility in Group 2 is added to address other family projects or vacant units which are not undergoing comprehensive or homeownership modernization and which must be tested and abated. These activities are now defined as lead-based paint modernization. Corresponding changes have been made in Part 968 to reflect this new category of modernization. Lead-based paint testing and abatement of units undergoing comprehensive or homeownership modernization will continue to be funded as part of the Comprehensive or homeownership modernization.

V. Proposed Regulations for Rehabilitation Under Section 203(k) of the National Housing Act, Comments and Final Regulations

The adoption in early 1987 of revised regulations under the LPPPA (see 52 FR 1891, January 15, 1987) raised a problem that occurs when the surface treatment requirement of 24 CFR 200.810(b) is invoked in certain cases of rehabilitation under section 203(k) of the National Housing Act. Section 200.810(b) of the 1987 regulations provided:

> The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1973 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Under no circumstances, when such a defective paint surface has been listed to be treated, is any escrow procedure regarding that condition permitted. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance.

Section 203(k) of the National Housing Act provides for a program of mortgage insurance to facilitate the rehabilitation of one-to-four-family properties. Under the program, HUD insures rehabilitation loans to: (1) Finance rehabilitation of an existing property; (2) finance rehabilitation and refinancing of the outstanding indebtedness of a property; and (3) finance purchase and rehabilitation of a property. An eligible rehabilitation loan must involve a principal obligation not exceeding the amount allowed under the section 203(b) basic home mortgage insurance program. Legislation establishing this rehabilitation program was enacted in 1961.

In many instances, making abatement a precondition of endorsement (as is required under § 200.810(b)) compels either the buyer or the seller, where section 203(k) is being used, to perform work that must be undone during the rehabilitation for which the loan was sought. The seller is often unwilling, and prior to closing and disbursement may be unable, to undertake the expense of abatement; the buyer is usually even less able to afford it until the loan is

closed. Similarly, when there is no accompanying sale of the property, the homeowner is typically unable to meet the expenses until the loan is closed. Even if one of the parties can afford the cost, the work, which usually requires an additional inspection by the appraiser, is often duplicative and wasteful. Occupant homeowners may defer or forego property improvements that could abate a lead-based paint hazard or else obtain rehabilitation financing through other sources that impose no abatement requirements. The proposed rule indicated that procedures intended to enhance the protection of occupants, may in fact exacerbate the lead-based paint problem.

When the rehabilitation involves a sale of the property, work is usually completed before the buyer takes occupancy. The properties are typically uninhabitable prior to rehabilitation. To avoid the risk of poisoning and also duplicative rehabilitation/abatement with respect to unoccupied properties, HUD proposed to expand the exception under section 203(k) and make the abatement procedure a condition of occupancy. HUD proposed to revise § 200.810(b) to provide that, except in the case of rehabilitation work in unoccupied dwellings financed under section 203(k) of the National Housing Act, no escrow procedure will be permitted with respect to abatement of a defective paint surface, and treatment must be accomplished before the mortgage is endorsed for insurance. Where section 203(k) financing is involved and the dwelling is unoccupied, the defective paint condition will be abated in conjunction with the rehabilitation work, and will be completed as expeditiously as possible.

HUD requested comments regarding the situation where the property is occupied at the time of section 203(k) loan application. Because of the obvious risk of exposing occupants to abatement work in progress, the proposed rule did not provide for escrow of abatement (or other rehabilitation) funds if the property is occupied.

HUD received one comment on the proposed amendment of § 200.810(b). The commenter, the National Association of Realtors, noted that home sales in Northeastern and Midwestern states have been delayed during winter months because of the requirement to abate defective exterior paint. The commenter urged HUD to allow the use of escrow accounts in those circumstances where exterior defective paint surfaces cannot be abated due to adverse whether conditions. HUD agrees with the commenter that relief is needed but does not wish to expose occupants to unnecessary risks; therefore, HUD has added an exception which parallels the current section 8 program requirement. When weather conditions prevent completion of repainting of exterior surfaces, repainting may be delayed and an escrow procedure is permitted; however, covering or removal of the defective paint must be completed within a reasonable period of time.

