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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule the interim rule published at 53 FR 31639 which amended the regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. These actions were taken under the authority of section 103A(a)(5)(E) (i) through (iii) of the Agricultural Act of 1949, as amended, in order to enhance the effectiveness of the upland cotton price support program.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

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

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

An interim rule was published in the **Federal Register** on August 19, 1988 (53 FR 31639), amending regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. The interim rule provided for a 30-day public comment period which ended September 19, 1988. Six responses were received.

Discussion of Comments

Five respondents supported the changes made by the regulation. However, as members of the textile by-products industry, they voiced concerns about the impact on their industry of the changes which would have the effect of lowering the adjusted world price. The respondents indicated that, as a result of the 1986 Upland Cotton Program, they lost some markets to Low-priced cotton lint. The protection extended to gin motes and spinnable textile wastes through the 1986 Inventory Protection Program and to gin motes under the 1986 First Handler Certificate Program was considered vital to the competitive position of these products in the textile industry. Since the changes made no provision for payments with respect to cotton textile by-products, they felt it appropriate to raise the issue at this time.

Based upon a review of these concerns, it has been determined that this issue is not directly related to the changes made by the interim rule and that this issue should more appropriately be considered in the context of the 1989 Upland Cotton Program. Since analysis and consideration of those program provisions are currently taking place, these comments will be addressed in the formulation of the 1989 program.

The sixth respondent discussed the impact of the program changes on the price of 1987-crop cotton not pledged as collateral for price support loans. As a producer holding such cotton, the respondent felt that the changes unfairly lowered the price he was being offered for his cotton. He suggested several remedies to this problem including reopening the loan availability period for 1987-crop cotton or making a payment to either the producer or the buyer equal to the difference between the loan rate and the adjusted world price. Implementing these suggestions would be unfair to producers who sold their 1987-crop cotton prior to these changes. The respondent's recommendations, if implemented, would result in increased Commodity Credit Corporation outlays and would not contribute to the competitiveness of U.S. cotton. For these reasons, the respondent's recommendations were not adopted.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

PART 26—[AMENDED]

Final Rule

Accordingly, the interim rule published at 53 FR 31639 which amended 7 CFR Part 26 is hereby adopted as a final rule without change.

Signed at Washington, DC, on November 8, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–27257 Filed 11–23–88; 8:45 am]
BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 1405, 1413, 1421, and 1470

Price Support Loans and Purchases, Production Adjustment Programs, and Other Operations

AGENCY: Agricultural Stabilization and Conservation Service; Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule published in the **Federal Register** on June 3, 1988 at 53 FR 20280. The interim rule amended 7 CFR Part 1421 by combining as one subpart the subparts currently contained in Part 1421 which set forth the price support loan and purchase program regulations for the 1988 and subsequent crops of barley, corn, sorghum, oats, farm-stored peanuts, rice, rye, soybeans, and wheat. The interim rule also amended Part 1421 by revising: (1) The manner in which price support rates are determined when adjoining towns in different counties are considered to be one shipping point; (2) the information which must be entered on a warehouse receipt in order for such receipt to be used in obtaining a price support loan; and (3) the grade requirements which must be met by commodities pledged as collateral for a warehouse-stored price support loan. This final rule also deletes an obsolete reference to a form no longer used by CCC.

This final rule also adopts the proposed rule published in the **Federal Register** on October 5, 1987 at 52 FR 37160 which would amend 7 CFR Part 1405 to set forth the manner in which interest in calculated by the Commodity Credit Corporation (CCC).

These regulations provide greater uniformity in program administration and delete repetitive provisions.

EFFECTIVE DATE: November 25, 1988.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447–8223.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the interim rule since Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporations (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental envaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

Proposed Rule

On October 5, 1987, a proposed rule was published in the **Federal Register** at 52 FR 37160 with respect to the manner in which the rate of interest that is generally applicable to CCC loans would be determined and announced. No comments were received in response to this proposed rule. Accordingly, the provisions of this proposed rule are adopted without change.

Interim Rule

On June 3, 1988, an interim rule was published in the **Federal Register** at 53 FR 20280 which amended the regulations governing Price Support and Production Adjustment Programs. This interim rule amended Chapter XIV of Title 7 of the Code of Federal Regulations pertaining to the functions of Commodity Credit Corporation, Department of Agriculture to include the regulations which set forth the terms and conditions of the CCC production adjustment programs at 7 CFR Part 713 and the terms and conditions under which CCC may make payments in a form other than cash set forth at 7 CFR Part 770. These regulations were formerly set forth in Chapter VII of Title 7 of the Code of Federal Regulations pertaining to the functions of ASCS. The new section numbers for each of the existing sections are provided in the table below:

Old section	New section
713.1–713.157	1413.1–1413.157
770.1–770.7	1470.1–1470.7

The interim rule also: (1) Amended the regulations set forth at 7 CFR Part 1421 to codify the terms and conditions under which CCC will make available price support loans and purchase agreements for barley, corn, farm-stored peanuts, oats, rye, sorghum, soybeans, rice, and wheat in one subpart of 7 CFR Part 1421; (2) amended 7 CFR 1421.59, 1421.99, 1421.219, 1421.254, 1421.344, 1421.374, and 1421.470 to remove regulations that provided for adjustment of the basic county support price for barley, corn, sorghum, oats, rye, soybeans and wheat, respectively, in the event two or more CCC-approved warehouses are located in the same or adjoining towns which have the same freight rate even though such warehouses are located in the same county; (3) amended 7 CFR 1421.18(c)(3) to delete references to the method used by CCC in adjusting basic county loan rates when the reconcentration of CCC loan collateral is approved; (4) amended 7 CFR 1421.9 to set forth with greater specificity those entries which must be included on warehouse receipts which are tendered to CCC in connection with a price support loan or purchase agreement; (5) combined at 7 CFR 1421.18 the individual commodity subparts for barley, corn, sorghum, oats, rice, rye, soybeans, and wheat that set forth the grade requirements which must be met by commodities pledged as collateral for warehouse-stored CCC price support loans and also incorporated new grading requirement terminology which is currently used by the Federal Grain Inspection Service; and (6) made changes throughout 7 CFR Part 1421 for purposes of grammar and clarity.

General Summary of Comments

Comments were received from only one respondent with respect to the interim rule. The response, submitted on behalf of the Georgia Agricultural Commodity Commission for Peanuts, indicated that the impact would not be very great on the peanut growers represented since those growers seldom use farm-stored loans. The respondent stated that the interim rule would be

most important to the growers in Virginia and Carolina, where the types of peanuts grown are different from those grown in Georgia, and expressed support of the position of growers in those areas on the interim rule. The respondent ultimately saw the interim rule as causing no negative impact on the peanut industry as a whole. No other comments were received.

Accordingly, the regulations as set forth in the interim rule published at 53 FR 20280 are adopted as a final rule without any changes other than the changes made in this final rule for the purposes of grammar and clarity, and to delete the reference to an obsolete form.

List of Subjects

7 CFR Part 713

Feed grain, Rice, Upland and extra long staple cotton, Wheat and related programs.

7 CFR Part 770

Commodity certificates, In-Kind payments, Other forms of payment.

7 CFR Part 1405

Feed grain, Rice, Upland cotton, Wheat and related programs, Grains, Loan programs/Agriculture, Price support programs, Warehouse commodity certificates, In-Kind payments, Other forms of payment.

7 CFR Part 1421

Grains, Loan programs/Agriculture, Price support programs, Warehouses.

Final Rule

Accordingly, Title 7 of the Code of Federal Regulations is revised as follows:

PART 1405—[AMENDED]

1. The proposed rule published at 52 FR 37160 is adopted as a final rule as follows:

A. The authority citation for 7 CFR Part 1405 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

B. Sections 1405.1 and 1405.2 are revised to read as follows:

§ 1405.1 Interest.

(a) *General.* Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC, interest shall be assessed as provided in this Part with respect to loans disbursed by CCC.

(b) *Rate in effect on disbursement.* The rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(c) *Rate in effect as of January 1.* The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR Part 793.

PART 1421—[AMENDED]

2. The interim rule published at 53 FR 20280 is adopted as a final rule with the following changes:

A. The authority citation for 7 CFR Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

§ 1421.1 [Amended]

B. Section 1421.1 is revised by removing "1425" and inserting in lieu thereof "1446".

C. 7 CFR 1421.4(a) is revised to read as follows:

§ 1421.4 Eligible producer.

(a) *Producer.* An eligible producer of a crop of a commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title.

* * * * *

D. 7 CFR 1421.5(b)(1) is revised to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer andmust be in existence at the time of disbursement of loan or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Such commodities must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

* * * * *

E. 7 CFR 1421.6 is revised to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date.

(b) *Purchase agreements.* (1) With respect to all commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated expiration date.

(c) *Extension of loans.* (1) Notwithstanding any other provision of this Part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with provisions of this part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent year loans may not be extended upon maturity.

F. 7 CFR 1421.7(e) is revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(3) *Adjustment of basic county support rates.* (1) This paragraph is applicable to barley, rye, sorghum and wheat pledged as collateral for regular price support loans.

(2) The applicable basic support rate for commodities pledged as collateral for a warehouse-stored loan that were received by rail or combination barge-rail shall be the basic support rate established for the county from which the commodity was shipped. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–2, Advance Notification of Grain Movement By Producer; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(3) The applicable basic county support rate for commodities delivered by truck by the producer to a warehouse at a normal delivery point shall be the support rate for the county where the commodity is stored, adjusted for the premiums and discounts determined by CCC. The basic county support rate for commodities delivered by truck by the producer to (i) an in-line warehouse, or (ii) a warehouse and shipped by truck, barge, or truck-barge to an in-line warehouse shall be the support rate for the county from which the commodity was shipped, adjusted for premiums and discounts determined by CCC. The support rate may be further adjusted when the commodity is moved in accordance with the terms and conditions prescribed by CCC on Form CCC–678–2, Advance Notification of Grain Movement By Producer; Form CCC–699, Reconcentration Agreement and Trust Receipt; or as otherwise determined and announced by CCC.

(4)(1) Supplemental certificates must be issued by the warehouse which receives commodities which have been moved in accordance with paragraphs (e) (2) and (3) of this section. Such certificates must show:

(A) The rate of freight paid into the storage point;

(B) The amount of any penalty for backhaul or out-of-line movement;

(C) The applicable normal trade channel market that would be used in commercial channels of trade; and

(D) Any other information which may be prescribed by CCC.

(ii) The warehouseman shall be responsible for the accuracy of such information and shall be liable for any cost incurred by CCC for the failure to comply with the provisions of this paragraph. After the acquisition of the warehouse receipt by CCC, such costs shall be determined in accordance with the provisions of the Uniform Grain Storage Agreement which has been executed by the warehouseman.

G. 7 CFR 1421.9(i) is revised to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail and/or barge, must be accompanied by supplemental certificates completed according to § 1421.7(e).

§ 1421.11 [Amended]

H. 7 CFR 1421.11 is amended by removing the second sentence.

I. 7 CFR 1421.12(b) (2) and (3) are revised to read as follows:

§ 1421.12 Fees, charges, and interest.

* * * * *

(b) *Delivery charges.* * * *

(2) Delivery charges shall be paid at the time of settlement with respect to:

(i) Farm-stored loans; and

(ii) Purchase agreements.

(3) With respect to warehouse-stored loans, delivery charges shall be paid by the producer prior to the date the loan application is made and shall be deducted from the loan proceeds.

* * * * *

J. 7 CFR 1421.18(b)(4)(i)(A) is revised to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) *Grade requirements.*

* * * * *

(4)(i) Oats must grade No. 3 or better, except that: (A) The oats may grade No. 4 or "Sample Grade" on the factors of test weight or because of being badly stained or materially weathered or both; and

* * * * *

Signed at Washington, DC, on November 18, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–27260 Filed 11–23–88; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–89–004]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Dancy Tangerine Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily relaxes the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2–6/16 inches in diameter) to size 210 (2–4/16 inches in diameter). The size composition, maturity level, and current and prospective market demand conditions for the 1988–89 season Dancy tangerine crop warrant this action.

DATES: The Florida Dancy tangerine size relaxation is effective for the period November 21, 1988, through August 20, 1989. Comments which are received by December 27, 1988, will be considered prior to issuance of the final rule.

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

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the Act.

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

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

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

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in 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 small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (7 CFR 905.306; 53 FR 17171, May 16, 1988). This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerine, and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I.

This rule amends paragraph (a) of § 905.306 to temporarily relax the minimum size requirements for domestic shipments of Dancy tangerines from size 176 (2–6/16 inches in diameter) to size 210 (2–4/16 inches in diameter). The relaxation for Dancy tangerines will remain in effect from November 21, 1988, through August 20, 1989, by which time shipment of the 1988–89 season Dancy tangerine crop will be finished.

The Citrus Administrative Committee (committee), which administers the program locally, recommended the relaxation at its October 18, 1988, meeting. The committee's recommendation to relax such requirements follows the practice of prior years of lowering the minimum size requirements when the crop has reached an acceptable level of flavor and maturity. Dancy tangerine shipments are expected to start in mid-November and peak in mid-December this season.

The relaxed minimum requirements for Dancy tangerines reflect the projected maturity and flavor levels and size composition of the crop which will remain for shipment on November 21, 1988, as well as the prospective tangerine supplies remaining for shipment at that time. The committee expects the maturity and flavor of the tangerines to be released to be adequate to foster strong sales for the remainder of the season. Growing conditions have been especially good this season. This action is designed to maximize shipments to fresh market channels.

The relaxation of the minimum size requirements for Dancy tangerines is only for 1988–89 season shipments. The tighter minimum size requirements, as specified in § 905.306, will resume for Dancy tangerines effective August 21, 1989. The resumption of the tighter minimum size requirements for 1989–90 season shipments is based upon the anticipated maturity, size, quality, and flavor characteristics of Dancy tangerines early in the shipping season.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. 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.

Some Florida tangerine shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

The relaxation of the minimum size requirements applicable to Dancy tangerines is intended to maximize domestic shipments and permit shipments to meet buyer needs. Therefore, the Department's view is that the impact of this action upon producers and shippers will be beneficial because it will enable shippers to provide Dancy tangerines consistent with buyer requirements. The application of minimum size requirements to Florida Dancy trangerines over the past several years has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

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 infomation, 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, unnecesary 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) This action relaxes size requirements currently in effect for Florida Dancy tangerines; (2) Florida Dancy tangerine shippers are aware of this action which was recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1988–89 season Florida Dancy tangerine crop will be underway by November 21, 1988; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

2. The provisions of § 905.306 are amended by revising the following entries in Table I of paragraph (a) applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 47.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
* * * * *			
Tangerines:			
* * * * *			
Dancy	11/21/88–8/20/89.	U.S. No. 1.....	2–4/16
	On and after 8/21/89.	U.S. No. 1.....	2–6/16
* * * * *			

Dated: November 18, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–27259 Filed 11–23–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Nuclear Regulatory Commission is amending a final rule that was published on November 10, 1988, to correct the numerical designation of one footnote and to indicate the removal of a second footnote. These corrections are necessitated by a separate rulemaking, published on October 13, 1988 (53 FR 40019), that revised many footnotes in the policy statement. These changes were inadvertently overlooked when the November rule was published. This notice corrects that oversight.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION:

In the November 10, 1988, edition of the **Federal Register**, on page 45451, make the following corrections:

PART 2—[AMENDED]

Appendix C—[Amended]

1. In column 2, amendatory instruction number 3, the number of the footnote reference and the actual footnote should be "13" rather than "11".

2. In column 2, amendatory instruction number 4 should be removed along with the footnote, as this footnote was earlier removed in the October 1988 final rulemaking document.

Dated at Bethesda, Maryland, this 21st day of November 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–27212 Filed 11–23–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R–0635]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice regarding data reporting.

SUMMARY: On August 19, 1988, the Board published a revised Regulation C. Among other things, the revised regulation implemented statutory amendments that brought mortgage banking subsidiaries of bank and savings and loan holding companies and certain savings and loan service corporations within the coverage of the Home Mortgage Disclosure Act (HMDA). Under the statutory amendments, these institutions were required to report mortgage loan data for all of calendar year 1988. More recently, however, Congress changed the effective date provision of the original amendments. As a consequence, in their reports for calendar year 1988, these institutions are required to report data only for loans originated or purchased on or after August 19, 1988. This notice is intended to alert institutions to the revised effective date.

DATE: November 23, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Noto or Linda E. Vespereny, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3667 or 202–452–2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans and to report this data to federal regulators.

In the Housing and Community Development Act of 1987 (Pub. L. 100–242, section 565, 101 Stat. 1815) (Housing Act), which was signed into law on February 5, 1988, the Congress expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations. Revisions to Regulation C to implement the expanded coverage were adopted by the Board and published in the **Federal Register** on August 19, 1988 (53 FR 31683). In accordance with the amendments in the Housing Act, the newly covered institutions were required to include, in the report that is due March 31, 1989, data on loans that they originated or purchased at any time during calendar year 1988.

Recently, in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, 102 Stat. 3224), the Congress clarified the applicability of the Housing Act amendments to HMDA. As a consequence, mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations are required, in their March 1989 reports, only to include HMDA data for loans originated or purchased on or after August 19, 1988.

Board of Governors of the Federal Reserve System, November 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-27161 Filed 11-23-88; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards for Natural Gas Distribution

AGENCY: Small Business Administration (SBA).

ACTION: Emergency interim final rule.

SUMMARY: The SBA is establishing, on an emergency interim basis, a size standard of 500 employees for Standard Industrial Classification (SIC) code 4924, Natural Gas Distribution. No size standard exists at present for this industry. Recent deregulation laws grant open access to gas lines owned by local public utilities to all firms including marketers, transmission firms and gas field producers. As a result of deregulation, firms can now compete for Federal natural gas contracts, necessitating the establishment of a size standard to be used for 8(a) program participation and contracts set aside for exclusive small business bidding.

Interested parties are invited to comment on the suitability of this emergency interim size standard or the suitability of adopting a different size standard.

DATES: November 25, 1988. Comments are to be submitted on or before January 24, 1989.

ADDRESS: Address All Comments To: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street NW., Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norma Salenger, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: During the months of August, September, and October 1988, the SBA received several requests to establish promptly a size standard applicable to the procurement of natural gas by military installations. The sudden interest, by both firms and Federal agencies, is due to the recent deregulation laws which grant open access to interstate and local transportation pipelines owned by regulated public utility firms for the transmission and distribution of natural gas. Prior to this deregulation each public utility held title to the natural gas as it passed through its lines. Thus the Federal Government and other consumers purchased the gas from the local regulated gas utility. Under current laws, with open access to transportation lines, many firms within the natural gas industry have the opportunity to supply natural gas to the consumer.

Deregulation has introduced competition in the supply of natural gas to the Federal Government. Under deregulation, Federal agencies can purchase natural gas directly from the producing field, from utilities, or from marketers. Natural gas marketers, a new type of entity, are firms that take title to the gas before transmission over the long range lines and hold title until delivery to the ultimate consumer, but do not take physical possession of the gas. They arrange the purchase of gas at the source, transportation over pipelines, and sale to the user. Marketers have shown particular interest in bidding on Federal contracts for natural gas.

Natural gas can be supplied by firms whose primary line of business can be in any of five standard industrial classifications (SICs). Field producers of natural gas are classified under SIC code 1311, Crude Petroleum and Natural Gas. SIC code 1311 already has a size standard of 500 employees. There are no size standards for the other four industries that can supply natural gas. These industries are: SIC code 4922, Natural Gas Transmission; SIC code 4923, Natural Gas Transmission and Distribution; SIC code 4924, Natural Gas Distribution; and SIC code 4932, Gas and Other Services Combined (with the major portion gas services). With respect to natural gas marketers, SBA has consulted with two Federal agencies who advised that their practice is to determine that natural gas marketers are classified within SIC code 4924.