The commenter also suggested allowing treatment to take place after closing to allow a seller additional time for treatment or to permit the buyer to provide treatment before the dwelling becomes re-occupied. HUD agrees with this comment and has amended the regulation to permit escrow procedures for post-closing treatment. HUD will provide the abatement guidelines to the party responsible for the rehabilitation.

VI. Section-by-Section Review of Final Regulation

These regulations amend Parts 35, 200, 510, 511, 570, 882, 886, 941, 965 and 968. With the exception of the Public and Indian Housing regulations (Parts 941, 965 and 968) described in Section IV above, each of these amendments is described below.

Part 35 is amended by revising Subpart A's notification requirements. Section 35.5(b) reflects the 1987 Act's amendments. Each Assistant Secretary will use the same notification. Such notification will be prepared after consultation with the National Institute of Building Sciences. Section 35.5(c) was inadvertently omitted when the final regulation for rehabilitation programs was published on February 17, 1987 (52 FR 4870). In response to the 1987 Act, § 35.22 is amended by revising the definition of applicable surfaces to include all interior and exterior painted surfaces, and §§ 35.24(b)(1) and 35.56 are amended by extending the construction cut off date to HUD-associated housing constructed prior to 1978. Sections 35.24(b) and 35.56 are amended to generically describe covering methods and prohibit all open flame removal methods.

In response to the 1987 Act, the definitions of applicable surface in affected HUD program regulations are revised to include all interior and exterior painted surfaces (*i.e.*, § 200.805; § 510.410(c)(1); § 511.11(f)(3)(i); § 570.608(c)(2); § 882.109(i)(2); § 882.404(c); and § 886.113(i)(2)). The rationale for revisions to § 200.810(b) regarding rehabilitation work in unoccupied dwelling financed under section 203(k) of the National Housing Act is detailed in Section V above.

In response to the 1987 Act, construction cut-off dates in affected HUD program regulations are revised to include housing constructed prior to 1978 (*i.e.*, § 200.815(b), (c) and (d); § 200.820(b) and (c); § 200.825(b) and (c); § 510.410(c)(2); § 511.11(f)(3)(ii); § 570.608(c)(3); § 882.109(i)(3) and (4); § 882.404(c)(3) and (4); and § 882.113(i)(3) and (4)). The testing requirements are revised to also permit testing by an organization recognized by HUD. The existing testing and abatement requirements continue to apply.

Other Matters

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

OMB Control Number

Information collection requirements contained in §§ 965.705, 965.706(c) and (d)(2), and 968.9(e)(2) and (3) of this final rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number will be announced by separate notice in the **Federal Register**.

Regulatory Impact Analysis

This rule qualifies as a major rule as defined in Executive Order 12291. The Department has conducted a draft cost analysis of the regulations, using in part the public and Indian housing modernization needs study. This cost analysis will serve as a Regulatory

Impact Analysis. The cost study will be available from the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Semiannual Agenda of Regulations

This final rule was listed as sequence number 880 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13863) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 510

Loan programs—Housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing, Pockets of poverty, Small cities.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 886

Grant programs—Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 941

Loan programs—Housing and community development, Public Housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 965

Energy conservation, Loan programs—Housing and community development, Public housing, Utilities.

24 CFR Part 968

Loan programs—Housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs—Housing and community development, Indians.

Accordingly, 24 CFR Parts 35, 200, 510, 511, 570, 882, 886, 941, 965 and 968 would be amended to read as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation of Part 35 continues to read as follows:

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 35.5 is amended by revising paragraph (b) and adding a new paragraph (c) to § 35.5 to read as follows:

§35.5 Requirements.

* * * * *

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragaph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include providing the required notification (prepared by the Secretary after consultation with the National Institute of Building Sciences) and establishing procedures to:

(1) Provide evidence that the required notification has been received by purchasers and tenants of HUD-associated housing constructed prior to 1978, and

(2) Require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure that purchasers and tenants receive the required notification.

(c) Any requirement of this section, except use of the required notification, shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated pursuant to the authorization granted in this section and supersedes, with respect to programs within its defined scope, the notification requirements prescribed by this section. *Sec. e.g.*, 24 CFR 570.680(b) (Community Development Block Grants).

3. Section 35.22 is amended by revising the definition of applicable surface to read as follows:

§ 35.22 Definitions.

As used in this subpart:

Applicable surface means all intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

4. Section 35.24 is amended by revising paragraphs (b)(1), (b)(2)(ii) and (b)(4) to read as follows:

§ 35.24 Requirements.

* * * * *

(b) * * *

(1) All applicable surfaces of HUD-associated housing constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist.

(2) * * *

(ii) Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adquate treatment.

* * * * *

(4) Any requirements of this section shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated under the authorization granted in this section and supersedes, with respect to programs within its defined scope, the requirements prescribed by this section. *See, e.g.*, 24 CFR Part 200, Subpart O (Mortgage Insurance and Property Disposition); § 570.608 (Community Development Block Grant); § 882.109(i) (Section 8 Existing Housing); Part 965, Subpart H (Public and Indian Housing).

5. Sections 35.56(a)(1) and (2) are revised to read as follows:

§ 35.56 Requirements.

(a) * * *

(1) All applicable surfaces of residential structures constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

(2) Treatment necessary to eliminate hazards of lead-based paint shall consist of covering or removal of defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallbard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

* * * * *

PART 200—INTRODUCTION

6. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. The definition of applicable surface in § 200.805 is revised to read as follows:

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

8. Paragraph (b) of § 200.810 is revised to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(b) *Appraisal.* The fee panel appraiser or direct endorsement appraiser of a dwelling constructed prior to 1978 shall inspect the dwelling for defective paint surfaces. If a defective paint surface is found, the commitment or other approval document will contain the requirement that the surface is to be treated as described in paragraph (c) of this section. Treatment of the surface shall be accomplished before the mortgage is endorsed for insurance. Except in the case of rehabilitation work financed under section 203(k) of the National Housing Act and under certain weather conditions described below, when such a defective paint surface has been listed to be treated, no escrow procedure regarding that condition will be permitted. With respect to rehabilitation work financed under section 203(k), an escrow procedure is permitted provided that the defective paint condition will be abated in conjunction with the rehabilitation work and will be completed as expeditiously as possible. When weather conditions prevent completion of repainting of exterior surfaces, repainting may be delayed and an escrow procedure is permitted; however, covering or removal of the defective paint must be completed within a reasonable period of time.

* * * * *

9. Paragraphs (b), (c) and (d) of § 200.815 are revised to read as follows:

§ 200.815 HUD-owned single family property disposition.

* * * * *

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before the closing of the sale of the property. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before the closing of the sale of the property. In the case of a sale to a non-owner occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment.

(c) *Chewable surfaces.* This subsection applies to dwellings constructed prior to 1978. If the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child under the age of seven years will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii).

(d) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section in the case of a residential structure constructed prior to 1978, HUD, at its option, may forgo testing and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

10. Paragraphs (b), (c)(1), and (c)(4) of § 200.820 are revised to read as follows:

§ 200.820 Multifamily insurance and coinsurance.

* * * * *

(b) *Defective paint surfaces.* In the case of a residential structure constructed prior to 1978, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before final endorsement as a condition of the firm commitment.

(c) *Chewable surfaces*—(1)(i) *Random sample.* In the case of a residential structure constructed prior to 1978 a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the project are required to be tested. If lead-based paint is found in any common area, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the project are required to be tested.

(ii) *EBL Child.* In the case of a residential structure constructed prior to 1978, if the developer is presented with test results that indicate a child seven years of age or younger living in a unit

has an EBL the developer must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test, and abate all the unit surfaces.

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c)(1)(i), (2) and (3) of this section, in the case of a residential structure constructed prior to 1978, the developer may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

* * * * *

11. Paragraphs (b), (c) introductory text, and (c)(2) of § 200.825 are revised to read as follows:

§ 200.825 HUD-owned multifamily property disposition.

* * * * *

(b) *Defective paint surfaces.* For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed before delivery of the property to the purchaser or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required reports. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in this paragraph.