The Department of Defense (DoD) is expected to issue a substantial number of contracts for natural gas at the end of 1988 and the first several months of 1989. In recent solicitations for the procurement of natural gas, the DoD has designated SIC code 4924, Natural Gas Distribution, as the industry classification which describes such purchases. The contracting officer has the responsibility of selecting the appropriate SIC for each procurement and the size standard for that SIC will be used to determine if a firm is small. Any firm capable of performing the contract may bid subject to the size standard for the designated SIC in the case of a set aside procurement.

The DoD and several private firms have expressed concern over the absence of a small business size standard for SIC code 4924. Without a size standard, the determination of what is a small business within SIC code 4924 for Federal procurements of natural gas cannot be made. This absence of a small business size standard has an impact on three programs targeted for small businesses. First, Federal contracts for natural gas cannot be set aside for exclusive small business competition. Recent congressional actions (i.e., Pub. L. 99-661 and H.R. 1807) demonstrate a concern by the Congress to increase small business participation in industries in which participation has been historically low. Without a small business size standard small business participation cannot be measured, much less increased. Second, SBA and Federal agencies cannot make available to firms within the 8(a) program newly available contract opportunities in the field of natural gas distribution. Finally, DoD cannot make a determination as to whether a firm is small without a size standard for that industry for purposes of increasing small disadvantaged business participation pursuant to section 1207 of Pub. L. 99-661. For these reasons, an emergency interim final size standard is being established for SIC code 4924. This action is taken under SBA's implementing regulation § 121.10(b) Title 13 CFR, which allows SBA to set an emergency interim size standard if no size standard exists for the industry in question.

Historical data are available on Federal procurements for natural gas. Based on data from the Federal Procurement Data Center, there were 405 Federal contracts for natural gas in FY 1987 for a total of $194,336,000, and an average contract value of $479,842. This was a 4.2 percent increase in procurement dollars from FY 1986, when $185,572,000 in natural gas was purchased through 447 Federal contracts. In FY 1987, 88.8 percent was purchased from distributors (SIC codes 4923, 4924, and 4932) for an average of $445,700 for the 387 contracts. Only 18 procurements were directly from a natural gas transmission firm (SIC code 4922) and these averaged $1,213,700 per contract.

Data for the natural gas distribution industry are not collected by the U.S. Bureau of the Census, but are collected by SBA's data base entitled "United States Establishment and Enterprise Microdata (USEEM)." These data are used for this rule to determine an appropriate temporary size standard for natural gas distribution. In the following table it is clear that the bulk of sales in this industry is by firms with at least 1,000 employees.

DISTRIBUTION OF SALES BY EMPLOYMENT SIZE—1986 SIC CODES 4613 AND 4924

Employment size class	SIC code 4613		SIC code 4924	
	No. of firms	Pct. of sales	No. of Firms	Pct. of sales
1–19	22	0.2	193	4.4
20–49	4	0.3	36	1.6
50–99	7	1.8	15	1.6
100–249	2	1.8	18	3.6
250–499	0	0	6	4.0
500–999	1	8.2	11	9.1
1,000–4,999	1	87.7	15	43.1
5,000+	0	0	3	32.6
Totals	37	100.0	297	100.0

Source.—U.S. Small Business Administration, United States Establishments Enterprise Microdata (USEEM).

The decision to establish the emergency interim size standard at 500 employees took into consideration several factors. The existing size standard for field producters of natural gas, SIC code 1311, Crude Petroleum and Natural Gas, is at 500 employees. Field producers can participate as bidders on Federal contracts along with utilities and marketers, and as a result there is a basis for establishing the size standard at a common level with their industry. Suppliers of natural gas, other than field producers, are similar to nonmanufacturers who deliver a product manufactured by another firm. Natural gas is not a manufactured product, but like the manufacturer, a nonproducer may sell the product of a natural gas producer. Considering SBA's position of establishing a 500-employee size standard for nonmanufacturers which is a size standard for distributors, a nonproducer of natural gas, a size standard of 500 employees ensures equitable treatment of similar types of firms. The lions's share of natural gas sales by distributors is by firms with 500 or more employees. In the closely related industry, SIC code 4613, Refined Petroleum Pipelines, 95.9 percent of industry sales is by firms with over 500 employees. For SIC code 4613, the size standard is 1,500 employees. This comparison lends support to a size standard of at least 500 employees.

A size standard of 500 employees for natural gas distributors would allow small field producers and small public utilities to bid in competition with almost all marketers. However, marketers can be in business with a few personnel, since they usually do not have production, storage, or transportation facilities. A size standard substantially below 500 employee would result in limiting set-aside contracts almost exclusively to marketers. SBA has no desire to exclude small field producers or others with natural gas facilities and is thus establishing 500 employees as a interim size standard.

Compliance with Regulatory Flexibility Act, Executive Orders 12291 and 12612 and the Paperwork Reduction Act

SBA certifies that this interim final rule is being published pursuant to an emergency for the reasons indicated above and the SBA is, therefore, waiving the requirements of section 603 of the Regulatory Flexibility Act. The SBA will publish a final regulatory analysis when this rule is promulgated in final form.

SBA certifies that this rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA also certifies that this rule would not have Federalism implications warranting the preparation of a Federalism assessment in accordance with Executive Order 12612.

SBA is waiving the requirements for a Regulatory Impact Analysis pursuant to section 8(a)(1) of Executive Order 12291. As discussed above, a size standard is needed immediately to determine if a firm is small on Federal contracts for natural gas distribution. The portion of natural gas that can be expected to be purchased from small firms under the size standard being established by this final rule cannot be estimated at this time, since there are no data on past procurements indicating the size of firm receiving past contracts. Data are expected to be available for such an estimate in the final regulatory impact analysis.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA amends Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C., 632(a) and 634(b)(6), and Pub. L. 99–591 and 99–661.

§ 121.2 [Amended]

2. In § 121.2(d)(2), Table 2, is amended by adding to Major Group 49 the following:

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
4924	Natural Gas Distribution.	500

* * * * *

Dated: November 7, 1988.

James Abdnor,

Administrator U.S. Small Business Administration.

[FR Doc. 88–27222 Filed 11–23–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–31, Special Condition No. 25–ANM–21]

Special Conditions; Cessna Aircraft Co. Model 560 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company Model 560 airplane. This airplane will have an unusually high operating altitude (45,000 feet) when compared to the state of technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–2118.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, Cessna Aircraft Company applied for an amendment to their type Certificate No. A22CE to include their new Model 560 airplane. The Model 560, which is a derivative of the S550 currently approved under Type Certificate No. A22CE, is slightly larger, with a 20-inch fuselage stretch, different engines, increased horizontal tail size, increased operating weights and speeds, and an increase in operating altitude from 43,000 feet to 45,000 feet.

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Model 560 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE or the applicable regulations in effect on the date of application for the Model 560. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A22CE are as follows: Part 25 of the Federal Aviation Regulations, effective February 1, 1965, including Amendments 25–1 through 25–17; §§ 25.251(e), 25.934, and 25.1091(d)(2), as amended through Amendment 25–23; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359, as amended through Amendment 25–32; §§ 25.1385(c) and 25.1401, as amended through Amendment 25–40; § 25.1303(a)(2) as amended through Amendment 25–43; Special Conditions 25–25–CE–4; Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended at the time of certification; and SFAR 27, effective February 1, 1974, as amended at the time of certification.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 560 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 560 must comply with the noise certification requirements of Part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Novel or Unusual Design Features

The model 560 will incorporate an unusual design feature in that it will be certified to operate up to an altitude 45,000 feet.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system.) This has been the case for the early Learjets, the Cessna 650, and the Israel Aircraft Industries Model 1125 Westwind Astra. The special conditions for the Westwind Astra are considered the most applicable to the Cessna Model 560 and its proposed operation. They were therefore used as the basis for the special conditions described below.

Damage tolerance methods were proposed to be used to assure pressure vessel integrity while operating at the higher altitude, in lieu of the ½-bay crack requirement used in some previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization., Initial crack sizes for detection are determined under § 25.571, Amendment 25–54. The cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in Figures 3 and 4. Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions for improbable failures not coverd by the spcial conditions, provided the cabin altitude is limited.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–88–5–NM for the Cessna Aircraft Company Model 560 airplane was published in the **Federal Register** on August 11, 1988 (53 FR 30292). Only one comment was received.

The commenter notes that the proposed special conditions state that "the cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in figures 3 and 4," and further state that "to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes." The commenter points out that if these requirements are valid, they would be valid at any pressurized altitude, i.e., the occupants would experience similar physiological effects in the event the altitude/time curve was exceeded. Based on this argument, the commenter asserts that the requirements should not be levied as a special condition based on an arbitrary altitude. The FAA does not agree that these special conditions should not be adopted. As stated previously, the FAA has determined that the applicable

regulations do not contain adequate standards with respect to the Model 560 airplane's operation at high altitude. Therefore, these special conditions are necessary to establish an acceptable level of safety. The FAA does concur, however, that requirements such as those contained in these special conditions should be made generally applicable, and is considering rulemaking to adopt such requirements.

The commenter also states that the FAA is inconsistent with its acceptance or rejection of using "extremely improbable" as a means of showing compliance with rules contained in Part 25, as compared with selected portions of some special conditions. The commenter states, as an example, that at least one model airplane was certified to 41,000 feet by certifying that an engine rotor burst for a portion of the engine is "extremely improbable." If, as the commenter asserts, it is acceptable to certify an airplane to 41,000 feet, based on an "extremely improbable" rotor burst, it should be an acceptable method at 45,000 feet, assuming that the failure is still "extremely improbable." The FAA does not agree with the commenter's position relative to the application of probability methods to engine burst and pressure vessel integrity. The commenter proposes to use the probability of failure concept as the basis for showing compliance with the special conditions, the same basis used in finding compliance with § 25.1309 of the regulations. Section 25.1309 speaks in terms of improbable and extremely improbable relative to the occurrence of a failure event and the event's effect on the airplane and its occupants. The FAA policy has been, as noted by § 25.903 and in findings relative to §§ 25.901 and 25.1309, to assume that the engine burst will occur. It is not appropriate to assume a statistical approach for certification relative to engine burst as engines are subjected to unpredictable foreign object damage (FOD), and, in addition, the engines are not tested to any degree of statistical confidence that would allow the use of the statistical approach.

In general, the statistical approach to certification, when elected by an applicant, is appropriate when establishing the reliability of fail-safe systems when they are separated or isolated and the analysis is based on a reliable data base of the same or similar components. Further, this is applicable after conducting environmental, endurance, fatigue, and failure assessment type tests. It is not appropriate to use statistical analysis where single failures, common-cause type failures, or human error are involved. The FAA is also not aware of any attempt to establish a rotor burst hole size for executive jets by statistical methods. Typically, even the holes from smaller fragments decompress the cabin at an unacceptable rate for executive jets. Certification of executive jets has generally been considered for higher altitude operation when the pressure vessel, including any pressure vessel conditioned air check valves, are located 5 degrees or more forward from the forward-most fan rotating plane. It should be noted that there is an executive jet which is presently limited to an operating altitude of 41,000 feet because the forward fan stages will impinge on the pressure vessel if they fail.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the Cessna 560 is mid November 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Aircraft, Air transportation, Aviation safety, Safety.

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 560 airplanes, pursuant to the authority delegated to me by the Administrator.

PARTS 21 AND 25—[AMENDED]

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E. O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

2. *Operation to 45,000 feet.*

a. *Pressure Vessel Integrity.*

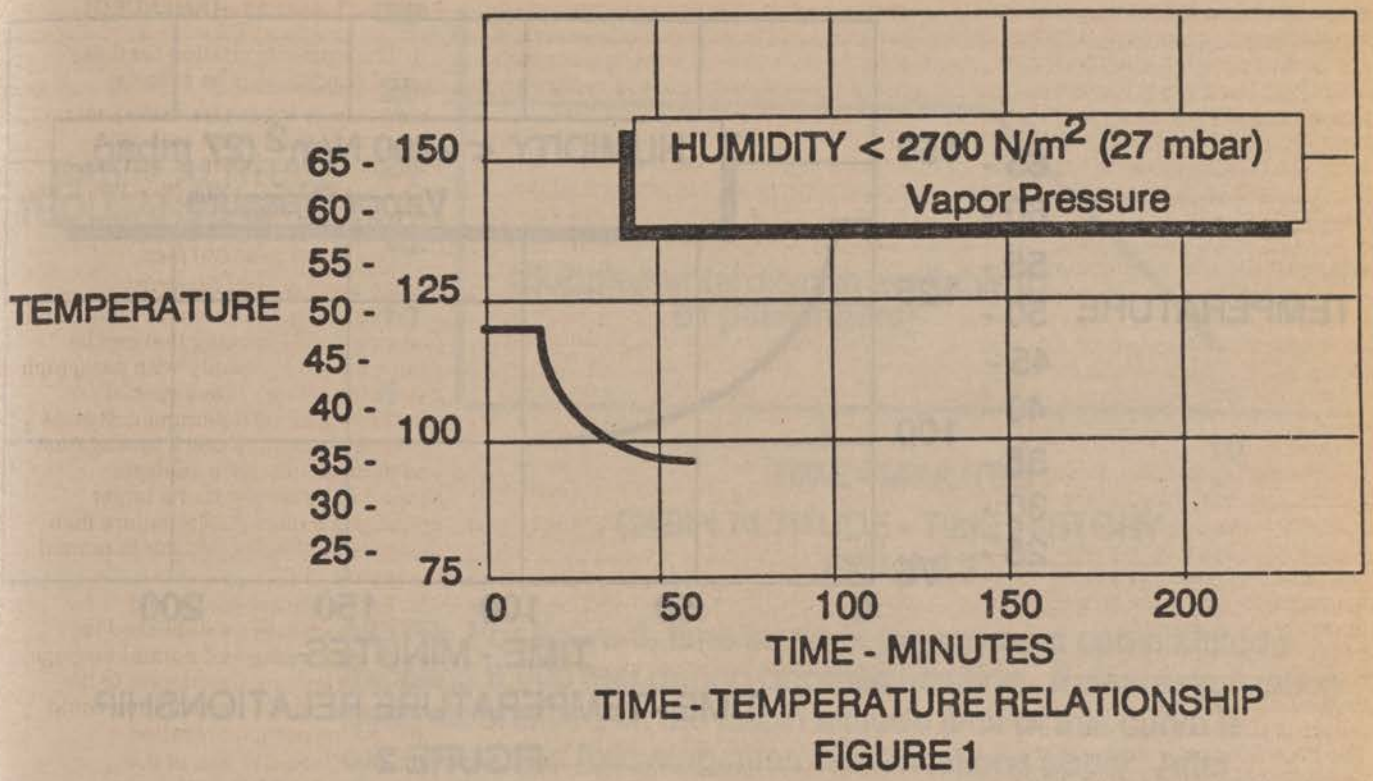
1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

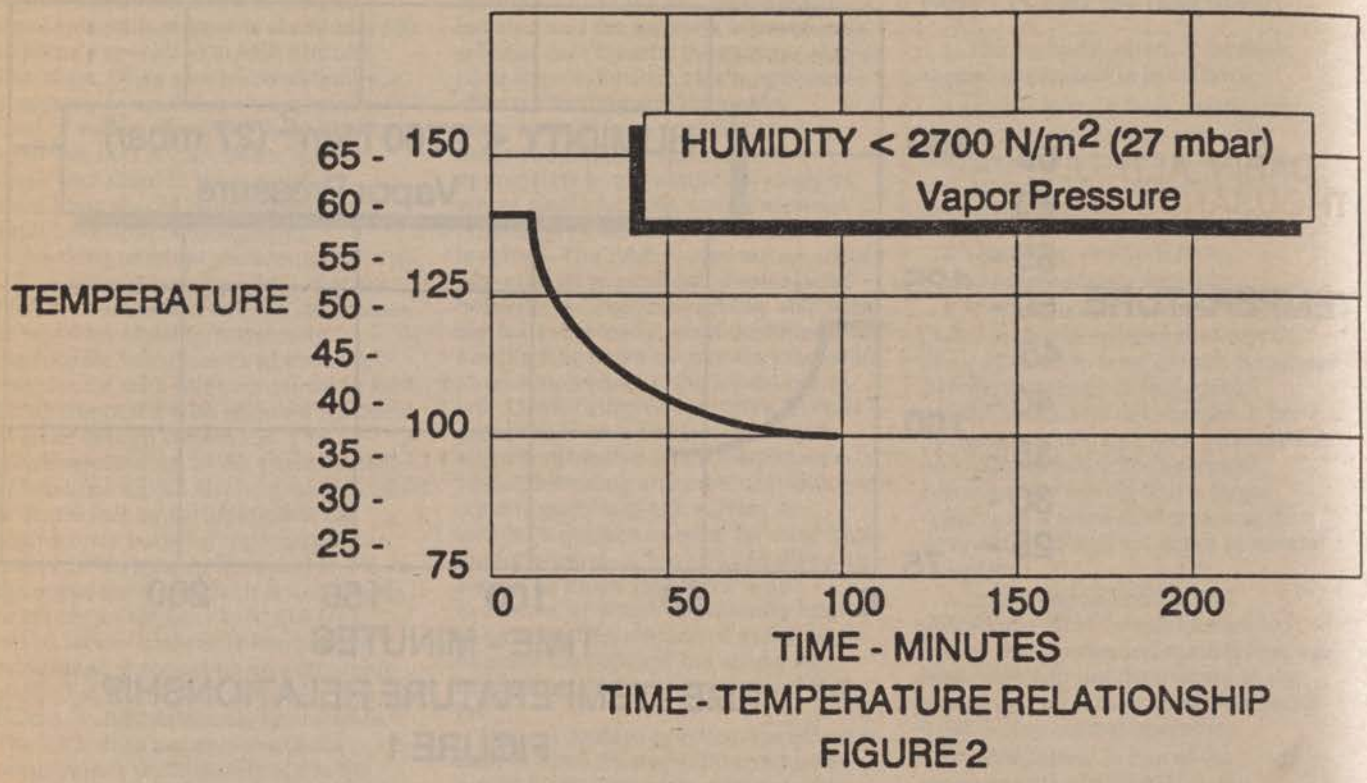
1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.



TIME - TEMPERATURE RELATIONSHIP

FIGURE 1

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.



TIME - TEMPERATURE RELATIONSHIP

FIGURE 2

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

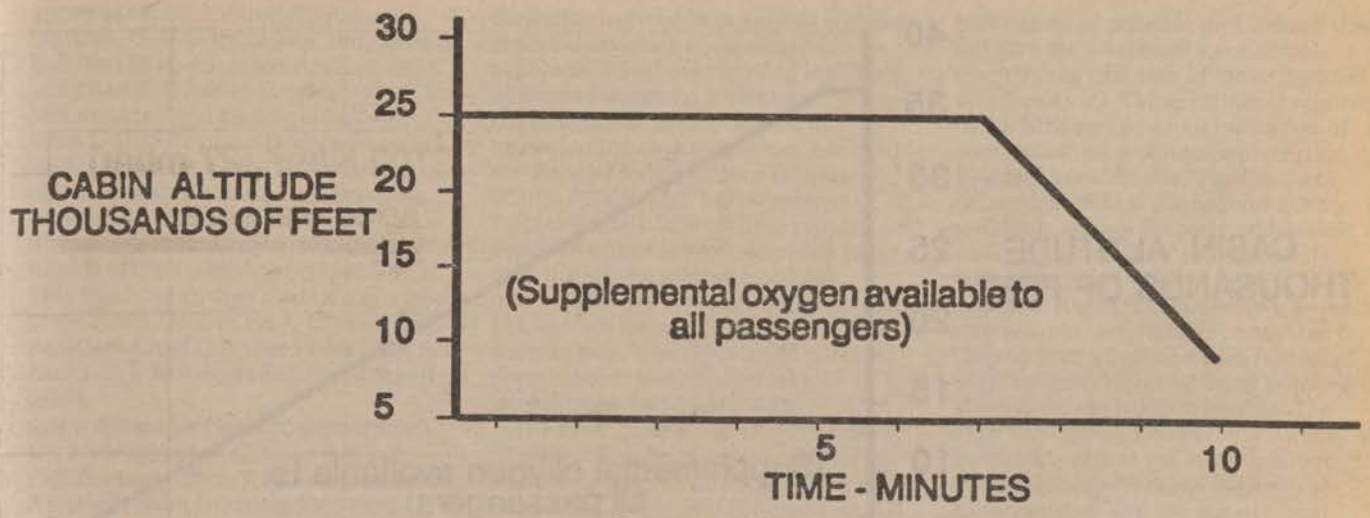
a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs d1 and d2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note.—For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.