(c) *Chewable surfaces.* If the residential structure was constructed or substantially rehabilitated prior to 1978, HUD shall cause a random sampling of dwelling units to be tested for lead-based paint on chewable surfaces as part of the sales contracting procedure. Random testing shall be performed as described in § 200.820(c)(1). Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by the Commissioner. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, a qualified HUD inspector, or an organization recognized by HUD. The testing entity shall certify to the results of the test. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). Treatment shall be completed before delivery of the property to the purchaser, or, if the disposition program under 24 CFR Part 290 provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

* * * * *

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the case of a residential structure constructed prior to 1978, HUD, at its option, may forego testing, and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

12. The authority citation for Part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In paragraph (c)(1) the definition for "Applicable surface" and (c)(2) of § 510.410 are revised to read as follows:

§ 510.410 Lead-based paint.

* * * * *

(c) * * *

(1) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(2) *Inspection and testing*— (i) *Defective paint surfaces.* The local agency shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The local agency shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an indentified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(2)(ii) of this section, in the case of a residential structure constructed prior to 1978, the owner may forego testing and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 511—RENTAL REHABILITATION GRANT PROGRAM

14. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In paragraphs (f)(3)(i), the definition for "Applicable surface" and (f)(3)(ii) of § 511.11 are revised to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(f) * * *

(3) * * *

(i) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(ii) *Inspection and Testing*—(A) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(B) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint.

(C) *Abatement without testing.* In lieu of the procedures set forth in paragraph (f)(3)(ii)(B) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in

accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

16. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

17. In paragraph (c)(2), the definition for "Applicable surface" and (c)(3) of § 570.608 are revised to read as follows:

§ 570.608 Lead-based paint.

* * * * *

(c) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Inspection and Testing*—(i) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PROGRAM—EXISTING HOUSING

18. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f, sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

19. In paragraph (i)(2), the definition for "Applicable surface," and (i) (3) and (4) of § 882.109 are revised to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(i) * * *

(2) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211(b)–(c), as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30 day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1978, for a Family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

* * * * *

20. In paragraph (c)(2) the definition for "Applicable surface," and (c)(3) and (4) of § 882.404 are revised to read as follows:

§ 882.404 Housing quality standards.

* * * * *

(c) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 882.504(a), and each periodic inspection under § 882.516(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a) or required as corrective action pursuant to § 882.516(c), as appropriate. Correction of defective paint surfaces discovered at periodic inspection must be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30 day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* If a proposal is submitted with respect to a unit constructed prior to 1978, occupied by a Family which includes a child under the age of seven years with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is indentified at initial inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a). Where lead-based paint on

chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be completed within the time limits set forth in paragraph (c)(3) of this section.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

21. The authority citation for Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages

22. In paragraph (i)(2) the definition for "Applicable surface"and (i) (3) and (4) of § 886.113 are revised to read as follows:

§ 886.113 Housing quality standards.

* * * * *

(i) * * *

(2) *Definitions.—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

(3) *Defective paint.* Residential units which were constructed prior to 1978 shall be inspected for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed prior to 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces. Ten units shall be tested in projects with twenty or more units, and six units shall be tested in projects with fewer than twenty units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as day care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all assisted units in the project are required to be tested. If lead-based paint is found in any common areas, all common areas in the project are required to be tested. If lead-based paint is found in any exterior applicable surface, all exterior applicable surfaces in the projects are required to be tested. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Testing of chewable surfaces shall be performed by a State or local health or housing agency, an inspector certified or regulated by the State or local health or housing agency, or an organization recognized by HUD. The testing entity shall certify to the results of the test. The Owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with 24 CFR 35.24 (b)(2)(ii) shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(iii) *EBL Child.* In the case of a residential structure constructed prior to 1978, if the owner is presented with test results that indicate a child seven years of age or younger living in a unit has an elevated blood lead level or EBL, the owner must test the unit occupied by the child and if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii) or choose not to test and abate all the unit surfaces.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed prior to 1978, the owner may forego testing and abatement, and abate all applicable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(iii).

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

23. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)).

24. Section 941.208 is revised by adding a new section (h) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(h) *Lead-based paint.* All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) under this part shall be tested for lead-based paint on applicable surfaces (including defective paint surfaces) as described in 24 CFR 968.9(e)(2). If lead-based paint is found, the cost of testing and abatement shall be considered when: (1) Making the cost comparison to justify new construction as well as (2) meeting maximum total development cost limitations. If units containing lead-based paint are acquired, compliance with 24 CFR Part 35 and 24 CFR Part 965 Subpart H is required, and abatement as described in 24 CFR 965.705 shall be completed prior to occupancy.