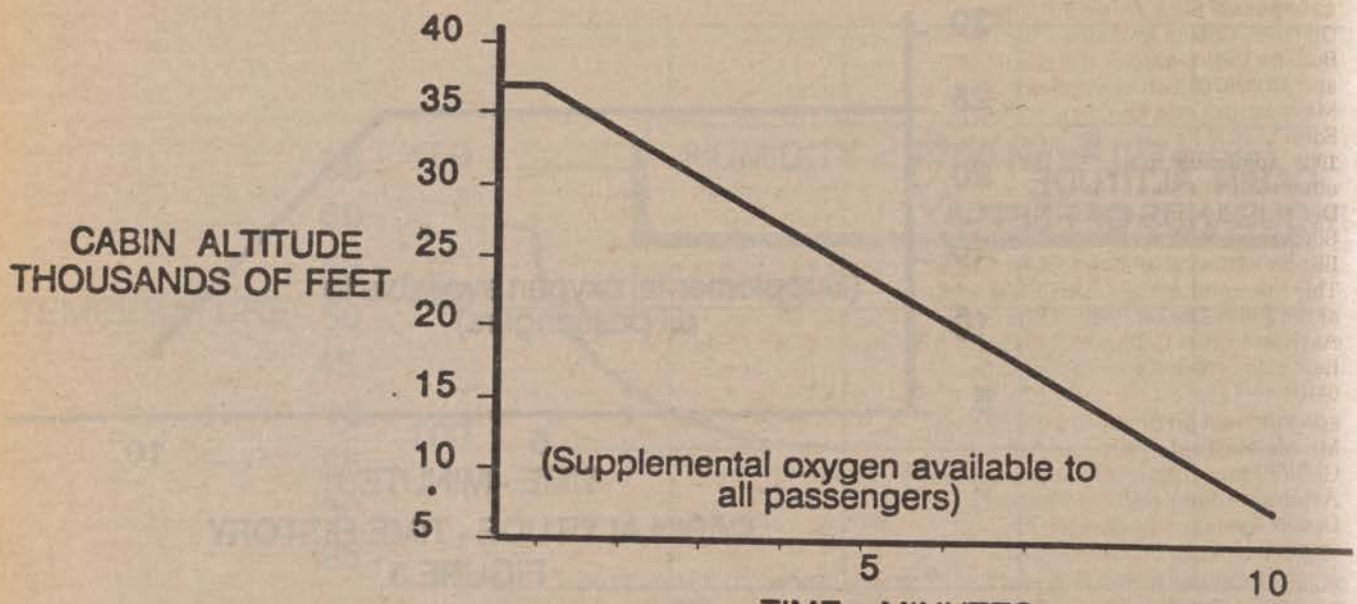
CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

e. *Oxygen equipment and supply.*

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Seattle, Washington, on November 17, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-27156 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-17-AD; Amdt. 39-6081]

Airworthiness Directives; Cessna Models T210L, T210M, T210N, P210N, and T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos. It requires repetitive inspections and pre-flight checks to detect magneto moisture contamination. This AD is prompted by numerous reports of contaminated magnetos, which could result in dual magneto failure, engine stoppage, and forced landing of the airplane. The inspections and checks specified in this AD would preclude this situation from occurring.

DATES: *Effective:* December 26, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Slick Aircraft Products Division, Unison Industries, Inc., Service Bulletin (SB) 1–88, dated April 10, 1988, and 4200/6200 Series Magneto Maintenance and Overhaul Manual, Form L–1037 Revision D, dated April 10, 1988, applicable to this AD may be obtained from Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108, telephone (815) 965–4700. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, ACE–115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7134.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections and pre-flight checks of pressurized magnetos on certain Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes was published in the **Federal Register** on July 18, 1988 (53 FR 27051). The proposal resulted from numerous reports of internal moisture contamination of Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos used on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes. Evidence of moisture is shown by corrosion of some internal metal components, indications of electrical arcing or tracking near the center of the distributor block, decomposition of non-metallic components indicated by gummy or powdery substances, and/or traces of water pooling.

Two accidents were reported in which dual magneto failure occurred resulting in forced landings. Examination of those magnetos revealed long term deterioration with evidence of moisture contamination. It was also revealed that the magnetos had not been inspected per the airplane manufacturer's maintenance instructions, which required several internal magneto inspections before the 500-hour inspection and/or overhaul interval recommended by Slick Aircraft Products Division. Of the airplanes involved, one had flown through rain at the time of failure and the other had previous flights in rain conditions.

The Models 6220 and 6224 pressurized magnetos are identical in design to other approved models except for changes necessary for pressurization. Several thousand of these other non-pressurized magnetos have been in service with no reported moisture contamination problems. All of the reported incidents of internal magneto moisture contamination have occurred on turbocharged engines such as are used on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes. Approximately 50% of these reports occurred after the recommended 500-hour inspection and/or overhaul interval. Nearly 30% occurred between 400 and 500 hours. Long term deterioration was reported in most of these reports, indicating a lack of internal magneto inspections.

The FAA determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, and proposed an AD requiring initial and repetitive inspections for evidence of moisture contamination, and repair as necessary on Cessna Models T210L, T210M, T210N, P210N, and T303 airplanes equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos.

Interested persons have been afforded an opportunity to comment on the proposal. Five comments were received. No comments were received on the cost determination. Three commenters opposed the proposed placard indicating that it is inappropriate and unnecessary, because the pre-flight magneto checks are part of information contained in operating handbooks, checklists, and other supplementary materials. The proposed placard requires pre-flight magneto checks to be conducted in accordance with the Airplane Flight Manual (AFM)/Pilot's Operating Handbook (POH) Supplement included as Appendix 1 of the AD. While the procedures for conducting the pre-flight magneto checks are the same as required by the AFM/POH, the AFM/POH Supplement adds requirements which must be accomplished if the magneto check exceeds certain limits.

Because the pilot must be alerted to this additional requirement, the FAA has determined that the placard is both necessary and appropriate.

One commenter concurred with the proposal, but recommended adding post-flight magneto checks. The FAA has determined that the pre-flight magneto checks and periodic magneto inspections proposed will adequately address magneto contamination problems. One commenter opposes the proposal indicating the small percentage of the total number of airplanes reporting this problem through the Service Difficulty Report (SDR) Program. While this program gives the FAA indications of possible problems, it does not give the total number of actual occurrences (the sum of those reported and those not). Those incidents reported in the SDR served as an indication of contamination problems with certain magneto installations. The FAA has determined that if the contamination problems are not properly addressed, dual magneto failure could possibly occur resulting in forced landing of the airplane. Another commenter also made reference to certain tests conducted on a Cessna P210 airplane which indicated large volumes of water being required to show moisture laden magnetos. The FAA has determined that the validity of those tests are, at the least, questionable due to alterations of the magneto air supply system and the use of visual means for determination of moisture. With such an altered magneto air supply system, visual observation of moisture does not account for water entrainment along surfaces not observed.

Based on the above comments, no changes to the proposal are deemed necessary. However, one commenter pointed out that the AFM/POH Supplement called out airplane models not shown in the applicability statement of the NPRM. Accordingly, the AFM/POH Supplement referred to in the final rule will reflect these changes. In addition, minor editorial corrections were made regarding the dates on the service information and who may accomplish the requirements of paragraph (a) in the AD.

The FAA has determined that this regulation only involves 3,500 airplanes at an approximate annual cost of $80 for each airplane, or a total annual fleet cost of $280,000. No small entities impacted by this AD own sufficient airplanes to cause their cost of compliance to equal or exceed the significant thresholds of the Regulatory Flexibility Act.

The regulations adopted herein will not 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or

negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Models T210L, T210M, T210N, P210N, and T303 (all serial numbers) airplanes certificated in any category, that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Model 6220 or 6224 pressurized magnetos.

Compliance: Required as indicated, unless already accomplished.

To preclude magneto moisture contamination, which could result in dual magneto failure, engine stoppage, and forced landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Revise the "*Normal Procedures*" section of the Airplane Flight Manual (AFM) or the airplane Pilot's Operating Handbook (POH), by inserting the AFM/POH Supplement, dated April 1, 1988, provided in Appendix 1 of this AD.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters not less than 1/10 inches in height with the following wording:

"Prior To Each Flight, Conduct Magneto Checks in Accordance With AFM/POH Supplement Dated April 1, 1988."

and operate the airplane accordingly.

(3) The requirements of paragraphs (a) (1) and (2) of this AD may be accomplished by the owner/operator of any airplane owned or operated by him. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the airplanes in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988, and:

(1) For airplanes operating for compensation or hire, at intervals not to exceed 100 hours TIS after the initial inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(2) For airplanes operating under FAR 91, after the initial inspection, at each annual inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 10, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above-referenced service bulletin.

(c) Airplanes may be flown in accordance with provisions of FAR 21.197 to a base where the requirements of this AD may be accomplished.

(d) The 100-hour TIS repetitive inspection interval specified in paragraph (b) of this AD may be extended up to an additional 10 hours TIS to allow compliance with previously scheduled maintenance.

(e) An equivalent means of compliance with the requirements of this AD may be used, if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108 or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 26, 1988.

Issued in Kansas City, Missouri, on November 16, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

Appendix 1—FAA Approved Supplement to the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual for Cessna Models T210L, T210M, T210N, P210N, and T303 Series Aircraft

Reg. No.

Ser. No.

This supplement must be attached to the FAA Approved Airplane Flight Manual on which Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos are installed. The information contained herein supplements or supersedes the basic manual only in those areas listed. For limitations, procedures, and performance information not contained in this supplement, consult the basic Airplane Flight Manual.

FAA Approved.

W. F. Horn,

Manager, Chicago Aircraft Certification Office, FAA Central Region.

Date: April 1, 1988.

Section II. Limitations

No change.

Section III. Emergency Procedures

No change.

Section IV. Normal Operating Procedures

Before Takeoff

Perform a magneto check of each engine at 1,700 RPM as follows: move ignition switch first to R position and note RPM. Next, move switch back to Both, to clear the other set of plugs. Then, move switch to the L position, note RPM and return the switch to the Both position. RPM drop should not exceed 150 RPM on either magneto or show greater than 50 RPM differential between magnetos. If there is doubt concerning operation of the ignition system, RPM checks at higher engine speeds will usually confirm whether a deficiency exists.

Caution

Many non-ignition system factors influence engine performance during a magneto check, and the replacement or repair of ignition components may not remedy problems in all cases. After verifying that all non-ignition system related causes for problems have been explored, proceed with the inspection procedures as stated below. If the magneto check exceeds either of the above limits, both magnetos must be disassembled and inspected in accordance with Section III, 100-hour inspection of Slick Aircraft Products Division, Unison Industries, Inc., SB 1-88, dated April 10, 1988, or FAA approved equivalent. An absence of RPM drop may be an indication of faulty grounding of one side of the ignition system or should be cause for suspicion that the magneto timing is set in advance of the setting specified. Check ignition ground and magneto timing.

FAA Aproved.

Date: April 1, 1988.

[FR Doc. 88-27157 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-22-AD; Amdt. 39-6080]

Airworthiness Directives; Piper Models PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper (Aerostar) Models PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P airplanes. This AD requires replacement and

modification of certain engine fluid-carrying hoses and associated hardware. This action is prompted by reports of burned, chafed, brittle and leaking oil supply hoses which are suspected in several incidents of causing in-flight fires. The actions specified in this AD will correct the reported conditions and reduce the possibility of in-flight fires.

DATES: *Effective:* December 26, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (SB) No. 761, dated April 18, 1983, and SB No. 815, dated January 3, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4366. This information also may be examined in the Rules Docket, Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which would require replacement and rerouting of certain fluid-carrying hoses and the proper securing of these hoses on certain Piper (Aerostar) Model PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P airplanes was published in the **Federal Register** on August 9, 1988, (53 FR 29912).

The proposal was prompted by a National Transportation Safety Board Recommendation that reported several in-flight engine fires had occurred on Piper PA–60 series airplanes due to exhaust system leaks and misrouted oil supply hoses. On February 26, 1986, Piper SB No. 818 was issued, applicable to the PA–60 series airplanes, and required the disassembly, inspection and replacement of defective or worn parts, and proper reassembly of the exhaust system. The FAA issued AD 87–07–09, Amendment 39–5600 (52 FR 11631, April 10, 1987), with an effective date of May 15, 1987, which implemented Piper SB No. 818. On April 18, 1983, Piper released SB No. 761 requiring replacement and modification of engine fluid-carrying hoses and associated hardware. This action alleviates the above stated hose conditions by replacing some hoses with higher temperature rated hoses, and also provides for rerouting these and other serviceable hoses for increased clearances between the hoses, the exhaust stacks, and the turbochargers. On January 3, 1986, Piper released SB No. 815 requiring the replacement of ties securing turbocharger oil supply hoses with metal clamps and hardware so as to provide increased security and clearance between the hoses, the exhaust stacks and the turbochargers.

Since the conditions described herein are suspected of causing in-flight fires and are likely to exist or develop in other Piper Model PA–60 airplanes of the same type design, an AD was proposed which would require replacement and rerouting of certain fluid-carrying hoses and the proper securing of these hoses as specified in Piper SB Nos. 761 and 815 on the subject airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Subsequent to issuance of this proposal, the FAA determined that certain Piper Model PA–60–700P airplanes were modified during production to comply with the provision of SB No. 761. Accordingly, the proposal has been rewritten to except these modified airplanes from the requirements of the AD. Since this change is clarifying in nature and does not increase the burden of the proposal the amendment is being adopted without additional rulemaking procedures.

The FAA has determined there are approximately 325 airplanes affected by this AD. The one-time cost of implementing the AD is estimated to be $1,040 per airplane. The total cost is estimated to be $338,000 to the private sector. The cost of complying with this AD will not have significant impact on any small entities owning affected airplanes.

The regulations adopted herein will not 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Piper (Aerostar): Applies to Models PA–60–601 equipped with an automatic waste gate controller per Retrofit Option 106 (S/N 61–0001–004 through 61–0334–111), PA–60–601 (S/N 61–0342–112 through 61–0880–8162157), PA–60–601P (S/N 61P–0157–001 through 61P–0860–8163455), PA–60–602P (S/N 62P–0750–8165001, and 62P–0861–8165002 through 60–8365010), PA–60–700P (S/N 60–8423001 through 60–8423025) airplanes certificated in any category.

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

To reduce the possibility of damage to the oil supply hoses which, if not corrected, could result in an in-flight fire, oil starvation and/or engine failure, accomplish the following:

(a) For all the above applicable airplanes except Model PA–60–700P (S/N 60–8423001 through 60–8423025) airplanes, replace and modify the engine fluid-carrying hoses and associated hardware in accordance with the instructions contained in Piper Service Bulletin (SB) No. 761, dated April 18, 1983, and Piper SB No. 815, dated January 3, 1986.

(b) For Model PA–60–700P Aerostars (S/N 60–8423001 through 60–8423025) airplanes replace and modify the engine fluid-carrying hoses and associated hardward in accordance with the instructions contained in Piper SB No. 815, dated January 3, 1986.

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

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE–115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 26, 1988.

Issued in Kansas City, Missouri, on November 16, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 88-27158 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of temporary rules.

SUMMARY: In compliance with an order of the United States District Court for the Central District of California, the United States Information Agency (the "Agency" or "USIA") on November 16, 1987, published interim rules to amend regulations found at 22 CFR Part 502 which implement the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* ("Beirut Agreement of 1948") at 52 FR 43753. On May 13, 1988, the district court found the interim regulations unconstitutional and ordered the Agency to draft new regulations. By order dated September 9, 1988, the court required that the new regulations be promulgated within 60 days. Regulations were published at 53 FR 45079 on November 8, 1988. On November 10, 1988, the United States Court of Appeals for the Ninth Circuit stayed the district court's May 13, 1988, and September 9, 1988, decisions for 60 days. Accordingly, the Agency will resume operating under the interim regulations published on November 16, 1987, until further notice.

DATES: The temporary regulations shall become effective November 25, 1988.

ADDRESS: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street, SW., Washington, DC 20547, (202) 485-8829.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Room 700, USIA, 301 4th Street SW., Washington, DC 20547, (202) 485-8829.

SUPPLEMENTARY INFORMATION: By advance notice of proposed rulemaking published at 52 FR 25384, July 7, 1987 (republished in its entirety because of typesetting errors at 52 FR 26156, July 13, 1987), the USIA instituted a rulemaking proceeding in response to an order of the United States District Court for the Central District of California in *Bullfrog, Inc. v. Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court held that part of the regulations implementing the Beirut Agreement were unconstitutional, and enjoined USIA from enforcing the invalidated sections of the regulations. In addition, the court ordered that USIA reconsider six films which had been denied certification under 22 CFR Part 502. Consequently, in order to aid the Agency in complying with the district court's order, the Agency requested public comments as to whether and how the challenged regulations could be redrafted in a way which would both satisfy the district court's ruling and comply with the terms and requirements of the Beirut Agreement, as interpreted by the United States, UNESCO, and the international community. After review of the public comments received, the Agency adopted interim regulations. By order dated May 13, 1988, the court invalidated the interim regulations as unconstitutional. On September 9, 1988, the court ordered the Agency to promulgate new regulations which were to become effective within 60 days. Consequently, the Agency published new interim regulations on November 8, 1988. On November 10, 1988, the United States Court of Appeals for the Ninth Circuit stayed the district court's May 13, 1988, and September 9, 1988, decisions for 60 days. Accordingly, the Agency will suspend temporarily the regulations set forth at 53 FR 45079 on November 8, 1988, and resume operating under the regulations published at 52 FR 43753 November 16, 1987. The notice published at 52 FR 43753 is included here by reference.

Findings and Conclusions

The Agency concludes that it will adopt the regulations set forth herein on temporary basis effective November 25, 1988, and will begin to make certification decisions at that time.

This decision does not significantly effect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does 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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6 (a)(3), (4), (b)(3), and (5) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 through 3520) and have been assigned OMB Control Numbers.

PART 502—[AMENDED]

The authority for Part 502 continues to read:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 *et seq.* E.O. 11311.31 FR 13413, 3 CFR 1966–1970 comp. page 593.

§ 502.6 [Amended]

2. In § 502.6 paragraph (a)(3) is suspended. A new paragraph (a)(4) is added to read as follows:

(a) * * *

(4) Audio visual materials which are deemed "educational, scientific or cultural" for the purposes of Article 1 of the Beirut Agreement of 1948 are those "whose primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill," as defined below as comprising the following elements:

(i) The content of the audio visual material is presented in a primarily factual or demonstrative manner.

(ii) To the extent that the material reflects a viewpoint or viewpoints which purport to be supported by factual bases, the facts are not distorted. The

facts will be deemed distorted if they do not represent the current state of factual knowledge of a subject or aspect of a subject, verifiable by generally accepted methods, or if the facts are presented in such a way as to constitute hate material (such as the racial supremacist material involved in *National Alliance v. United States*, 710 F.2d 868 (1983)).

(iii) To the extent that the material presents, promotes, or advocates a conclusion or viewpoint for which different viewpoint(s), theory(ies) or interpretation(s) may exist, the material acknowledges, presents or refers to the existence of a difference of opinion or other point of view.

(iv) The technical quality is such that it does not interfere with the use made of the material.

In the "Summary of Content" section of the certificate, the Agency, in its discretion, may identify material that in its opinion constitutes propaganda, in that it is substantially adapted to prevail upon, indoctrinate, convert, induce or in any other way influence a viewer or user with reference to any specific political, religious or economic views, practices, movements, causes or systems or belief. Where an applicant identifies an intended audience the Agency may also express an opinion in the "Summary of Content" section of the certificate as to whether that audience possesses the background or training to understand the subject matter.