* * * * *

PART 965—PHA-OWNED PROJECTS—MAINTENANCE AND OPERATIONS

25. The authority citation for Part 965 continues to read as follows:

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

26. Section 965.702 is amended by deleting the definition of chewable surface and revising the definitions of applicable surface and family project to read as follows:

§ 965.702 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

* * * * *

Family project. Any project assisted under section 9 of the U.S. Housing Act of 1937 which is not an elderly project. For this purpose, an elderly project is one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project. Zero bedroom units, for purposes of this subpart, are excluded from any family project.

* * * * *

27. Section 965.704 is revised to read as follows:

§ 965.704 Maintenance obligation.

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall visually inspect

units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed within a reasonable period of time.

§§ 965.706 and 965.707 [Redesignated as §§ 965.710 and 965.711]

28. Sections 965.706 and 965.707 are redesignated as §§ 965.710 and 965.711; § 965.705 is revised; and new §§ 965.706, 965.707, 965.708 and 965.709 are added to read as follows:

§ 965.705 Unit turnover procedures.

(a) *Vacant unit testing.* In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall test units for lead-based paint on applicable surfaces at unit turnover. If the family project has been randomly tested in accordance with § 968.9(e)(2) and no lead-based paint was found, no further testing is required. If testing finds lead-based paint and the incoming tenant family has a child under seven years of age, the tenant family shall be offered a post 1978 unit, or a unit which either has been abated to the requirements of this section or found to contain no lead-based paint. A qualified inspector shall certify in writing the precise results of the test. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. Testing shall be performed by using an X-ray fluorescence analyzer (XRF). Laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. If the test results equal or exceed a level of 1 mg/cm^2, the results shall be provided to the incoming tenant family and any potential purchaser.

(b) *Building testing.* All units shall be tested in any building in which a unit is determined, at unit turnover, to have lead-based paint test results equal or exceeding a level of 1 mg/cm^2. Vacant unit and building testing are eligible costs under § 968.4. Procedures for obtaining approval of a modernization program are described in § 968.5(h)(2).

(c) *Abatement.* If lead-based paint is found on applicable surfaces, such surfaces shall be treated in accordance with § 35.24(b)(2)(ii) of this title. Wherever possible removal (of the paint), encapsulation (or covering) or replacement of the substrate (or trim) surface is strongly upgraded to avoid lead-dust hazards to both residents and workers. If defective but not leaded paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed before occupancy. Final inspection and certification after treatment shall be made by a qualified inspector. Testing and treatment of lead-based paint will be considered an eligible modernization cost under Part 968 only upon PHA certification that such services are otherwise unavailable.

§ 965.706 Procedures involving EBLs.

(a) *Procedures where a current resident child has an EBL.* When a child residing in a PHA-owned low income family project has been identified as having an EBL, the PHA shall: (1) Test all surfaces in the unit and applicable surfaces of the PHA-owned or operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven years of age) will be done as considered necessary and appropriate by the PHA and HUD; or (2) assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using a PHA-owned or operated child care facility has an EBL.* When a non-resident child using a PHA-owned or operated child facility has been identified as having an EBL, the PHA shall test all applicable surfaces of the PHA-owned or operated child care facilities and abate the surfaces found to contain lead-based paint.

(c) *Testing requirements.* Testing for lead-based paint on all surfaces in the unit housing the EBL child and the PHA owned or operated child care facilities used by the EBL child shall be completed within five days after notification to the PHA of the identification of the child. A qualified inspector shall certify in writing the precise results of the test. Testing services available from state, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm^2, the results shall be provided to the tenant or the family of the EBL child using PHA owned or operated child care facilities. Testing will be considered an eligible modernization cost under Part 968 only upon PHA certification that testing services are otherwise unavailable. Testing shall be performed by using an X-ray fluorescence analyzer (XRF). Laboratory chemical analysis may be used in limited circumstances if approved by HUD in cases where it is not practical to obtain XRF readings. XRF readings of 1 mg/cm^2 or higher are considered positive for presence of lead-based paint.

(d) *Hazard abatement requirements—* (1) *Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) Unit housing a child with an EBL. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

(ii) PHA owned or operated child care facilities used by a child with an EBL. Any applicable surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including non-dwelling PHA facilities which are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside. Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* Surfaces found to contain lead-based paint shall be treated in accordance with § 35.24(b)(2)(ii) of this title. The PHA shall select a safe and cost-effective treatment for the surface under the circumstances. Wherever possible, coverings, encapsulation and replacement of painted surfaces is strongly urged to avoid lead-dust hazards to both residents and workers. Final inspection and certification after treatment shall be made by a qualified inspector.

§ 965.707 Tenant protection.

The PHA shall take appropriate action in order to protect tenants including children with EBLs, other children, and pregnant women from hazards associated with abatement procedures. Where debris, fumes or dust are going to

be created during the abatement process, such action shall include the relocation of tenants with children under seven years of age and pregnant women in order to mitigate possible health hazards arising from the abatement process. Tenant relocation may be accomplished with CIAP assistance.

§ 965.708 Disposal of lead-based paint debris.

The PHA shall dispose of lead-based paint debris in accordance with applicable local state or Federal requirements. (See *e.g.*, 40 CFR Parts 260 through 271.)

§ 965.709 Records.

The PHA shall maintain records on which units, common areas, exteriors and PHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface or PHA child care facility. The PHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The PHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR Part 35, Subpart A and § 965.703 of this Part, in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart before or after June 6, 1988, such units, child care facilities, exteriors or interior common areas are not required to be re-tested or re-treated.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577–0090.)

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

29. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. Section 968.3 is amended by revising the definition of comprehensive modernization and by adding in alphabetical order the definition of lead-based paint modernization to read as follows:

§ 968.3 Definitions.

"Comprehensive modernization" means a modernization program for a project which provides for all needed physical and management improvements. Under the CIAP, all modernization programs are Comprehensive Modernization, except those defined as emergency, homeownership, lead-based paint or special purpose.

* * * * *

"Lead-based paint modernization" means a modernization program for a family project that is limited to lead-based paint testing and lead-based paint hazard abatement as prescribed in §§ 965.705 and 968.9(e)(1)(iii). For such projects, management improvements are not eligible modernization costs.

* * * * *

31. Sections 968.4 (h) and (i) are revised to read as follows:

§ 968.4 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.9(e) of this Part, are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in §§ 965.705 and 965.706 of this chapter and § 968.9(e) of this Part are eligible modernization costs.

* * * * *

32. Paragraphs (c) introductory text, (c)(1), (e)(2), (h)(1) and (2), and (i)(7)(ii) of § 968.5 are revised to read as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(c) *Preliminary application.* Based on an initial comprehensive assessment of its improvement needs, including a determination of the financial feasibility of the proposed modernization and the long-term viability of the project(s) after Comprehensive homeownership, lead-based paint or special purpose modernization, the PHA shall submit to the HUD office a Preliminary Application, in a form prescribed by HUD, which shall contain:

(1) A five-year plan, which is the PHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects, including any special purpose, lead-based paint and homeownership needs, as well as any emergency needs in the current year. The plan provides for gross estimates of the total needs of the project(s) for which Comprehensive Modernization is requested and for gross estimates of the specialized needs of the project(s) for which special purpose, emergency, lead-based paint or homeownership modernization is requested.

* * * * *

(e) *PHA preparation for Joint Review.*

* * * * *

(1) * * *

(2) Completing a detailed comprehensive assessment, in a form prescribed by HUD, of the total physical and management improvement needs of the project(s) for which the PHA is requesting Comprehensive Modernization and of the specialized needs of the project(s) for which the PHA is requesting special purpose, emergency, lead-based paint or homeownership modernization in the current FFY. For each project proposed for Comprehensive Modernization, the comprehensive assessment shall include: the current physical condition and the physical improvements necessary to meet the standards (see § 968.4(a)); the improvements needed to upgrade the management and operation so that decent, safe and sanitary living conditions will be provided; and an identification of management needs related to items set forth in § 968.4(b)(2).

(h) *HUD preliminary funding decisions.*

* * * * *

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health and safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing and abatement as required by § 965.706 of this chapter.