Date: November 21, 1988.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 88-27287 Filed 11-23-88; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8234]

Electronic Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document removes temporary regulations and adopts as final regulations proposed regulations published in the **Federal Register** on February 23, 1988, relating to a notice of Federal tax lien filed by the use of an electronic or magnetic medium. These regulations clarify existing regulations under section 6323(f) of the Internal Revenue Code (Code).

EFFECTIVE DATES: The regulations are effective for a notice of Federal tax lien filed on or after February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ada S. Rousso of the Office of the Assistant Chief Counsel,Income Tax and Accounting, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (202-566-4104, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1988, the **Federal Register** published temporary regulations (52 FR 5269) (1988-16 I.R.B. 24) and proposed regulations (53 FR 5279) (1988-16 I.R.B. 33) under section 6323(f) of the Code relating to a notice of Federal tax lien filed by the use of an electronic or magnetic medium, clarifying existing regulations under section 6323(f) of the Code. No written comments were received. A public hearing was neither requested nor held. Accordingly, the temporary regulations are removed and the proposed regulations are adopted as final regulations by this Treasury decision.

In General

This document amends the Administrative Regulations (26 CFR Part 301) under section 6323 of the Code. These regulations clarify that the term "Form 668" includes a notice of Federal tax lien filed by the use of an electronic or magnetic medium where the law of the state in which a notice of Federal tax lien is filed permits such method of filing.

Section 6321 of the Code imposes a lien in favor of the United States whenever a person liable for any tax neglects or refuses to pay the tax after demand. For such lien to be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor, a notice of the lien must be filed which meets the requirements of section 6323(f). Section 6323(f)(3) provides that the form and content of the notice referred to in section 6323(a) shall be prescribed by the Secretary, and that such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

Notice of Lien May Be Filed by the Use of an Electronic or Magnetic Medium

Section 301.6323(f)-1(c) of the regulations provides that notice of a Federal tax lien "shall be filed on Form 668, 'Notice of Federal Tax Lien under Internal Revenue Laws'." These final regulations clarify that the term "Form 668" includes both a Form 668 printed on paper and a Form 668 filed by the use of an electronic or magnetic medium if the law of the state in which the notice is filed permits a notice of Federal tax lien to be filed by the use of such medium. The use of a non-paper form will not affect the decision to place a notice of lien on file and will not significantly affect the timing of issuance of a notice of lien. Rather, the use of a non-paper form merely simplifies the manner of transmitting information to a state after a lien is determined to be valid and any remaining issues are resolved. Paper forms will continue to be used in states that do not permit electronic or magnetic filing.

The use of electronic or magnetic media to file a notice of tax lien will enable the Internal Revenue Service to better serve the public by (a) reducing the time it takes to notify the public that a lien exists; (b) reducing the amount of paperwork necessary to file a notice; and (c) in certain cases, eliminating or reducing the cost of filing a notice of lien, which cost is generally billed to the taxpayer involved.

Refiling a Notice of Lien

Section 6323(g) of the Code and § 301.6323(g)-1 of the regulations, which govern the refiling of a notice of Federal tax lien, do not require a particular form to be used in refiling a notice of Federal tax lien. Therefore, an amendment to the regulations is not necessary to allow a notice of Federal tax lien to be refiled by the use of any electronic or magnetic medium permitted by the state in which the notice is refiled.

Special Analyses

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these regulations is Lauren G. Shaw of the Office of the Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service. However,

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

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, Part 301 of Title 26 of the Code of Federal Regulations is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended as follows:

(1) By removing the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6323(f)–1T(c) is also issued under 26 U.S.C. 6323(f)(3); and

(2) By adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6323(f)–1(c) is also issued under 26 U.S.C. 6323(f)(3).

Par. 2. 26 CFR Part 301 is amended as follows:

§ 301.6323(f)–11 [Removed]

(1) By removing § 301.6323(f)–1T; and

(2) By revising § 301.6323(f)–1(c) to read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

* * * * *

(c) *Form*—(1) *In general.* The notice referred to in § 301.6323(a)–1 shall be filed on Form 668, "Notice of Federal Tax Lien Under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notice contain a description of the property subject to the lien.

(2) *Form 668 defined.* The term "Form 668" generally means a paper form. However, if a state in which a notice referred to in § 301.6323(a)–1 is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium, the term "Form 668" includes a Form 668 filed by the use of any electronic or magnetic medium permitted by that state. A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

November 2, 1988. Approved:

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–27232 Filed 11–23–88; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1978

Rules Implementing Section 405 of the Surface Transportation Assistance Act of 1982

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter the "STAA"), Pub. L. 97–424, 96 Stat. 2097, 2157–58, enacted January 6, 1983 (49 U.S.C. app. 2301 *et seq.*), provides protection to employees in the trucking industry from discrimination because of activity related to commercial motor vehicle safety and health matters. On November 21, 1986, OSHA published an interim final rule which provided for rules of practice and procedure to implement section 405 of STAA. At that time the agency requested comments concerning the interim final rules. Since then, the agency has received several comments from interested parties and the U.S. Supreme Court has ruled on an important provision in STAA. OSHA has reviewed those comments and the Court's decision and it now adopts these rules which have been revised to a certain extent to comply with the Court's ruling on the statute and its method of implementation and to address problems perceived by the agency or the commentators.

DATES: These rules are effective December 27, 1988. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work an injustice, in which event present rules (i.e., those published at 51 FR 42091) apply.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Rulemaking Proceedings

On November 21, 1986, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** an Interim Final Rule promulgating rules which implemented section 405 of STAA. 51 FR 42091–42095. In addition to promulgating the interim final rule, OSHA's notice included a request for public comment on the interim rules.

In response, five organizations and individuals filed comments with the agency. These commentators represented the full spectrum of those who will be affected by the rules. The International Brotherhood of Teamsters, a labor organization representing a significant portion of drivers covered by STAA, filed a comment which supported the rules as drafted. Two trucking industry associations, American Trucking Association Inc. (ATA) and Specialized Carriers and Rigging Association (SCRA), filed comments, which generally supported the rule but also pointed to specific problems which they perceived in the rules. In addition, two attorneys, Michael C. Towers of Fisher and Phillips, Atlanta, Georgia, and Jeffrey I. Pasek of Cohen, Shapiro, Polisher, Shiekman and Cohen, Philadelphia, Pennsylvania, who have participated in section 405 proceedings, filed comments which address both specific problems they faced under practice prior to rule promulgation and also problems that they perceive under the interim rule.

After promulgation of the interim rule, in *Brock* v. *Roadway Express, Inc.*, — U.S. —, 107 S. Ct. 1740 (1987), the Supreme Court ruled on a constitutional challenge to the temporary reinstatement provision in STAA. (49 U.S.C. app. 2305(c)(2)(A)). The Supreme Court's ruling, which upheld the constitutionality of that statutory provision and the rules promulgated thereunder, directly affected several of the rules and accordingly, OSHA has decided to redraft certain subsections of the rule to better comport with the Supreme Court's holding.

Following the receipt of the comments and the issuance of the decision in *Brock* v. *Roadway Express, Inc., id.* (hereinafter *"Roadway Express"*), OSHA has reviewed the comments and the decision and, in response, has

developed a final rule which makes some changes in the interim final rule. Other changes urged by commentators were considered but rejected. OSHA addresses the comments and the changes in the discussion which follows. The comments and OSHA's response are discussed seriatim in the order of the provisions of the rule.

Definitions

OSHA received only one comment on the definition section. SCRA questioned whether the meaning of "employee" as defined in § 1978.101(d) included the employee of an independent contractor.

OSHA believes that a person is an employee, whether he or she works for a major multistate trucking firm or for an independent contractor, if that person meets the criteria found in 49 U.S.C. 2301, *i.e.*, if that person drives in interstate commerce a vehicle which meets the criteria of the definition of "commercial motor vehicle" found at 49 U.S.C. app. 2301(1) and is employed by a commercial motor carrier as that term is defined in a new definition in the regulation at § 1978.101(e). For example, if an independent contractor is a motor carrier and has an employee who drives a vehicle in interstate commerce which has a gross vehicle weight rating of ten thousand or more pounds, that employee is covered by section 405. Because the statute and rule did not previously provide a definition for "commercial motor carrier," OSHA has added a definition at § 1978.101(e).

OSHA also notes that the definition of "employee" specifically includes an independent contractor if that person personally operates the commercial motor vehicle in interstate commerce. In that instance, if the independent contractor insisted upon meeting DOT regulations and subsequently the company which had contracted with him refused to honor the contract because of the independent contractor's safety activity, the independent contractor has the right to complain to OSHA about such adverse action.

Filing of Complaint

SCRA has suggested that § 1978.102(c) be changed because the rule permits the filing of section 405 cases with "any OSHA officer or employee," with the result that the employer would have to travel to a remote location to contest the filing. This comment misapprehends OSHA practice and the intent of the rule. Section 1978.102(c) simply permits the employee to file at a convenient location. Thereafter, OSHA will assign the case to a regional office responsible for enforcement activities in the geographical area where the employee resides or was employed. Usually, this location is equally convenient to the employer, since most employees are domiciled near the terminal which may have discriminated against them. Thus, OSHA does not see this rule, which permits quick and convenient filing of a complaint, to impinge unduly upon employer or employee.

In § 1978.102(f), OSHA has made a change in accordance with *Roadway Express* and several comments. The interim rule called for OSHA to notify the *"named person" i.e.*, the person against whom the complaint had been filed, of the filing of a complaint without transmittal of the actual complaint filed by the employee. Several commentators suggested that this withholding of the actual complaint is unfair. Likewise, the Supreme Court has suggested that the named person be given notice of the complaint and the substance of the relevant evidence to satisfy due process requirements. *Roadway Express*, 107 S. Ct. at 1748. Accordingly, OSHA has changed 102(f) to provide that, upon receipt of a valid section 405 complaint, the agency will transmit to the named person a copy of the complaint as filed by the complainant, as long as the complaint does not identify any potential confidential witnesses.

Nevertheless, OSHA notes that oftentimes the complaint as received from the employee is frequently an inarticulate, non-legal statement of the facts as a non-lawyer perceives them. After receipt and transmittal of the complaint, when OSHA conducts its investigation, the agency may discover evidence which expands or narrows the basis and the scope of the complaint's allegation. See *NLRB* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18 (1942). Of course, as provided for in the new § 1978.103(b) (discussed below), if the nature or scope of the investigation changes, OSHA shall notify the named person of any new or additional bases for the claim of discrimination.

Investigation

In response to *Roadway Express* and several comments, OSHA has significantly revamped § 1978.103(b). In *Roadway Express*, the Court upheld the facial constitutionality of the statute and the regulations under the Due Process clause of the Fifth Amendment and thus ruled that the statute's provision permitting temporary reinstatement of a discharged employee after a preliminary investigation and issuance of findings and order was permissible. However, in the Court's analysis of the facts, because the record failed to show that OSHA investigators had informed Roadway of the substance of the evidence to support reinstatement of the discharged employee, the plurality concluded that the statute and OSHA's rules were unconstitutionally applied.

Under OSHA's reading of this decision, it has been determined that, while OSHA's current procedures are facially constitutional, the rule governing the investigation process should be changed to permit a more clear-cut and orderly exchange of information at the investigative phase. Thus, as noted above, OSHA will provide to the named person a copy of the employee complaint. Additionally, OSHA has changed § 1978.103(b) to provide for the named person's apprisal of any new or amended charges which may have been discovered during the course of the investigation, and OSHA has also added a new section, § 1978.103(c), which provides for giving the named person notice of the substance of the evidence which supports the complaint, if OSHA has reason to believe that it may be necessary to order temporary reinstatement of the complainant. In addition to providing the named person with the substance of the relevant evidence supporting a finding of discrimination and temporary reinstatement, § 1978.103(c) provides the named person the opportunity to meet with the investigator to submit rebuttal evidence.

When OSHA provides the named person with notice of the substance of the relevant supporting evidence, OSHA shall provide the named person with a synopsis of the evidence and may provide sanitized witness statements. However, OSHA will not provide the names of the witnesses and, if the statements cannot be sanitized to the extent that the identity of the witnesses is protected, OSHA will not provide the written statements themselves, but instead it will provide the company with the substance of the evidence.

This decision to withhold names and copies of statements has been made in conformity with the Department of Labor's longstanding practice of protecting the identity of confidential witnesses. See, *e.g. Stephenson Enterprises Inc.* v. *Marshall*, 578 F.2d 1021, 1025 (5th Cir. 1978); *Hodgson* v. *Charles Martin Inspectors of Petroleum Inc.*, 459 F.2d 303 (5th Cir. 1972). See also *Roviaro* v. *U.S.*, 353 U.S. 53 (1957). OSHA takes statements from witnesses with the promise that witness identity will not be disclosed unless and until a witness is called to testify at trial. This decision to withhold names is a commonsense approach to a particularly difficult problem. The government is

investigating in these cases because an employee has accused an employer of discrimination after the employee contacted or threatened to contact the government. Fellow employees, who are often the best sources of information concerning the allegation of discrimination, are unlikely to come forward with the correct information if they perceive that the employer will learn of their identity, particularly in cases such as these where the employer is accused of discriminating against employees who contact the government. Any premature disclosure of witness identities at an early stage prior to hearing will likely hinder an effective investigation.

OSHA's analysis of *Roadway Express*, leads to the conclusion that the Court did not require disclosure of the names of confidential witnesses. Indeed, OSHA has concluded that the plurality's holding supports OSHA's decision. The plurality held that the minimum that due process requires is notice of the employee's allegations, "notice of the substance of the relevant supporting evidence" and the opportunity to rebut that evidence in writing and in meetings with OSHA. 107 S. Ct. 1748. At no point in the plurality decision does the court require OSHA to provide the names or identities of the witnesses. In fact, in three separate places in the plurality opinion, the court distinguishes between the term "substance of the evidence" and a witness' statement. Additionally, OSHA notes that Justice Brennan also discusses OSHA's obligation in terms of provision of the substance of evidence as opposed to furnishing actual witness statements. Accordingly, under the new rule at § 1978.103(c), OSHA will not disclose to the named person the identities of confidential witnesses.

However, recognizing that the employer has a constitutional right to know the substance of the relevant evidence supporting OSHA's preliminary finding, OSHA, as it has in the past, will disclose to the employer the substance of the evidence by meeting with the named person to discuss the evidence, and to provide sanitized copies of witness statements, if such provision will not jeopardize the identity of witnesses. If there is no way to sanitize the statements, OSHA will discuss with the employer the substance of the relevant evidence contained in those statements without providing the actual statements.

During or after the disclosure meeting, the named person may furnish rebuttal evidence. However, due to the Congressional mandate that section 405 proceedings be conducted expeditiously, OSHA cannot permit a named person any more than five days after notification to present rebuttal evidence, unless the interests of justice so require. After OSHA has considered the rebuttal evidence, it will issue findings and, if necessary, a preliminary order.

Issuance of Findings and the Preliminary Order

OSHA received several comments from the trade associations regarding the award of attorney's fees to the complainant if complainant prevails. SCRA requested that § 1978.104 be redrafted to permit award of attorney's fees to the named person if he or she prevailed. However, neither the statute nor the legislative history permit an interpretation of the statutory language to provide award of attorney's fees to the named person. The statutory language specifies that the Secretary may award attorney's fees only to a complainant if he or she prevails. There is no mention of award of attorney's fees to any other party. Relying on the fundamental canon of construction, *expressio unius est exclusio alterius*, OSHA has concluded that, since Congress mentioned only the complainant in the statutory provision regarding fees, Congress must have intended to exclude an award of attorney's fees to the named person. Thus, OSHA is unable to agree with SCRA's comment. Moreover, OSHA notes that the Secretary has already addressed this question in *Abrams* v. *Roadway Express, Inc.*, 84–STA–2, May 23, 1985, wherein the Secretary concluded that the statute did not authorize the award of fees to an employer.

In connection with § 1978.104, which provides for OSHA's issuance of findings and a preliminary order which may award attorney's fees, among other things, ATA commented that the rule as it relates to § 1978.109 is ambiguous with regard to an employer's liability for attorney's fees. ATA states that § 1978.109 does not provide specifically for vacation of a preliminary order by OSHA which awarded attorney's fees and accordingly, it believes that a named person may incur some liability for OSHA's preliminary order award of fees. However, OSHA notes in response that § 1978.109(c)(4) specifically states that when the Secretary determines that the named person did not violate the Act, "the final order shall deny the complaint." The Secretary's order is the final order of the Department and it takes precedence over all previous orders and rulings. Consequently, if the Secretary finds no validity to an employee's complaint, there can be no basis on which to award any damages to complainant, including attorney's fees.

Attorney Towers commented that § 1978.104(a) should provide for detailed findings of fact by OSHA at the conclusion of its investigation. OSHA agrees that its findings should be sufficiently detailed as to apprise the parties of the complained of activity and the facts upon which OSHA has based its determination regarding whether a violation of the statute occurred. However, OSHA believes that it is not necessary to specify in its rule the elements which must be found in each finding of fact issued by OSHA. The amount of detail and explanation in the findings depends on the facts of each case. Accordingly, OSHA will not revise § 1978.104 to specify the amount of detail in its investigative findings.

Scope of Rules, Notice of Hearing; Litigation Complaint

Attorney Pasek commented on § 1978.106(d); he believed that the rule should provide for the filing of a litigation complaint to frame the issues for trial. OSHA has determined for several reasons that this would be an unnecessary step and has chosen not to implement such a rule. First, the findings of fact issued by OSHA in most circumstances should be sufficiently detailed to apprise the parties of the legal and factual issues presented in the matter. Moreover, a requirement that the prosecuting party file a litigation complaint after issuance of findings and the filing of objections thereto would only tend to delay the proceedings which are to be conducted in a very time-shortened process. The Congressional mandate is that the Department is to conduct hearings expeditiously after the filing of objections. Given that the findings and objections have already served to narrow the issues and given the need for an expeditiously conducted hearing, OSHA has decided that the current rule at § 1978.106(d) which provides for the filing of a prehearing statement of positions, if ordered by the judge, is sufficient to give the parties notice of the issues and the remedy sought.

Parties

Section 1978.107 generated a number of comments regarding the role of the Assistant Secretary in administrative hearings. Section 1978.107(a) provides that if the Assistant Secretary finds reasonable cause to believe the employee's complaint, the Assistant Secretary will ordinarily be the prosecuting party at any administrative

hearing conducted pursuant to § 1978.106. Section 1978.107(b) provides that if no merit to the employee's complaint is found at the investigative level, the Assistant Secretary will ordinarily not participate in the hearing.

SCRA and ATA commented that this rule is unfair in that it does not permit the Assistant Secretary to provide assistance to the employer when OSHA has found no merit to the employee's complaint. SCRA has proposed that, to remedy this unfairness, OSHA set up a "public defender" office which will defend the employer's actions in cases arising under § 1978.107(b). Similarly, ATA and Attorney Towers believed that OSHA should participate in the hearings even when the agency has found no merit to the complaint.

OSHA has carefully considered these comments and finds that the commentators have misunderstood the purpose of the statute and the manner in which the rules implement the statute. The purpose of the statute is to ensure that the government's channels of information are not dried up by employer intimidation of prospective complainants and witnesses. *Brock* v. *Roadway Express, Inc., supra,* 107 S. Ct. 1745. See also, *NLRB* v. *Scrivener,* 405 U.S. 117, 122 (1972); *Mitchell* v. *Robert De Mario Jewelery, Inc.,* 361 U.S. 288, 292; *Square D. Company* v. *Donovan,* 709 F.2d 335, (5th Cir. 1983) (long-term effect and primary purpose of antiretaliation suits is to promote effective enforcement of statutes by protecting employee communications with governmental authorities.) As Congress noted in the legislative history to STAA:

> the Section was considered necessary to encourage "whistle-blowing" by employees. Enforcement of commercial motor vehicle safety laws and regulations is possible only through an effort on the part of the employer, employees, State safety agencies, and the Department of Transportation. Therefore, the committee considered it necessary to specifically provide protection for those employees who are discharged or discriminated against for exercising their rights and responsibilities under this title.

Senate Commerce Committee Section by Section Analysis of Title IV, S. 3044, Commercial Motor Vehicle Safety, 97th Cong., 2d Sess., 128 Cong. Rec. S 14028 (Dec. 7, 1982).