(2) Group 2, projects:

(i) Having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units; or

(ii) Other family projects not receiving comprehensive modernization funds as defined in § 968.3, and are required to conduct testing and abatement under §§ 965.705 and 968.9(e)(1)(iii) of this part; and

(iii) Located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, lead-based paint and homeownership modernization).

Within this group, the Secretary may also give priority to additional factors,

such as the correction of physical disparities under the nondiscrimination preference, second or subsequent stage of comprehensive modernization, cost benefit, and the need for lead-based paint testing and hazard abatement.

* * * * *

(i) *Final application.*

* * * * *

(7) * * *

(ii) *Emergency or lead-based paint modernization.* For a project under emergency or lead-based paint modernization, the PHA shall omit from the Final Application the items required in paragraphs (i)(1), (i)(2)(iii) and (iv), and (i)(3) and (4) of this section and limit the items required in paragraph (i)(2)(i) of this section to only those emergency or lead-based paint work items.

* * * * *

33. Paragraph (e) and the OMB approval number of § 968.9 are revised to read as follows:

§ 968.9 Other program requirements.

* * * * *

(e) *Lead-based paint poisoning prevention*—(1) *General.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and HUD implementing regulations (24 CFR Parts 35 and 965, Subpart H). Comprehensive plans for CIAP (as described in § 968.5 of this Part) shall be amended to include the schedule for lead-based paint testing and abatement. Testing shall be completed within five years from June 6, 1988. Testing and abatement shall be completed with respect to family projects approved for comprehensive and homeownership modernization (paragraph (e)(i) of this section), applications for family projects for comprehensive and homeownership modernization (paragraph (e)(1)(ii) of this section) and other family projects not undergoing comprehensive and homeownership modernization (paragraph (e)(1)(iii) of this section). Any previous testing or abatement work which does not meet the requirements of this rule must be tested and abated in accordance with these requirements.

(i) Comprehensive and Homeownership Modernization in Progress. With respect to family projects approved for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD before June 6, 1988, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(ii) Applications for Comprehensive and Homeownership Modernization Projects. With respect to applications for family projects for comprehensive and homeownership modernization (assisted under section 9 of the United States Housing Act of 1937) which may contain lead-based paint for which funds are reserved on or after June 6, 1988, no construction contracts, excluding those contracts solely for emergency or energy conservation work items, shall be executed until random testing as described in this paragraph has taken place and any necessary abatement as described in this paragraph is included in the modernization budget.

(iii) Other Family Projects Not Undergoing Comprehensive and Homeownership Modernization. Any family projects (assisted under section 9 of the United States Housing Act of 1937) not undergoing comprehensive and homeownership modernization (as covered in paragraph (e)(1) (i) and (ii) in this section) including family projects which previously have been comprehensively or homeownership modernized under previous regulations shall be randomly tested as described in this paragraph and abated if lead-based paint is found as described in this paragraph.

(2) *Random testing.* If the family project (including homeownership units) was constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall cause a random sample of all family project units to be tested for lead-based paint on applicable surfaces (including defective painted surfaces). Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint from unit turnover testing or presence of previous EBLs. Ten units shall be tested in family projects that are comprised of contiguous units which were built at the same time and contain twenty or more units. Six units shall be tested in similar projects with fewer than twenty units. A sample of interior common areas and exterior surfaces which are part of the family project shall also be tested. For scattered site family projects involving multi-unit structures, ten units shall be tested in structures containing twenty or more units and six units shall be tested in projects with fewer than twenty units, together with a sample of interior common areas and exterior surfaces and defective paint surfaces which are part of the family project. For other scattered site family projects involving single unit structures which are not contiguous or were built at different times, the PHA shall cause each unit to be tested for lead-based paint on applicable surfaces. The interior common areas required to be sampled by this paragraph may include PHA-owned or operated child care facilities or non-dwelling PHA facilities commonly used by children under seven years of age. If none of the tested units, interior common areas or exterior surfaces contain lead-based paint, the family projects may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the family project are required to be tested. If lead-based paint is found in any interior common areas, all interior common areas in the family project are required to be tested. If lead-based paint is found on any exterior surface, all exterior surfaces in the family project are required to be tested. In the family projects that are known to contain some lead-based paint, no random sampling is necessary, but all applicable surfaces shall be tested. Testing, tenant protection, lead-based paint debris disposal, record-keeping and state and local law requirements as described in §§ 965.705, 965.707, 965.708, 965.709 and 965.710 of this chapter shall be followed. Random testing as described in this paragraph (e)(2) is an eligible planning cost as described in § 968.4(d). Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered, or otherwise abated as described in this part), those surfaces need not be tested.