Based on this reasoning, OSHA has found that it is extremely important that, if the Assistant Secretary determines that section 405 has been violated, the case be properly prosecuted at a hearing to ensure that the government's channels of communication with employees are kept open. Accordingly, the Solicitor will normally prosecute this type of claim.

On the other hand, if after an investigation OSHA does not find reasonable cause to believe the employee's complaint, in essence OSHA does not believe that the government's channels of information have been interfered with and accordingly, the government's interest in protecting whistleblowing is not as likely to be implicated in a hearing. For that reason, OSHA will ordinarily not participate in such a hearing.

ATA and SCRA urge that this position is unfair in that it denies the named person the benefit of the government's investigative report and expertise. However, a requirement that OSHA appear to defend its investigative findings does not further any governmental purpose, for the government has preliminarily, at least, concluded that whistleblowing is not implicated in the hearing, and appearance at a hearing would use up scarce resources.

Furthermore, the hearing is conducted *de novo* and is not a review of OSHA's findings. OSHA's conclusions are no longer directly at issue. Instead the critical factors at the hearing are the evidence adduced by the complainant as prosecuting party and the employer's rebuttal of that evidence. Since the employer knows the true reasons for the employment action and can best adduce facts to support its reasons for taking that action, the party in the best position to refute the complainant's evidence is the named person. The Assistant Secretary will not have any special knowledge of the employer's reasons for the discharge or other action and thus, would not likely be able to contribute to the proceeding.

In a related comment, Attorney Towers raises a constitutional objection to § 1978.107(b) which, as noted, provides that if the Assistant Secretary does not find reasonable cause to believe that the employee's complaint has merit, he or she will ordinarily not participate in the administrative hearing which may be held after the employee files objections. Mr. Towers' objection is based on the proposition that, if the Assistant Secretary does not participate in the hearing, the complainant then seeks to remedy a private dispute in an administrative tribunal, which is an Article I of the U.S. Constitution tribunal. Under Mr. Towers' argument, private disputes can be constitutionally adjudicated only in Article III courts. See *Northern Pipeline Co.* v. *Marathon Pipeline Co.,* 458 U.S. 50 (1982) (Bankruptcy Act of 1978 is unconstitutional to the extent bankruptcy judges were not Article III judges.)

OSHA believes that his objection is based on an erroneous assumption. The objection assumes that when the Assistant Secretary finds no reasonable cause to believe the employee's claim, the matter becomes a purely private dispute if it goes to an administrative hearing without the Assistant Secretary's participation. On the contrary, with or without the Assistant Secretary's participation, the employee's claim is still very much a claim that a Congressionally created right to be protected from discrimination has been violated. An employee's claim of discrimination based on engagement in the protected activity of "whistleblowing" with regard to commercial motor vehicle safety and health matters is a claim which did not exist at common law. It only came into existence when Congress, on January 6, 1983, determined that the government had to protect its sources of information and accordingly, the STAA process was formulated. In this regard, then, OSHA's investigative finding is merely the first step in a Congressionally-created process to determine whether the claim is correct. The *de novo* hearing before an administrative law judge, followed by the Secretary of Labor's review are additional steps in this process and in no way are they resolution of "private disputes". Since these are all steps in a Department of Labor process to determine the existence of a statutory violation, the Assistant Secretary's non-participation in the proceeding does not render the Congressionally-created right a private dispute.

Indeed, as explained in various Supreme Court decisions, when Congress has created a special right, not known at common law, such as the right to be free from discrimination because of an employee's safety-related activities, Congress can remove adjudication of this Congressionally-created substantive Federal right from Article III courts and delegate it to administrative agencies for factual determination. See *Northern Pipeline Construction Co.* v. *Marathon Pipeline Co.,* 458 U.S. 50, 102 S. Ct. 2858, 2878. See also, *Crowell* v. *Benson,* 285 U.S. 22, 51–65 (1932); *Atlas Roofing Co.* v. *OSHRC,* 430 U.S. 442, 450 n. 7 (1977); *NLRB* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1, (1937). In fact, Congress has used the same or similar approaches in numerous other whistleblower statutes administered by the Secretary. See, e.g., Energy Reorganization Act, 42 U.S.C. 5851; Toxic Substances Control Act, 15 U.S.C. 2622; Safe Water Drinking Act, 42

U.S.C. 300; 9(i); Water Pollution Control Act, 33 U.S.C. 1367; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; and Resource Conservation and Recovery Act, 42 U.S.C. 6971.

Finally, OSHA notes that the final administrative decision of the Secretary is reviewable in the Federal courts of appeals, 49 U.S.C. app. 2305(d)(1), and the Secretary must go to U.S. district court to enforce his final order. 49 U.S.C. app. 2305(e).

Two other comments were raised with regard to § 1978.107. Attorney Pasek noted that this section contains the only direct reference to the right of the parties to obtain discovery in STAA proceedings and he requested that the rules provide more explicitly for discovery. The rule does not provide for specific discovery measures because the rule in § 1978.106(a), has incorporated by reference 29 CFR Part 18, the Rules of Procedure governing Department of Labor Administrative Hearings, which specifically provides for discovery. See 29 CFR 18.14–23.

Attorney Towers also noted that the rule did not provide for joinder of necessary parties. OSHA believes that it is unnecessary to have a specific provision regarding joinder because 29 CFR Part 18 specifies that the Federal Rules of Civil Procedure will apply to the extent that the rules of administrative practice do not cover an area.

Decision and Orders

Section 1978.109, which covers the issuance of ALJ decisions and the final decision and order of the Secretary, generated several comments. As noted previously in OSHA's response to comments on § 1978.104, SCRA and ATA commented on the availability of attorney's fees for employers. As noted in the response to those comments, the statute provides only for awards of costs and attorney's fees to complainants.

Attorney Towers and ATA commented on the § 1978.109(a) provision for the close of the record before the administrative law judge. According to these commentators, the rule appeared to be incorrectly drafted because § 1978.106(b) provided for the holding of a hearing within 30 days of the filing of objections, and yet § 1978.109(a) provided for the closing of the record "no later than 30 days after the objection." According to the comments, the rules conflicted and presented the parties with an impossibility of performance in that the hearing would open on the same day as the record would close.

OSHA has reviewed this provision and believes that the rules as drafted are correct and operable. In § 1978.106(b), the hearing must commence within 30 days after the filing of an objection to the Assistant Secretary's findings and order. This rule means that a hearing can commence at any time within that 30 day period, unless the parties agree to an extension.

In § 1978.109(a), the record closes on the 30th day after the filing of objections. This rule requires that any hearing which may have been conducted and the submission of all evidence must be completed by the close of business on the 30th day after the filing of objections. In this scenario, there is no conflict between §§ 1978.106(b) and 1978.109(a) since the hearing could be conducted prior to and concluded by the 30th day after the filing of objections. Accordingly, the record can then be closed on the 30th day. If necessary, the parties may agree to a continuance. OSHA's purpose in implementing such a shortened timeframe for hearings is to satisfy the Congressional mandate that hearings be conducted "expeditiously" after objections are filed. See *Brock* v. *Roadway Express, Inc., supra*, 107 U.S. 1746.

Withdrawal and Settlements

Attorney Pasek raised several concerns regarding § 1978.111. His first concern is that § 1978.111(a) limits the withdrawal of complaints by an employee to the time prior to the filing of objections to the Assistant Secretary's findings. Attorney Pasek found this requirement to be "unduly restrictive" and an impairment to reaching an amicable accord. OSHA has considered this concern and believes that he has misunderstood the purpose of this section. Section 1978.111(a) is aimed at the unilateral withdrawal of a complaint by the complainant prior to the start of adjudicatory proceedings. If an individual is no longer interested in pursuing his claim at the *investigative* stage, OSHA will review with the complainant his or her reasons for withdrawal and, if OSHA determines that this withdrawal has been made voluntarily and under no coercion by the named person, the withdrawal request will ordinarily be approved by OSHA.

Attorney Pasek also was concerned that § 1978.111(c) unduly restricted settlement attempts since the subsection requires the ALJ or the Secretary to affirm any portion of the findings or order with respect to which objection is withdrawn. OSHA's purpose in promulgating this rule was to cover unilateral withdrawals of objections to findings and an order where a party has determined on his or her own that he or she no longer wishes to pursue an objection and it is not intended to cover a settlement agreement. The Secretary, in *Underwood* v. *Blue Springs Hatchery*, 87–STA–21, Order to Show Cause, issued September 23, 1987, has also ruled that § 1978.111(c) covers the withdrawal of complaint after the filing of objections. If the parties, including the Assistant Secretary, agree, a settlement which includes a withdrawal of objections without admitting liability may be reached without engaging the provisions in § 1978.111(c). Such a settlement falls not under § 1978.111(c) but rather § 1978.111(d), where settlements are to be tri-partite as required by the statute.

In § 1978.111(d), OSHA intended to require that all parties who have chosen to participate in the hearing agree to the settlement and that the Secretary of Labor approve such agreement. In § 1978.111(d) settlements, if the Assistant Secretary has chosen not to participate in the hearing, it was OSHA's intent that it should be unnecessary to seek his approval of the agreement. Instead, the settlement section requires that the agreement be submitted for approval by the Secretary or his ALJ. In that regard, the settlement would conform with the statutory mandate that proceedings under 405 may be terminated by a settlement agreement entered into by the Secretary of Labor, the complainant and the named person.

To the extent that § 1978.111(d) does not make this intention clear, OSHA has changed the rule to provide for a distinction between settlements at the investigative phase and those at the adjudicatory phase. New § 1978.111(d)(1) provides for investigative settlements where tri-partite agreement is reached with the Assistant Secretary's approval of a settlement between complainant and the named person. New § 1978.111(d)(2) provides for the procedure in adjudicatory settlements where the parties, including the Assistant Secretary if he or she has elected to participate, must submit the agreement for approval to the ALJ or the Secretary. New § 1978.111(d)(3) incorporates the language of old § 1978.111(d) which covered the Assistant Secretary's declination to prosecute a case if the complainant refused to accept a fair and equitable settlement. OSHA believes that the new language will clarify its

intent in the previously drafted section on settlements.

Arbitration or Other Proceedings

Attorney Towers and ATA commented that, at the investigative phase prior to issuance of findings and preliminary order, the Assistant Secretary should defer to the outcome of other proceedings. OSHA intended that the provisions at § 1978.112(c) apply to the Assistant Secretary as well as the Secretary's. OSHA's reading of the current language is that § 1978.112(c)'s use of the word "Secretary" included the Assistant Secretary within its ambit. See § 1978.101(b). However, OSHA recognized that confusion may occur as the section is presently drafted and accordingly, to eliminate this confusion, § 1978.112(c) shall be changed to include a reference to the Assistant Secretary. Under this provision, the Assistant Secretary, at the investigative phase, may defer to the outcome of proceedings conducted in another forum, including arbitration and grievance proceedings, if those proceedings dealt adequately with all factual issues, were fair, regular and free of procedural defects and the outcome of the proceedings was not repugnant to the purpose and policy of the Act. See *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).

OSHA has made one other, insignificant change in § 1978.112. As was done in § 1978.102(d)(3), OSHA has deleted any case citations which support the rule. OSHA has deleted these references since the specific citations do not add anything significant to the rule and only serve to clutter the text of the subsections.

Errata

Several errors occurred in promulgation of the interim rule. These errors are related solely to incorrect cross references within the rule itself and one instance of incorrect editing.

1. In § 1978.102(f), the reference to 29 CFR 1978.102(b) is changed to 29 CFR 1978.103 (b) and (c).

2. In § 1978.108(a), the reference to § 1978.106(a) is changed to § 1978.107(a).

3. Section 1978.106(b), the reference to § 1978.106(b) is changed to 1978.107(b).

4. In § 1978.108(c), the reference to § 1978.106(c) is changed to 1978.107(c).

5. In § 1978.110(a), the reference to § 1978.108 is changed to 1978.109.

6. In § 1978.109(b) the word "discretionary" in last sentence of that paragraph has been deleted.

Unchanged Provisions

Many of the provisions in the interim rule received no comments. Those provisions are adopted as originally promulgated.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. These rules are issued pursuant to section 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between section 405 and section 11(c) procedures, pursuant to section 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and section 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

Classification

This rule is procedural in character in that it implements the procedures for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Surface Transportation Assistance Act of 1982. Therefore, the rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule is procedural in character in that it implements the procedures established by the Surface Transportation Assistance Act of 1982 and thus no significant economic impact is expected with respect to small entities, nor with respect to other entities as well. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 29 CFR Part 1978

Employer-employee relations, Administrative practice and procedure, Labor, Occupational Safety and Health.

Signed at Washington, DC this 17th day of November, 1988.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

For the reasons set out in the preamble, Title 29 is amended by revising Part 1978, Subpart B to read as follows:

PART 1978—RULES FOR IMPLEMENTING SECTION 405 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)

Subpart A—Interpretive Rules [Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

Sec.

Litigation

Miscellaneous Provisions

Authority: Sec. 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between sec. 405 and sec. 11(c) procedures, pursuant to sec. 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and sec. 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

Subpart A—Interpretive Rules—[Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

§ 1978.100 Purpose and scope.

(a) This subpart implements the procedural aspects of section 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 2305, which provides for employee protection from discrimination because the employee has engaged in protected activity pertaining to commercial motor vehicle safety and health matters.

(b) Procedures are established by this subpart pursuant to the statutory provision set forth above for the expeditious handling of complaints of discrimination made by employees, or persons acting on their behalf. These rules, together with those rules set forth at 29 CFR Part 18, set forth the procedures for submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review and enforcement, and deferral to other forums.

§ 1978.101 Definitions.

(a) "Act" means the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 2301 *et seq.*).

(b) "Secretary" means Secretary of Labor or persons to whom authority under the Act has been delegated.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(d) "Employee" means (1) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle); (2) a mechanic; (3) a freight handler; or (4) any individual other than an employer; who is employed by a commercial motor carrier and who in the course of his employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or a political subdivision of a State who is acting within the course of such employment.

(e) "Commercial motor carrier" means a person who meets the definition of "motor carrier" found at 49 U.S.C. 10102(13) (Supp. 1987) and "motor private carrier" found at 49 U.S.C. 10102(16) (Supp. 1987).

(f) "OSHA" means the Occupational Safety and Health Administration.

(g) "Complainant" means the employee who filed a section 405 complaint or on whose behalf a complaint was filed.

(h) "Named person" means the person alleged to have violated section 405.

(i) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

§ 1978.102 Filing of discrimination complaint.

(a) *Who may file.* An employee may file, or have filed by any person on the employee's behalf, a complaint alleging a violation of section 405.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but filing with any OSHA officer or employee is sufficient. Addresses and telephone numbers for these officials are set forth in local directories.

(d) *Time for filing.* (1) Section 405(c)(1) provides that an employee who believes that he has been discriminated against in violation of section 405 (a) or (b) "* * * may, within one hundred and eighty days after such alleged violation occurs," file or have filed by any person on the employee's behalf a complaint with the Secretary.

(2) A major purpose of the 180-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 180 days of an alleged violation will ordinarily be considered to be untimely.

(3) However, there are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, *e.g.*, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period. The Assistant Secretary will not ordinarily investigate complaints which are determined to be untimely.

(e) *Relationship to section 11(c) complaints.* A complaint filed by an employee within thirty days of the alleged violation or otherwise timely filed pursuant to section 11(c) of the OSHA Act, which alleges discrimination relating to safety or health, shall be deemed to be a complaint filed under both section 405 and section 11(c). Normal procedures for investigations under both sections will be followed, except as otherwise provided.

(f) Upon receipt of a valid complaint, OSHA shall notify the named person of the filing of the complaint by providing a copy of the complaint, sanitized to protect witness confidentiality if necessary, and shall also notify the named person of his or her rights under 29 CFR 1978.103 (b) and (c).

§ 1978.103 Investigation.

(a) OSHA shall investigate and gather data concerning the case as it deems appropriate.

(b) Within twenty days of his or her receipt of the complaint the named person may submit to OSHA a written statement and any affidavits or documents explaining or defending his or her position. Within the same twenty days the named person may request a meeting with OSHA to present his or her position. The meeting will be held before the issuance of any findings or preliminary order. At the meeting the named person may be accompanied by counsel and by any persons with information relating to the complaint, who may make statements concerning the case. At such meeting OSHA may present additional allegations of violations which may have been discovered in the course of its investigation.

(c) If, on the basis of information gathered under paragraphs (a) and (b) of this section, OSHA has reasonable cause to believe that the named person has violated the Act and that temporary reinstatement is warranted, prior to the issuance of findings and preliminary order as provided for in § 1978.104, OSHA shall again contact the named person to give him or her notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. The named person shall be given the opportunity to submit a written response, to meet with the investigators and to present statements from rebuttal witnesses. The named person shall present this rebuttal evidence within five days of OSHA's notification pursuant to this subsection, or as soon thereafter as OSHA and the named person can agree, if the interests of justice so require.

§ 1978.104 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the

investigation, the Assistant Secretary will issue, within sixty days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the named person or others have discriminated against the complainant in violation of section 405 (a) or (b). If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed in section 405(c)(2)(B). Such order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named party the complainant's costs and expenses (including attorney's fees) reasonably incurred in filing the complaint.

(b) The findings and the preliminary order shall be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order shall inform the parties of the right to object to the findings and/or the order and shall give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and/or order.

(c) Upon the issuance of findings that there is reasonable cause to believe that a violation has occurred, any pending section 11(c) complaint will be suspended until the section 405 proceeding is completed. When the section 405 proceeding is completed the Assistant Secretary will determine what action, if any, is appropriate on the section 11(c) complaint. If the Assistant Secretary's findings indicate that a violation has occurred, the Assistant Secretary shall make a separate determination as to whether section 11(c) has been violated.

§ 1978.105 Objections to the findings and the preliminary order.

(a) *Basic procedures.* Within thirty days of receipt of the findings or preliminary order the named person or the complainant, or both, may file objections to the findings or preliminary order providing relief or both and request a hearing on the record. The objection and request shall be in writing and shall state whether the objection is to the findings or the preliminary order or both. Such objection shall also be considered a request for a hearing. The date of the postmark shall be considered to be the date of filing. Objections shall be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC and copies of the objections shall be mailed at the same time to the other parties of record, including the Assistant Secretary's designee who issued the findings and order.

(b) *Effective date of findings and preliminary order and failure to object.* (1) The findings and the preliminary order shall be effective thirty days after the named person's receipt thereof, or on the compliance date set forth in the preliminary order, whichever is later, unless an objection to the findings or preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections thereto.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, such findings or preliminary order, as the case may be, shall become final and not subject to judicial review.

§ 1978.106 Scope of rules; applicability of other rules; notice of hearing.

(a) Except as otherwise noted, hearings shall be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges promulgated at 29 CFR Part 18, 48 FR 32538 (July 15, 1983), amended at 49 FR 2739 January 20, 1984. Hearings shall be conducted as hearings *de novo*.

(b) Upon receipt of an objection, the Chief Administrative Law Judge shall immediately assign the case to a judge who shall, within seven days following the receipt of the objection, notify the parties, by certified mail, of the day, time, and place of hearing. The hearing shall commence within 30 days of the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties.

(c) If both complainant and the named person object to the findings and/or order, the objections shall be consolidated and a single hearing shall be conducted. If the objections are not received simultaneously, the hearing shall commence within 30 days of the receipt of the later objection.

(d) At the time the hearing order issues, the judge may order the prosecuting party to file a prehearing statement of position, which shall briefly set forth the issues involved in the proceeding and the remedy requested. Such prehearing statement shall be filed within three days of the receipt of the hearing order and shall be served on all parties by certified mail. Thereafter, within three days of receipt of the prosecuting party's prehearing statement, the other parties to the proceeding shall file prehearing statements of position.

§ 1978.107 Parties.

(a) In any case in which only the named person objects to the findings or the preliminary order the Assistant Secretary ordinarily shall be the prosecuting party. In such a case the complainant shall also be a party and may engage in discovery, present evidence or otherwise act as a party. The named person shall be the party-respondent. If, at any time after the named person files objections, the Assistant Secretary and complainant agree, the complainant may present the case to the judge. Under such circumstances the case will be handled as if it had arisen under paragraph (b) of this section.

(b) In any case in which only the complainant objects to findings that the complaint lacks merit, to the preliminary order, or to both, the complainant shall be the prosecuting party. The Assistant Secretary may as of right intervene as a party at any time in proceedings under this paragraph. The named person shall be the party-respondent.

(c) In any case in which both the complainant and the named person object to the preliminary order the Assistant Secretary shall be the prosecuting party. The complainant and the named person shall be the party-respondents. In any such case, if the named person also objected to the findings the Assistant Secretary, complainant, and named party shall each have the party status, rights, and responsibilities set forth in paragraph (a) of this section with respect to the findings.

§ 1978.108 Captions, titles of cases.

(a) Cases described in § 1978.107(a) shall be titled:

Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party and (Name of Complainant), Complainant v. (Name of named person), Respondent.

(b) Cases described in § 1978.107(b) shall be titled:

(Name of complainant), Complainant v. (Name of named person), Respondent.

(c) Cases described in § 1978.107(c) shall be titled:

Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party v. (Name of named person), Respondent.

(Name of complainant), Complainant v. (Name of named person), Respondent.

(d) The titles listed in paragraphs (a), (b), and (c) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

§ 1978.109 Decision and orders.

(a) *Administrative Law Judge decisions.* The administrative law judge shall issue a decision within 30 days after the close of the record. The close of the record shall occur no later than 30 days after the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties. For the purposes of the statute the issuance of the judge's decision shall be deemed the conclusion of the hearing. The decision shall contain appropriate findings, conclusions, and an order pertaining to the remedy which, among other things, may provide for reinstatement of a discharged employee and also may include an award of the complainant's costs and expenses (including attorney's fees) reasonably incurred in bringing and litigating the case, if the complainant's position has prevailed. The decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee. The decision shall be served upon all parties to the proceeding.

(b) The administrative law judge's decision and order concerning whether the reinstatement of a discharged employee is appropriate shall be effective immediately upon receipt of the decision by the named person. All other portions of the judge's order are stayed pending review by the Secretary.

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Secretary shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Secretary briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Secretary, upon notice to the parties, establishes a different briefing schedule.

(3) The findings of the administrative law judge with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be considered conclusive.

(4) Where the Secretary determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Secretary shall be served upon all parties to the proceeding.

§ 1978.110 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1978.109, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation (49 U.S.C. 2305(d)(1)).

(b) A final order of the Secretary shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, an employee may withdraw his or her section 405 complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary shall thereafter determine whether the withdrawal shall be approved. The Assistant Secretary shall notify the named person of the approval of any withdrawal.

(b) The Assistant Secretary may withdraw his findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order shall begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Secretary. The judge or the Secretary, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(d)(1) *Investigative Settlements.* At anytime after the filing of a section 405 complaint by an employee and before the finding and/or order are objected to, or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlement.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Secretary of Labor or the ALJ. A copy of the settlement shall be filed with the ALJ or the Secretary as the case may be.

(3) If, under paragraph (d) (1) or (2) of this section the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.107(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his decision in writing and, if the case is before the administrative law judge, or the Secretary on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.107(b).

Miscellaneous Provisions

§ 1978.112 Arbitration or other proceedings.

(a) *General.* (1) An employee who files a complaint under section 405 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 405 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may proceed with the investigation and the issuance of findings and orders regardless of the pendency of other proceedings.

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under

procedures in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 405 complaints.

(3) Where complainant is in fact pursuing remedies other than those provided by section 405, the Secretary may, in his or her discretion, postpone a determination of the section 405 complaint and defer to the results of such proceedings.

(b) *Postponement of determination.* When a complaint is under investigation pursuant to § 1978.103, postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 405 and those proceedings are not likely to violate rights guaranteed by section 405. The factual issues in such proceedings must be substantially the same as those raised by a section 405 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(c) *Deferral to outcome of other proceedings.* A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before the Assistant Secretary or the Secretary defers to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 405 complaint.

§ 1978.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to occur.

§ 1978.114 Statutory time periods.

The time requirements imposed on the Secretary by these regulations are directory in nature. While every effort will be made to meet these requirements, there may be instances when it is not possible to meet these requirements. Failure to meet these requirements does not invalidate any action by the Assistant Secretary or Secretary under section 405.

§ 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the judge or the Secretary on review may, upon application, after three days notice to all parties and intervenors, waive any rule or issue such orders as justice or the administration of section 405 requires.

[FR Doc. 88-27070 Filed 11-23-88; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 80515-8209]

Requests for Identifiable Records

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets forth changes that the Patent and Trademark Office (PTO) is making to the rules governing requests for records not disclosed to the public as part of the regular informational activity of the PTO. The prior rule sets out the PTO Freedom of Information Act (FOIA) procedures. The final rule updates these procedures and specifies that FOIA requests will be processed in accordance with Department of Commerce regulations contained in Part 4 of 15 CFR (Public Information).

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Albin F. Drost by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: As presently written, 37 CFR 1.15 describes procedures for obtaining documents under the Freedom of Information Act that have been superseded. The purpose of this rule change is to bring the PTO FOIA procedures into conformity with the Department of Commerce FOIA rules. The final rule directly advises requesters that the PTO will follow the Department of Commerce rules for disclosure of information under FOIA.

A notice of proposed rulemaking was published on July 19, 1988 (53 FR 27177). Interested parties were requested to submit written comments on or before September 20, 1988. No comments were received.

Other considerations

This rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

This rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because no increase in fees or paperwork should result from this rule change.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12991. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the states as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirement within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Records.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends Title 37 of the Code of Federal Regulations as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.15 is revised as follows:

§ 1.15 Requests for identifiable records.

(a) Requests for records, not disclosed to the public as part of the regular informational activity of the Patent and Trademark Office and which are not otherwise dealt with in the rules in this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request." Each such request, so marked, should be submitted by mail addressed to the "Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231," or hand delivered to the Office of the Solicitor, Patent and Trademark Office, Arlington, Virginia. The request will be processed in accordance with the procedures set forth in Part 4 of Title 15, Code of Federal Regulations.

(b) Any person whose request for records has been initially denied in whole or in part, or has not been timely determined, may submit a written appeal as provided in § 4.8 of Title 15, Code of Federal Regulations.

(c) Procedures applicable in the event of service of process or in connection with testimony of employees on official matters and production of official documents of the Patent and Trademark Office in civil legal proceedings not involving the United States shall be those established in parts 15 and 15a of Title 15, Code of Federal Regulations.

Date: November 21, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-27247 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3472-5; AL-022]

Approval and Promulgation of Implementation Plans; Alabama: Lead Plan for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan for Jefferson County submitted by Alabama to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead as required under section 110 of the Clean Air Act (CAA). EPA proposed to approve the Alabama lead State Implementation Plan (SIP) for Jefferson County on July 16, 1986 (51 FR 25716), and on February 11, 1987 (52 FR 4288), approved it on the condition that the Alabama Department of Environmental Management study and adopt, as appropriate, controls beyond the level of Reasonably Available Control Technology (RACT), since the plan did not include a demonstration that the NAAQS would be attained. Following a "RACT-plus" study in conformity with the conditional approval, the Jefferson County Department of Health (JCDH) submitted draft plan revisions on February 19, 1988. Approval was proposed on June 29, 1988 (53 FR 24451), contingent upon two conditions being met before final rulemaking. The first condition was that Jefferson County adopt the draft revised Regulation 6.11 and respond suitably to EPA's comments made on the draft revised regulations. Secondly, Jefferson County was to submit the air permits that reflect the lead emission limits of the draft revised Jefferson County regulations to Alabama as air permits. Alabama was in turn to submit the air permits to EPA for inclusion in the Alabama SIP. On May 11, 1988, Jefferson County adopted the revised Regulation 6.11, which was submitted to EPA on February 19, 1988. On August 5, 1988, Alabama submitted to EPA, for inclusion in the SIP, Jefferson County's air permits. This satisfies both conditions specified in the June 29, 1988, notice. EPA is today approving Alabama's revisions because the SIP contains a demonstration of attainment of standards and all necessary measures to attain the standards. Additionally, in the civil action of *NRDC* v. *EPA*, Civ. No. 82-2317 (D.C.D.C.), EPA agreed to take final action on Jefferson County's lead regulation by December 1, 1988.

DATES: This action will be effective on December 27, 1988.

ADDRESSES: Copies of the submittal are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION

I. Background

On October 5, 1978, the National Ambient Air Quality Standards (NAAQS) for lead were promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. Under Section 110 of the CAA, all states were to submit a SIP which will provide for attainment and maintenance of the lead NAAQS.

The State of Alabama on March 24, 1982, submitted to EPA a SIP for attainment of the lead NAAQS. On May 2, 1984 (40 FR 18737), EPA disapproved the Alabama SIP for lead because it did not provide for the attainment of the NAAQS for lead throughout the State. In 1984 and 1985, the State was not able to attain the standards due to fugitive emissions. Therefore, on March 18, 1985, and May 6, 1985, the State of Alabama submitted portions of a revised lead SIP which demonstrates attainment of the NAAQS for lead for all areas of Alabama except Jefferson County. This SIP focused on the area around Sanders Lead, in Troy, Alabama where both monitored air quality data and air quality model predictions showed violations of the NAAQS for lead. Through modeling, Alabama demonstrated that the required control measures and emission limitations were adequate to assure attainment of the lead NAAQS in the vicinity of Sanders Lead. Accordingly, EPA proposed approval of this revised plan on January 2, 1986 (51 FR 41), and final approval was given on July 14, 1986 (51 FR 25366). On October 7, 1985, Alabama submitted to EPA a new lead SIP for Jefferson County (revised Regulation 6.11). EPA proposed to approve the revised Regulation 6.11 on July 16, 1986 (51 FR 25715). Since this regulation, which was initially adopted on September 9, 1985, was not accompanied by a demonstration of attainment of the NAAQS for lead, EPA conditionally approved it on February 11, 1987. The condition of approval was that the State fulfill by October 1, 1987, its commitment to submit to EPA any additional measures, along with an appropriate demonstration, necessary to assure timely attainment and maintenance of the NAAQS as expeditiously as practicable but no later than October 1, 1989.

Following a "RACT-plus" study in conformity with the conditional approval, the Jefferson County Department of Health (JCDH) submitted draft plan revisions on February 19, 1988. EPA proposed to approve Jefferson County's draft revision on June 29, 1988 (53 FR 24451), contingent upon two conditions being met before final approval. First, JCDH was to adopt the draft revised Regulation 6.11 which was submitted to EPA on February 19, 1988, and respond suitably to EPA's comments on the draft revised regulation. Secondly, JCDH was to submit the emission limits reflected in the regulation to Alabama as air permits. Alabama was in turn to submit the permits to EPA for inclusion in the Alabama SIP.

II. Alabama Revised Lead SIP

On August 5, 1988, the Alabama Department of Environmental Management submitted to EPA the Jefferson County air permits issued to Interstate Lead Company as a revision to the Alabama SIP in fulfillment of Alabama's requirement to modify its SIP to address the lead nonattainment in Leeds, Alabama.

On May 11, 1988, the Jefferson County Board of Health adopted a revised Regulation 6.11, designed to correct the lead nonattainment problem in Leeds, Alabama. These revised regulations have been incorporated into the permits issued to the secondary lead plant in the Leeds area, Interstate Lead Corporation. The revised regulations represent control of lead and particulate matter emissions from secondary lead smelters above the level of RACT. This level of control (above RACT) is normally referred to as "RACT-plus."

The RACT-plus lead regulations were derived by: (1) Research and study of existing approved lead SIPs in other states; (2) investigation of effective lead air pollution controls at sources in geographic areas in attainment of the lead NAAQS; (3) conducting numerous inspections of Interstate Lead Corporation's (ILCO) plant to observe actual emission problems; (4) making extensive emission calculations on all known ILCO lead sources and emission points to estimate emissions under current, RACT-level control, as practiced by ILCO, and as projected for the RACT-plus level of control; and (5) evaluating the results of mathematical computer modeling which utilized these emissions estimates. The resultant regulations generated represent RACT-plus controls which, when implemented and enforced, will provide for attainment of the lead NAAQS.

III. Results of EPA Review

Today's final rule provides the results of EPA's review of Alabama's revised lead SIP for Jefferson County. This information is presented under the following headings.

A. Changes in the Final SIP and Regulations.

B. Emission Data

C. Air Quality Data and Monitoring System.

D. Demonstration of Attainment/ Modeling.

E. RACT-plus Control Plan for ILCO.

F. Compliance Schedule for Jefferson County.

G. Public Comments on EPA's Proposal.

More detailed information concerning EPA's review of this SIP is contained in a Technical Support Document which is available for public inspection at the locations identified in the "Addresses" section of this notice.

A. Changes in the Final SIP and Regulations

The most important changes in the existing secondary lead smelter regulations were made to implement RACT-plus level of control for affected sources or emission release points; these changes were incorporated into the air permits. Other changes were made for clarity or consistency with other regulations. A public hearing was held on the revisions on April 5, 1988. EPA reviewed the draft revised regulations and made comments which were forwarded to the Jefferson County Department of Health before the hearing. EPA proposed to approve the draft revised regulation on June 29, 1988 (53 FR 24451), based on the condition that the version adopted by Jefferson County respond suitably to EPA's comments on the draft revised regulations. JCDH has responded suitably to all comments made by EPA in the proposal notice.

B. Emission Data

The Jefferson County Department of Health has submitted lead emissions data for stack and process fugitive emission and fugitive dust sources. A summary of actual emissions at ILCO in 1984 and 1986 and the allowable RACT and proposed RACT-plus emissions is shown in Table 6 of the Technical Support Document. The lead RACT-plus control measures provide for a 72 percent reduction in point source emissions (from RACT allowable to RACT-plus allowable). The process area of the facility will be required to be enclosed in a building (100 percent capture). This building enclosure will have a ventilation capture system (hoods, ductworks, baghouses and fans) which will capture at any given time at least 90 percent of the process fugitive emissions and send it to a control device (baghouse) which will have 99-plus percent control efficiency. The remaining 5–10 percent of the emissions contained in the enclosed building will be removed in a timely manner by the same ventilation capture system.

The magnitude and duration of the 5–10 percent lead emissions which will be removed by the building ventilation capture system will vary depending on such problems as malfunctions, corrosion, or operator error which ILCO may experience and the reaction time needed to solve these problems. The emissions generated by such problems are intermittent in nature and will be required to be corrected on a priority basis.

The additional RACT-plus control is provided to improve captivity of all escaping process emissions. EPA has concluded that the lead emission reductions will provide for attainment and maintenance of the lead NAAQS.

C. Air Quality Data and Monitoring System

In 1987 a total of seven (7) quarterly lead violations were measured at two different ambient monitoring sites in the vicinity of ILCO. These tabulated results ranged from 1.91 to 3.33 ug/m^3. Therefore, Jefferson County was required to implement the next phase, or the RACT-plus portion, on the secondary lead smelter to ensure compliance with the lead NAAQS by October 1, 1989.

D. Demonstration of Attainment/ Modeling

Since RACT-plus has been defined, the purpose of the modeling analysis was to assess the ambient lead levels with RACT-plus in place and determine if the lead concentrations will be below the NAAQS for lead.

Two models were selected to assess the RACT-plus Control Strategy. The Industrial Source Complex Long Term Model (ISCLT) was used to assess the concentrations on the low terrain near the facility, caused primarily by the fugitive emissions. The VALLEY model was used to assess the lead concentrations on the higher terrain, caused primarily by the emissions from the stacks.

The modeling techniques used in the demonstration supporting this revision are, for the most, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA

"Guideline on Air Quality Models" (1986). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis.

Based on the modeling results, intermediate terrain (locations between plume height and receptor height) was not a factor in the analysis. The design concentration was found to occur at the fenced property line using the ISCLT model. The major contribution to the design concentration was from the fugitive and stack emissions being downwashed due to building configuration. The results of the modeling concentrations are summarized in Tables 2, 3, and 4 of the Technical Support Document.

The meteorological data used in the analysis consisted of five years (1982–1986) of Birmingham, Alabama surface data and Centerville, Alabama mixing height data. These meteorological data in conjunction with maximum production rates as defined in the RACT-plus strategy predicted compliance with the quarterly lead standards of 1.5 $\mu g/m^3$.

Other stationary sources of lead and background sources of lead were evaluated in the existing lead State Implementation Plan (SIP) done in 1985. These sources were found at that time to be insignificant with respect to impact on ambient air quality in the vicinity of ILCO. This assessment has not changed. However, an additional source of lead has been located in the vicinity of ILCO since then. This source, A.J. Gerrard Company, Inc., is located within one kilometer of ILCO. A lead stack test was performed on Gerrard on November 30, 1987, by a private consultant to determine the facility's emissions. The emissions from Gerrard were modeled. The modeling revealed that Gerrard by itself causes no lead NAAQS exceedance and contributes an insignificant amount of lead to the monitoring sites around ILCO.

E. RACT-Plus Control Plan for ILCO

To ensure compliance with the lead NAAQS, a RACT-plus control plan was developed. The draft revised Jefferson County lead control plan contains new requirements at the RACT-plus level as follows:

1. A fully enclosed and ventilated building with control device shall be required to reduce and control emissions that escape as fugitive emissions from the furnaces' process and pollution control equipment currently in use.

2. Stack emissions from all baghouse stacks, except the building ventilation control device stack, will be limited to 0.001 grains of lead and 0.005 grains of particulate matter per dry standard cubic foot of exhaust. The building ventilation control device exhaust stack will have emissions limits of 0.0001 grains of lead and 0.0005 grains of particulate matter per dry standard cubic foot of exhaust. These limitations when used in the computer modeling to demonstrate attainment show no predicted lead NAAQS exceedances at receptors near ILCO, Inc.

3. Each and every baghouse or control device stack must be maintained at a height of 75 feet as a minimum above the ground level of the source. Any stacks which have to be modified because of installation of the enclosure building must also meet GEP requirements as currently required in Chapter 2 of the Jefferson County Board of Health Air Pollution Control Rules and Regulations.

4. "Drinking Quality" water will be used by ILCO on those fugitive dust points that are controlled by wet suppression. Recycled effluent will no longer be allowed as a dust suppressant for selected fugitive dust emissions points.

5. The installation of collection systems on the casting operations, and the reverb furnace metal tapping, will not be required because these emissions will be captured in the ventilated building. All other collection systems will be maintained by ILCO.

F. Compliance Schedule for Jefferson County

On February 19, 1988, the Jefferson County Department of Health submitted a revised schedule for implementing the RACT-plus study for ILCO. The schedule contains specific and detailed progressive steps leading to attainment; a timeframe for adopting regulatory requirements to implement additional measures; deadlines for installation of additional controls; and other specific deadlines for bid packages, engineering changes and construction. Specifically, the schedule calls for ILCO to complete plans and specifications and necessary permit applications by September 1, 1988; completion of all engineering changes and finalization of all bid packages by November 1, 1988; issuance of bid packages to vendors and contractors by December 1, 1988; construction of all equipment including new enclosed building with ventilation system by September 1, 1989, startup of all equipment by October 1, 1989, and collection of ambient lead data with RACT-plus installed for twenty-four months by October 1, 1991. The revised schedule is considered by EPA to be adequate. This schedule is a portion of the SIP revision EPA is approving and can be enforced directly by EPA as well as the State and Jefferson County.

G. Public Comments on EPA's Proposal

The following are the Jefferson County Department of Health's comments on EPA's Proposed Rule for the Jefferson County, Alabama Lead RACT-plus regulations as contained in Vol. 53, No. 125 **Federal Register** dated June 29, 1988:

1. Ref: Section IV. A

Changes proposed by EPA to the proposed regulations have been included in the regulations adopted by the Jefferson County Board of Health on May 11, 1988.

2. Ref: Section IV. D

The meteorological data used in the plan analysis consisted of the year 1982–1986 rather than 1981–1985.