(3) *Abatement.* If lead-based paint is found on applicable surfaces, such surfaces shall be treated in accordance with § 965.705 of this chapter. Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

* * * * *

(Information collection requirements contained in paragraph (e)(1) were approved by the Office of Management and Budget under control number 2577–0090).

34. Section 968.10(a) is revised to read as follows:

§ 968.10 Special requirements for homeownership project.

(a) Promptly after HUD approval of the Final Application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an

increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation measures, or lead-based paint testing and abatement.

* * * * *

Dated: May 31, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88–12713 Filed 6–3–88; 8:45 am]

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This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the first session of the 100th Congress which require Federal agencies to publish documents in the Federal Register. Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1988.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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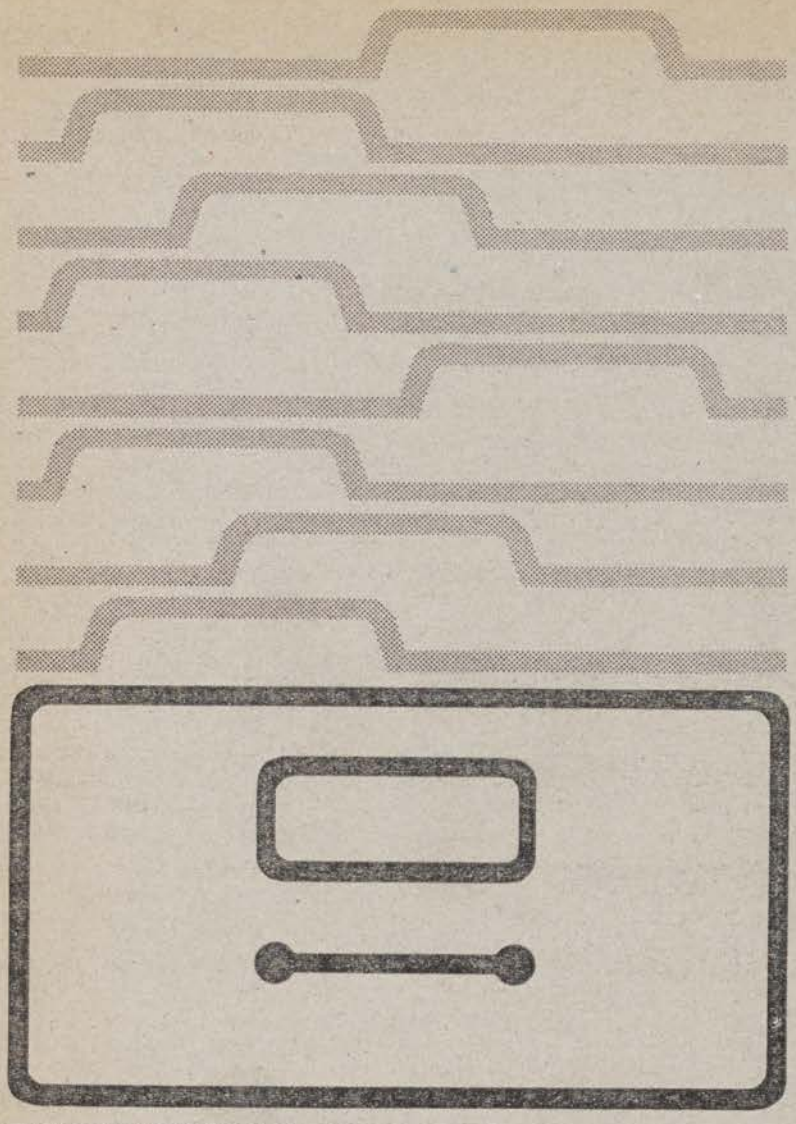
[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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