3. Ref: Section IV. E., Paragraphs Nos. 6 and 7

The Technical Support Document (TSD) for the lead SIP for Jefferson County as adopted on May 11, 1988, did not include the requirement for additional lead monitors since the existing network of 5 monitors (not including Leeds Elementary School which is a special study site) was considered adequate.

The Jefferson County Department of Health also feels that it is not necessary to relocate the Hayes monitor, because even though it is on Interstate Lead property, it is across a public road from the facility and the site is accessible to the public.

The adopted TSD also did not include a requirement for a meteorological data system to be installed by Interstate Lead. Ambient monitoring is to be used to demonstrate attainment of the NAAQS.

EPA agrees with the above comments. The changes or corrections have been included in the present notice.

EPA's Action

EPA has evaluated the Jefferson County part of the Alabama lead SIP and has determined that it demonstrates attainment of the lead NAAQS through the implementation of control measures at the Interstate Lead Company. EPA is therefore approving the Jefferson County part of the Alabama lead SIP since Jefferson County adopted the draft revised Regulation 6.11 on May 11, 1988, and responded suitably to all of EPA's

comments in the proposal notice. Also, Alabama formally submitted to EPA, for inclusion in the SIP, Jefferson County air permits that reflect the lead emission limits of the draft revised Jefferson County lead regulations.

Additionally, in the civil action of *NRDC* v. *EPA*, Civ. No. 82–2137 (C.D.C.D.), EPA agreed to take final action regarding Jefferson County's lead regulation, by December 1, 1988.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1988. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, and Lead.

Incorporation by reference of the state implementation plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Date: October 28, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(48) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(48) Revised State Implementation Plan for attainment and maintenance of lead standards in Jefferson County, submitted on August 5, 1988, by the Alabama Department of Environmental Management.

(i) *Incorporation by reference.* (A) Air permits incorporating revised regulations for existing secondary lead smelters located in Jefferson County, Alabama (Regulation 6.11), adopted by the Jefferson County Board of Health on May 11, 1988.

(B) [Reserved]

(ii) *Other material.* (A) Narrative SIP, entitled "State Implementation Plan for the Attainment of the National Ambient Air Quality Standard for Lead in Jefferson County," dated February 19, 1988.

(B) [Reserved]

[FR. Doc. 88–25769 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3439–4; TN–072]

Approval and Promulgation of Implementation Plans; Tennessee; Plan Revision for Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that a change in the definition of "Existing Source" in Chapter 18, Volatile Organic Compound (VOCs), of the Tennessee Air Pollution Control regulations be incorporated into the Tennessee State Implementation Plan (SIP). The definition of "Existing Source" for VOC sources subject to Chapter 18 rules is found in Tennessee Department of Health and Environment Rule 1200–3–18–.02(m). The change in definition which was adopted by the Tennessee Department of Health and Environment on November 10, 1986, will have no effect on the environment.

DATES: This action will become effective on January 24, 1989, unless notice is received by December 27, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 6, 1988, the Tennessee Department of Health and Environment submitted to EPA a request to change the definition of "Existing Source" for VOC sources subject to Chapter 18 of the Tennessee Department of Health and Environment Air Pollution Control regulations. The current definition of "Existing Source" is found in Rule 1200–3–18.02(m). The revision would add the phrase "or the emergency rule date, whichever is earlier" so that the revised rule would read as follows:

> "Existing source" is any process(es) in existence or having a state or local agency's construction permit prior to the "original rule certified date" or the emergency rule date, whichever is earlier, for the specified paragraph.

The Tennessee emergency rule date is December 31, 1980, and the Tennessee Emergency Rule for VOC's was approved by EPA on November 24, 1981 (46 FR 57486). The final rules for VOC sources have not been approved by EPA. No EPA action is planned regarding the final rules because they are identical to the emergency rules.

Therefore, the change in the definition of "Existing Source" for Chapter 18 is consistent with current Agency policy. Because of the simplicity of the action, no technical support document was prepared.

Final Action

EPA approves the SIP revision to change the definition of "Existing Source" in Chapter 18 of the Tennessee Department of Health and Environment rules. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note. The Director of the *Federal Register* approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: August 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(94) A revision of Rule 1200–3–18–.02(m) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) *Incorporation by reference.* (A) Amendment to Tennessee Department of Health and Environment rules (revision of Paragraph 1200–3–18–.02(m)), State-effective on November 10, 1986.

(ii) Other materials—none.

[FR Doc. 88–19887 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3473–9]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, requires that a state plan include a program to provide for installation of equipment to monitor emissions from stationary sources. In order to satisfy the requirements of the Act and EPA's plan requirements at 40 CFR 51.214, the Kansas Department of Health and Environment (KDHE) adopted K.A.R. 28–19–19 *et seq.*, Continuous emission monitoring (CEM). These rules were submitted to EPA on January 6, 1988, and became effective May 1, 1988.

Today's action approves Kansas' CEM rules. Approval of these rules repairs an outstanding state implementation plan (SIP) deficiency.

EPA is acting on these rules using the direct-to-final procedures.

DATES: The effective date of this rulemaking is January 24, 1989, unless EPA receives notice that someone wishes to make adverse or critical comments by December 27, 1988.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state's submittal are available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION:

Introduction

On October 6, 1975 (40 FR 46247), EPA promulgated regulations implementing section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, which require that SIPs contain legally enforceable procedures to require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and to provide other information as specified in Appendix P of 40 CFR Part 51. EPA's regulations requiring CEM were originally codified at 40 CFR 51.19(e). EPA recodified its Part 51 regulations on November 7, 1986 (40 FR 40656). The CEM requirements are now found at 40 CFR 51.214.

After public notification and a public hearing held on November 13, 1987, the KDHE adopted rules requiring CEM systems. The Kansas CEM requirements are contained in K.A.R. 28–19–19 *et seq.* The state's notification and public hearing satisfy the requirements of 40 CFR 51.102. The state's submittal meets the 60–day timeframe for submitting SIP revisions in 40 CFR 51.104(d).

Review of Regulations

40 CFR Part 51, Appendix P, sets forth the minimum requirements for CEM and recordkeeping that a SIP must include in order to be approved under 40 CFR 51.165(b). K.A.R. 28–19–19(a) requires that all sources subject to the regulation install CEMs and comply with the data reduction and report requirements contained therein. This is approvable.

K.A.R. 28–19–19(b) (1) and (2) exempt units subject to the state's New Source Performance Standards (NSPS) in K.A.R. 28–19–83 *et seq.* This is acceptable since the state adopted EPA's NSPS by reference and the NSPS contain provisions for CEM for affected facilities subject to NSPS. The exemption is extended to fossil fuel-fired steam generators where an operating permit issued by the state under K.A.R. 28–19–14 limits the operating capacity to less than 30 percent. The exemption is terminated if the capacity restriction is removed. In such cases, the source owner or operator must have a CEM system installed and operational within six months of removal of the operational restriction. This is consistent with Part 51, Appendix P.

K.A.R. 28–19–19(c) identifies sources to which the regulations apply. This is consistent with sections 1.1.1 and 1.1.2 of Appendix P. Appendix P requires CEMs on sulfuric acid plants with a capability greater than 300 tons per day and nitric acid plants with a capacity greater than 300 tons per day if a control strategy for nitrogen dioxide is required in that Air Quality Control Region. The state's CEM regulations do not address sulfuric acid or nitric acid plants. This is acceptable. The state's section 111(d) plan identifies one sulfuric acid plant, but that plant's maximum *is* 300 tons per day. Thus, a CEM is not required. Existing sulfuric acid plants are regulated under K.A.R. 28–19–26. No nitrogen dioxide control strategy is required in Kansas; thus, CEM is not required for nitric acid plants.

The Kansas rules require that subject sources complete the installation and demonstrate compliance by November 1, 1987. This is approvable. K.A.R. 28–19–19(e) provides for an extension of time for installation, but in no case is an extension beyond November 1, 1988, to be granted. K.A.R. 28–19–19(f) requires that the owner or operator of an affected emission unit notify the state not less than 30 days prior to the anticipated installation and the date of the anticipated performance tests. The extension is consistent with Part 51, Appendix P, section 3.1. This extension does not prevent attainment of any

primary ambient air quality standard because they are applicable only to stationary sources which do not impact on ozone or carbon monoxide nonattainment areas.

K.A.R. 28–19–19(g) adopts by reference the performance specifications and test procedures in 40 CFR Part 60, Appendix B, in effect on July 1, 1986. This is approvable. The performance specifications in the state regulation are identical to EPA's specifications for opacity, SO_2, CO_2, and O_2. The regulation requires that the source owner or operator subject to the requirements maintain records of all measurements, including performance test measurements, performance evaluations, calibration checks, adjustments, and maintenance, as well as emissions measurements. The regulation requires maintenance of records for at least two years. This is approvable.

The state rules require that the CEM system be operated except for down time during repairs, calibration checks, and zero and span checks. The rule requires monitoring of source emissions when the source is in operation. This is approvable.

The provisions of K.A.R. 28–19–19(k) require that the owners or operators of a source subject to the CEM regulations submit quarterly excess emissions reports. The data reductions requirements for the quarterly reports are clearly described in K.A.R. 28–19–19(e). This is consistent with Part 51, Appendix P, section 5.0, and is approvable.

The provisions of K.A.R. 28–19–19(m) require that an owner or operator of a source subject to the CEM rules develop and submit to the state an approvable quality assurance (QA) plan. When approved, the QA plan becomes enforceable as a part of the state CEM requirements. The quality control (QC) requirements are consistent with the QC requirements of Part 60, Appendix F, for CEMs and are approvable.

K.A.R. 28–19–19(o) allows a source owner or operator to use different but equivalent procedures and requirements for CEM systems, provided that a demonstration of equivalency is made, satisfactory to the department with EPA concurrence, that the alternative is equivalent. This rule is approvable with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the remaining rules shall be applicable.

Conclusion

EPA believes that the CEM regulations adopted by the state of Kansas are consistent with the technical requirements of 40 CFR Part 51, Appendix P. EPA believes the state's CEM regulations satisfy the requirements of 40 CFR 51.165(b) and 51.214.

Action

EPA approves the Kansas regulations K.A.R. 28–19–19(a) through K.A.R. 28–19–19(1) which govern the use and operation of CEM operating systems.

EPA believes there is good cause to approve the state's CEM rules without prior proposal. The rules adopted by the state of Kansas are consistent with the EPA requirements at 40 CFR 51.165 and 51.214 and satisfy the requirements of section 110(a)(2)(F)(ii) of the Clean Air Act, as amended. Further, the state's adoption of these rules and procedures cures an outstanding Kansas SIP deficiency. When EPA approves these state rules, they become federally enforceable and provide EPA with an additional means of tracking major sources of SO_2 and other pollutants. EPA believes that approval of these rules is noncontroversial.

The public should be advised that action will be effective January 24, 1989. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

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

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, and Sulfur dioxide.

Note.—Incorporation by reference of the SIP for the state of Kansas was approved by the Director of the *Federal Register* on July 1, 1982.

Date: October 28, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart R—Kansas

2. Section 52.820 is amended by adding paragraph (c)(23) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(23) Kansas Administrative Regulations (K.A.R.) 28–19–19(a) through 28–19–19(o) pertaining to continuous emission monitoring at certain stationary sources were submitted on January 6, 1988, by the Kansas Department of Health and Environment. K.A.R. 28–19–19(o) allows for departmental discretion on use of different but equivalent procedures than those specified in 28–19–19(a) through 28–19–19(n). EPA approves this rule with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such approval, the enforceable provisions of K.A.R. 28–19–19(a) through 28–19–19(n) shall be applicable.

(i) *Incorporation by reference.* (A) K.A.R. 28–19–19(a) through 28–19–19(o), continuous emission monitoring, as submitted by the Secretary of the Kansas Department of Health and Environment. These regulations became effective on May 1, 1988.

(B) Letter of January 6, 1988, from the Secretary of the Kansas Department of Health and Environment. This letter establishes the effective date for the revised regulations referenced in paragraph (23)(i)(A) of this section.

[FR Doc. 88–25927 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3481-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes generated by the Goodyear Tire and Rubber Company, Randleman, North Carolina. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 25, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–GYEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

The Goodyear Tire and Rubber Company (Goodyear), located in Randleman, North Carolina, petitioned the Agency to exclude from hazardous waste control a specific waste it generates. After evaluating the petition EPA proposed, on July 13, 1988, to exclude Goodyear's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 *FR* 26455).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

Goodyear Tire and Rubber Company, Asheboro Wire Plant, Randleman, North Carolina.

1. Proposed Exclusion

Goodyear petitioned the Agency for an exclusion of its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F006. Goodyear based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the waste above health-based levels of concern, Goodyear submitted results from total constituent analyses for all the EP toxic metals, nickel, cyanide, and sulfide and results from EP toxicity analyses for all the EP toxic metals and nickel. See 53 *FR* 26455, July 13, 1988, for a more detailed explanation of why EPA proposed to grant Goodyear's petition for its sludge filter cake.

2. Agency Response to Public Comments

The Agency received one comment on the proposed rule. The commenter supported the Agency's proposed use of the organic leachate model (OLM) and the vertical and horizontal spread (VHS) model as applied to Goodyear's petitioned waste. The commenter also strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." See 53 *FR* 26456. The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions. This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition raising this issue with the Agency (filed by the commenter, the Hazardous Waste Treatment Council).

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Goodyear's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Goodyear Tire and Rubber Company's Asheboro Wire Plant, located in Randleman, North Carolina, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F006. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

EPA would like to clarify its amendatory language presented in the proposed exclusion for Goodyear's waste. In the proposal, it was written that the exclusion would be for wastes generated "* * * after [the date of the final rule's publication]". See 53 *FR* 26460, July 13, 1988, Table 1. This language may be misinterpreted to mean that the Agency's exclusion is only prospective in nature. Generally, when EPA grants a final exclusion, it is intended to be retrospective as well as prospective in nature unless specifically stated otherwise in the conditions of the exclusion. Since Goodyear has demonstrated that its process, as described in its petition, generates a non-hazardous waste that does not vary

with respect to the types or levels of constituents in the waste, this exclusion is meant to be both retrospective and prospective in nature. The Agency, therefore, in promulgating this final rule, has deleted any reference which may be misinterpreted to indicate that the exclusion is only prospective in nature. Specifically, in this final rule we have deleted the phrase "* * * after [the date of the final rule's publication]" from Column 3 of Table 1 located under the heading "Part 261—*Identification and Listing of Hazardous Waste*".

III. Limited Effect of Final Exclusion

The final exclusion being granted today is being issued under the Federal RCRA delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's pursuant to section 3009 or RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately upon publication in the **Federal Register**. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation in the **Federal Register**. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 17, 1988.

Kenneth A. Shuster,

Acting Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 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), 6921, and 6922.)

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * * * *		
Goodyear Tire and Rubber Co.	Randleman, NC	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations.
* * * * * * *		

[FR Doc. 88–27201 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This final rule changes the burden of proof as to whether a violation occurred by allocating the ultimate burden of persuasion to the petitioner for review in a civil penalty proceeding under the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: This rule is effective December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone (703) 235–3750.

SUPPLEMENTARY INFORMATION: On October 15, 1987, the Office of Hearings and Appeals published a proposed amendment of 43 CFR 4.1155. 52 FR 38246–38247 (October 15, 1987). The amendment proposed to change the allocation of the ultimate burden of persuasion as to the fact of a violation from the Office of Surface Mining Reclamation and Enforcement to the petitioner for review in a proceeding for administrative review of a civil penalty proposed in accordance with section 518(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(a) (1982), in order to make the allocation of the burden of proof concerning this issue consistent with 43 CFR 4.1171 and with the legislative intent expressed in S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977).

Interested persons were given until November 16, 1987, to submit comments on the proposed amendment of this rule. No comments were received. The amendment is, therefore, adopted as proposed.

Determination of Effects

Because this rule only amends a procedure involving administrative review, the Department of the Interior has determined that it is not major, as defined by Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

National Environmental Policy Act

The Department has determined that this rule will not significantly affect the quality of the human environment, on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

This rule contains no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Drafting

This rule was drafted by Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands-mineral resources, Surface mining.

For the reasons set forth above, § 4.1155 of Subpart L, Part 4 of Title 43 of the Code of Federal Regulations, is revised as set forth below.

Dated: October 7, 1988.

Earl E. Gjelde,

Under Secretary.

PART 4—[AMENDED]

1. The authority for 43 CFR Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1155 is revised to read as follows:

§ 4.1155 Burdens of proof in civil penalty proceedings.

In civil penalty proceedings, OSM shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

[FR Doc. 88–27236 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–79–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6816]

Suspension of Community Eligibility; Maryland and West Virginia

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90-

and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, floodplains

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of the 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and community name	County	Community No.	Effective date
Maryland:			
Unincorporated Areas	Allegany	240001	Dec. 2, 1988.
Annapolis, City of	Anne Arundel	240009	Do.
Baltimore, City of	Independent City	240087	Do.
Eldorado, Town of	Dorchester	240105	Do.
Havre De Grace, City of	Harford	240043	Do.
Hurlock, Town of	Dorchester	240112	Do.
Mardela Springs, Town of	Wicomico	240079	Do.
Salisbury, City of	Wicomico	240080	Do.
West Virginia:			
Ansted, Town of	Fayette	540027	Dec. 16, 1988.
Mt. Hope, City of	Fayette	540280	Do.
Oak Hill, City of	Fayette	540031	Do.

Issued November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27161 Filed 11-23-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6817]

Suspension of Community Eligibility; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection

Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania: Potter, Towship of, Beaver County.	422327	Mar. 17, 1977, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12–2–88	Dec. 2,1988.
Region V				
Illinois:				
Arthur, Village of, Moultrie County	170520	Sept. 2, 1975, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12–2–88	Do.
Wenona, City of, Marshall County	170462	Aug. 4, 1975, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12–2–88	Do.
Region VI				
Oklahoma: Wagoner County, Unincorporated Areas.	400215	July 15, 1981, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12–2–88	Do.
Region VII				
Kansas: Louisville, City of, Pottawatomie County.	200272	July 2, 1981, Emerg.; Dec. 2, 1988, Reg.; Dec. 2, 1988, Susp	12–2–88	Do.
Region III				
Pennsylvania:				
Middle Smithfield, Township of, Monroe County.	421890	Oct. 3, 1975, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp	12–16–88	Dec. 16, 1988.
Tobyhanna, Township of, Monroe County	421897	Mar. 18, 1976, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12–16–88	Do.
Virginia:				
Essex County, Unincorporated Areas	510048	Mar. 15, 1974, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12–16–88	Do.
York County, Unincorporated Areas	510182	Oct. 5, 1973, Emerg.; Dec. 16 1988, Reg.; Dec. 16 1988, Susp	12–16–88	Do.
Region IV				
Georgia:				
Americus, City of, Sumter County	130203	Mar. 28, 1975, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12–16–88	Do.
Lakeland, City of, Lanier County	130120	Dec. 19, 1973, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp.	12–16–88	Do.
Tennessee: Lawrenceburg, City of, Scotland County.	475437	Jan. 7, 1972, Emerg.; May 25, 1973, Reg.; Dec. 16, 1988, Susp	12–16–88	Do.
Region V				
Michigan:				
Putnam, Township of, Livingston County	260442	Dec. 21, 1978, Emerg.; Feb. 6, 1984, Reg.; Dec. 16, 1988, Susp	12–16–88	Do.
Taymouth, Township of, Saginaw County	260503	June 2, 1977, Emerg.; Dec. 16, 1988, Reg.; Dec. 16, 1988, Susp	12–16–88	Do.
Ohio: Hamilton County, Unincorporated Areas	390204	July 2, 1973, Emerg.; June 1, 1982, Reg.; Dec. 16, 1988, Susp	12–16–88	Do.
Region VII				
Kansas: Dickinson County, Unincorporated Areas.	200575	July 19, 1978, Emerg.; Dec. 16, 1988, Reg.; Dec. 16 1988, Susp	12–16–88	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-27183 Filed 11-23-88; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 6815]

Suspension of Community Eligibility; City of Martin, KY; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, correction.

SUMMARY: This rule corrects the final rule published in the **Federal Register**, Friday, October 28, 1988 (53 FR 43693). The City of Martin, Kentucky, was listed in error and should be deleted from this list. The City is in compliance with the National Flood Insurance Program regulations. All records should be amended accordingly.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: November 21, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: This regulation revises certain portions of the Department's regulation implementing the FOIA, 5 U.S.C. 552, specifically, the portions dealing with fees and with predisclosure notification. Those portions were published as an interim final rule, with request for comments, on November 13, 1987, when the entire regulation was revised. For the convenience of the public, we are printing the entire regulation at this time.

DATE: This regulation takes effect December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Russell M. Roberts, Freedom of Information Officer, (202) 472-7453.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking to revise its FOIA regulations on April 18, 1986 (51 FR 13250). Pursuant to that notice, HHS received comments and considered them. After that publication, Congress enacted the Freedom of Information Reform Act of 1986, Pub. L. 99-570, 1801 through 1804. This statute amended the FOIA provisions on law enforcement records and on search fees and fee waivers. Also after that publication, the President promulgated Executive Order 12600 requiring agencies to establish procedures for predisclosure notification of business records.

HHS published a rule based on the proposed rule, the comments, the FOI Reform Act, and the Executive Order on November 13, 1987 (52 FR 43575). The rule was an interim final rule with respect to certain portions of § 5.5 (specifically, the definitions of "commercial use," "duplication," "educational institution," "non-commercial scientific institution," "representative of the news media," "review," and "search" only) and with respect to §§ 5.41 through 5.45 and § 5.65 (c) through (e). As to all other portions, the rule was a final rule. HHS solicited comments on the interim final portions, and we received comments from one individual and from two public interest groups. We have carefully considered those comments, and our responses to them are presented below. We are also making some minor technical changes at this time, and those are explained at the end of the preamble.

Analysis of Comments and of Changes

Definitions (§ 5.5)

The Freedom of Information Reform Act substantially revised the law on fees. Its primary effect was to establish three categories of requests and to prescribe which types of fees could be charged for each. For commercial use requests, agencies may charge for search, duplication, and review; for non-commercial requests from educational and scientific institutions and from news media representatives, agencies may charge for duplication only; and for other requests, agencies may charge search and duplication only. The statute also grants two free hours of search time and 100 free pages of duplication for the latter two categories, and it bars charging fees where the costs of collecting the fee exceed the fee to be collected. The statute also revised the standard for fee waivers. The portions of the rule that defined some of the terms introduced by this statute had an interim final status.

"Commercial use." One comment suggested that all non-profit entities be categorically excluded from this definition, partly because the criterion should be the nature of the entity rather than the nature of the use. However, the statutory language focuses on the nature of the use, and a not-for-profit entity can have commercial uses. The existing language in the rule focuses the inquiry on the nature of the use while stating that we will take into account the nature (including the nonprofit nature) of the requester. It also states that when a request is from a representative of the news media, a use supporting the news dissemination function is not a commercial use. We are leaving this language unchanged.

"Educational institution." One comment suggested that the definition is too narrow, and recommended either leaving the term undefined or using the definition in the tax code, I.R.C. section 501(c)(3). We have decided instead to modify the definition to conform with the Guidelines promulgated by the Office of Management and Budget at 52 FR 10012, 10018 (1987).

"Representative of the news media." All three commenters addressed this definition. One comment suggested striking the entire paragraph. All objected explicitly or implicitly to the definition of "news" in the second sentence, expressing concerns that a government agency should not be making determinations of newsworthiness. Two comments suggested that the important factor should be who the representative is, and not what is being requested. Two commenters expressed concern that the definition excluded requests relating to historical events.

We believe that the major concerns of the commenters can be satisfied without striking the entire paragraph. We recognize that the information sought need not be itself "news" or directly about very current events in order to qualify for an exemption from paying search fees. Thus, a journalist's request for information about historical events would qualify if, for example, those historical events were background to

current events or were otherwise of current interest.

We also recognize that it would be improper to let our determination of whether a particular request should be treated for fee purposes as having been made by a "representative of the news media" be influenced by any partisan political interest or by any parochial institutional interest in limiting what the public ought to know, and we do not intend to have those determinations influenced by any such interests.

We have decided to strike the sentence defining "news" and to revise the first sentence as follows:

" 'Representative of the news media' means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public."

Two of the comments were specifically concerned with the treatment of freelance journalists in the definition. One commenter said the definition requires a freelancer to be associated with a specific news organization, and that such a requirement is improper. We are not amending the language based on this comment, since the definition does not impose any such requirement. The other commenter argued that requiring a freelancer to show "a solid basis" for expecting publication was too restrictive a standard. We have substituted "likelihood of publication" for "solid basis for expecting publication."

"Review." One commenter suggested striking this definition since it would reward inefficiency and would encourage delays in disclosure while the agency ran up review costs. We are leaving the language unchanged. The act explicitly authorizes charging for review costs, although only in the case of commercial use requests. Neither the act nor the regulation suggests that this provision expands any deadlines, and the act allows us to charge only "reasonable" fees.

Fees (Subpart D)

One comment suggested that § 5.41 (b) and (c) refer to the availability of fee waivers. We are leaving these subsections unchanged, since this availability is already mentioned in the introductory language in § 5.41.

One comment objected to the statement in § 5.42(a) that we may charge search fees even if the records found are exempt or if we do not find any records. We are leaving this language unchanged. This is consistent with the position taken by the Office of Management and Budget in its uniform FOIA fee schedule and guidelines, at paragraph 9(b). See 52 FR 10012, 10019. A request of this sort has still caused us to incur costs of search and/or review. Also, in some cases, the non-existence of records within the scope of a request may itself be an informative result.

One comment, without referring specifically to HHS or to our interim final rule, objected generally to agencies' construing two hours of search time for computer searches differently from the way they construe it for manual searches. In § 5.42(b), we apply the two-hour waiver identically in connection with computer searches and in human searches—in both cases, what is waived is the first two hours of human work. The operation of the computer is a cost of operating a machine, which is distinct from the costs of an employee's time. We make this distinction consistently in §§ 5.42(b); 5.43 (b), (d).

In § 5.43(a), we are updating the information about rates currently charged.

We have revised § 5.44 to provide that we will normally require payment of all fees before furnishing records, with exceptions such as requesters with histories of prompt payment. We expect this will improve collection of fees owed. In that section, we are no longer specifying that fees be paid by check or money order; the instructions described in § 5.44(c) will specify modes of payment.

Two comments suggested eliminating § 5.45 (b) through (c), which explain the statutory standard for fee waivers. They said these provisions violate the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* One said the factors set forth here do not adequately take into account the public's interest in monitoring agency activities, and that they ought to, but fail to, make possible a waiver where the requester concludes after reading the records that the agency has acted properly and that no news story is warranted. We are retaining these provisions. They do not violate the Paperwork Reduction Act—they merely explicate the statutory standard and do not impose any reporting requirement on waiver applicants. The public's interest in monitoring agency activities is taken into account in paragraph (b). Finally, the provisions do not require that a story actually be written. For example, "whether the requester's intended use of the information would be likely to disseminate the information among the public" (paragraph (b)(3)) turns on whether public dissemination would be likely if anything newsworthy were found, and not on the likelihood of finding anything newsworthy.

One comment suggested that § 5.45 provide for waivers automatically when the requested information concerned violations of law, government inefficiency or misconduct, or agency administrative error. We are not adding such a provision. These circumstances may be relevant in applying the statutory standard, but they cannot expand on that standard.

One comment suggested establishing a presumption that public interest organizations, scholars, and journalists are entitled to fee waivers. We believe that any such formal presumption is neither necessary nor appropriate. The preamble to the November 13, 1987, publication (52 FR at 43577–43578) has already explained why we decided not to include an automatic waiver for news media representatives—such an automatic waiver would render superfluous the explicit statutory inclusion of those persons in the category of requesters that, while exempt from search and review costs, does normally have to pay duplicating costs. The explicit provisions regarding the news media in the final rule (§ 5.45 (b)(3), (c)(1)) should help make clear that news media representatives will be granted waivers when appropriate.

One comment objected to focusing on the informational value of only the disclosable portions of the records. The comment did not address any specific part of this regulation, but this limitation is inherent in § 5.45(b), especially in paragraph (b)(1). We are leaving that language unchanged. The statutory criterion requires such consideration, since information that is not disclosed cannot contribute to public understanding.

One comment suggested a substitute streamlined test that would require a waiver when all the following tests are met: The information is not sought for a primarily commercial purpose or for a primarily personal purpose; it is sought in connection with an issue of good government or general public concern; it is sought in order to further some civic, political, or public communication or other activity; and it is not generally and easily available to the public. We are retaining the analysis set forth in paragraphs (b) and (c), since that is a more accurate interpretation of the statutory language.

One comment objected to certain language in guidance issued by the Department of Justice on April 2, 1987. The language in question advised allowing fee waivers only if the information disclosed would contribute to the understanding of "the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons." The quoted language is similar to

§ 5.45(b)(3), so we have reviewed that subsection in light of the comment. The comment argues that dissemination of the information among the most concerned or affected subset of the public should suffice, and that dissemination to the public at large is not required. We agree that it is not necessary that the entire population learn of the information. On the other hand, the disclosure does not serve the "public interest" by "contribut[ing] significantly to public understanding" where only a few individuals learn of the information. We are concerned that the current language of paragraph (b)(3), distinguishing the general public from a "segment" of interested persons, might be read as requiring a more universal dissemination than should be required. Thus, we are changing "segment" to "narrow segment." Our intent is that waivers not be limited to situations where the entire public will learn of the information, but rather to exclude situations where only a relatively small group will learn of it.

The same commenter objects to language in the Justice Department guidance that interprets the statutory phrase "contribute significantly to public understanding" as requiring agencies to determine whether the level of public understanding after the disclosure is substantially greater than the predisclosure level. The comment suggests that information contributes "significantly" to public understanding whenever the information has meaning. We have reviewed § 5.45(b)(4) in light of this comment, and have decided to leave it unchanged. This subsection correctly treats "significantly" as meaning "to a significant degree," and thus as synonymous with "substantially."

One comment objected to the requirement, in § 5.45(e), that a waiver request be made at the same time as the request for records. We are retaining this requirement. We need to make the determination as to waiver at the outset so that, if we deny the waiver request, the requester can decide whether to assume liability for the fees before we underake the burden of searching and copying.

In § 5.45(d), we have eliminated language that would make narrowness of passing one of the tests a basis for merely reducing fees rather than waiving them.

In § 5.45(e), we have added a sentence incorporating by reference the appeal process set out in § 5.34(c).

Predisclosure Notification Procedures (§ 5.65 (c) through (e))

One comment objects to the predisclosure notification procedures on the grounds that they would hinder compliance with the time limits imposed by the FOIA, and it recommends that the regulations state that the procedures can be followed only to the extent permitted by law. We are leaving the language unchanged. Our authority, and our duty, to protect trade secrets and confidential and privileged commercial and financial information is based on statutes. *See* 5 U.S.C. 552(b)(4); 18 U.S.C. 1905. Executive Order 12600 and this regulation establish a reasonable way to comply to the greatest possible degree with both the FOIA time requirements and the requirement to protect this information. The regulation recites the FOIA time limits § 5.35, and no restatement in necessary in this section.

Another commenter concerned about the effect of these procedures on timely processing of requests recommends that the regulation (a) state that we will not delay processing the request while sending predisclosure notification and awaiting the submitter's response, (b) state time limits for the submitter to respond, (c) state that we will inform the requester of the dates when we sent notice to the submitter and received its response and of the method of notification, and (d) state that we will notify the requester when we reject a submitter's objections and will tell the requester the date when we will release the records absent a court order. We are leaving the language unchanged. Recommendation (a) is treated in the paragraph immediately above. Recommendation (b) in unnecessary, since the time limit for the submitter is already fixed at five days, in § 5.65(d)(2). We believe that the other two recommendations would create unnecessary paperwork.

We are revising § 5.65(c) to say that where a request for proposals or request for quotations mandates certain language in order to designate records as confidential, then that language is necessary. This change will make this regulation consistent with the HHS Acquisition Regulations, 48 CFR 252.215–12.

Minor Technical Corrections

We have made several minor technical corrections.

We have added 18 U.S.C. 1905 to the citation of authority for the regulation.

In § 5.5, we are clarifying the definitions of "agency" and "Department" to refer to "*Medicare* health insurance." We are also modifying the definition of "request" to conform with our regulation governing responses to subpoenas, 45 CFR Part 2.

In § 5.21(a), we are making it optional for FOI Officers to write down oral requests.

In § 5.22(a), we are adding a reference to requests for detailed earning statements under the Social Security program. In § 5.24(b), we are changing "on take" to "in an electronic medium."

In § 5.31(a)(1)(ii), the office mentioned is the Family Support (not "Services") Administration. In § 5.31(a)(2)(i), we have added a reference to the Agency for Toxic Substances and Disease Registry. We have added a provision for an FOI Officer for the Indian Health Service in § 5.31(a)(2)(vi), and § 5.31(c). In § 5.31(a)(3), the SSA FOI Officer is the Director, Office of Public Inquiries (not Office of Information). In various paragraphs of § 5.31(a), we have eliminated as superfluous the phrase "or his or her designee;" delegation is adequately provided for in paragraph (b). We have updated the addresses and/or phone numbers for the FOI Officers for HHS, SSA, HCFA, PHS, and NIH.

Finally, we have made typographic corrections in §§ 5.21(a), 5.45(b)(3), 5.45(c), 5.65 (introductory text), and 5.65(b)(3).

The Secretary finds that there is good cause to have the changes (other than those in §§ 5.5 (definition of "representative of the news media"), 5.41 through 5.45, and 5.65(c) through (e)) take effect without notice and comment procedures. Some of these changes are purely technical corrections (typographical corrections, updating of addresses and phone numbers, and updating or organizational references). Some are elimination of superfluous language. One (the definition of "request" in § 5.5), is an interpretative provision, and it merely conforms this regulation to another regulation already in effect. One (the change respecting oral requests in § 5.21(a)) affects only our internal procedures. These changes are insignificant in impact, and use of notice and comment procedures is unnecessary.

The Secretary has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Secretary certifies that this regulation will not have a significant economic impact on any substantial number of small entitities as defined by the Regulatory Flexibility Act, Pub. L. 96–354.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 45 CFR Part 5

Freedom of information.

For the reasons set out in the preamble, 45 CFR Part 5 is revised as follows:

Part 5—Freedom of Information Regulations

Subpart A—Basic Policy

Sec.

Subpart B—Obtaining a Record

Subpart C—Release and Denial of Records

Subpart D—Fees

Subpart E—Records Available for Public Inspection

Subpart F—Reasons for Withholding Some Records

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600.

Subpart A—Basic Policy

§ 51.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records.

§ 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of the Department, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to the Department or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the Freedom of Information Act.

§ 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent that they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you may get copies from our Freedom of information Officers.

§ 5.4 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and this rule apply to all HHS records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. "Individuals" and "system of records" are defined in the Privacy Act and in our Privacy Act regulation, Part 5b of this title.

(b) *Requesting your own records.* If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act and Part 5b. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and this rule. "Routine use" is defined in the Privacy Act and in Part 5b). If we handle your request under the FOIA and this rule and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 5.5 Definitions.

As used in this part,

"Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of HHS or its agents, such as Medicare health insurance carriers and intermediaries.

"Commercial use" means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester

(individual, non-profit corporation, for-profit corporation), on the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

"Department" or "HHS" means the Department of Health and Human Services. It includes Medicare health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

"Duplication" means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

"Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

"Freedom of Information Act" or "FOIA" means section 552 of Title 5, United States Code, as amended.

"Freedom of Information Officer" means an HHS official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

"Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

"Records" means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

"Representative of the news media" means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

"Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition. Subpoenas are requests only to the extent provided by Part 2 of this title.

"Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in "review." It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

"Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

Subpart B—Obtaining a Record

§ 5.21 How to request records.

(a) *General.* Our policy is to answer all requests, both oral and written, for records. However, in order to have the rights given you by the FOIA and by this regulation (for example, the right to appeal if we deny your request and the right to have our decisions reviewed in court), you must either make your request in writing or make it orally to a Freedom of Information Officer. Freedom of Information Officers and their staffs may put in writing any oral requests they receive directly.

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Imformation Officer in the HHS unit that is most likely to have the records you want. (See § 5.31 of this Part for a list of Freedom of Information Officers.) If you cannot determine this, send the request to: HHS Freedom of Information Officer, 645–F, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and letter.

(c) *Details in the letter.* You should provide details that will help us identify and find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

§ 5.22 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are currently available, either from HHS or from another part of the Federal Government, under a statute that provides for charging fees for those records. For example, we will not handle your request under the FOIA and this regulation to the extent it asks for detailed earnings statements under the Social Security program, or records currently available from the Government Printing Office of the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the Public Health Service or public information leaflets distributed by the Social Security Administration.

§ 5.23 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.24 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook: *Files Maintenance and Records Disposition.*

(b) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, we will provide the printout.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.

(1) *HHS Freedom of Information Officer.* Only the HHS Freedom of Information Officer may determine whether to release or deny records in any of the following situations:

(i) The records you seek include records addressed to or sent from an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Office of Human Development Services, the Family Support Administration, or any organizational unit of HHS not specifically indentified below; or

(iii) The records include records of more than one of the major units identified below (PHS, HCFA, and SSA) either at headquarters or in a Regional

(2) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Deputy Assistant Secretary for Health (Communications), who also is the PHS Freedom of Information Officer, may determine whether to release or deny the records, except as follows:

(i) *CDC and ATSDR Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control and/or the Agency for Toxic Substances and Disease Registry, only the Director, Office of Public Affairs, CDC, who also is the CDC and ATSDR Freedom of Information Officer, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Associate Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, HIH, who also is the NIH Freedom of Information Officer, may determine whether to release or deny the records.

(iv) *HRSA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Resources and Services Administration, only the Associate Administrator for Communications, HRSA, who also is the HRSA Freedom of Information Officer, may determine whether to release or deny the records.

(v) ADAMHA Freedom of Information Officer. If the records you seek are exclusively records of the Alcohol, Drug Abuse and Mental Health Administration, only the Associate Administrator for Communications and Public Affairs, ADAMHA, who is also the ADAMHA Freedom of Information Officer, may determine whether to release or deny the records.

(vi) *IHS Freedom of Information Officer.* If the records you seek are exclusively records of the Indian Health Service, only the Director of Communications, IHS, who also is the IHS Freedom of Information Officer, may determine whether to release or deny the records.

(3) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Public Inquiries, SSA, who also is the SSA Freedom of Information Officer, may determine whether to release or deny the records.

(4) *HCFA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, may determine whether to release or deny the records.

(b) *Delegations.* Any of the above Freedom of Information Officers may delegate his or her authority to release or deny records and to determine fees. Any such delegation requires the concurrence of the Assistant Secretary for Public Affairs.

(c) *Addresses and telephone numbers.* The addresses and telephone numbers of the Freedom of Information Officers are listed below.

Freedom of Information Officers

HHS Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, *Tel:* (202) 472–7453

SSA Freedom of Information Officer, Room 4–H–8, Annex Building, 6401 Security

Boulevard, Baltimore, Maryland 21235, *Tel:* (301) 965–3962

HCFA Freedom of Information Officer, Room 100, Professional Building, Office of Public Affairs, 6660 Security Boulevard, Baltimore, Maryland 21207, *Tel:* (301) 966–5352

PHS Freedom of Information Officer, Room 13–C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–5252

FDA Freedom of Information Officer, HFW–35, Room 12A16, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, *Tel:* (301) 443–1813

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B39, 9000 Rockville Pike, Bethesda, Maryland 20892, *Tel:* (301) 496–5633

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, *Tel:* (404) 329–3286

HRSA Freedom of Information Officer, Room 14–43, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–2086

ADAMHA Freedom of Information Officer, Room 12–C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, *Tel:* (301) 443–3783

IHS Freedom of Information Officer, Room 5–A–39, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, *Tel:* (301) 443–1397.

§ 5.32 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) of this section, does not apply if the previous release was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 5.33 Denial of requests.

(a) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.

(b) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and send it to the review official identified in the denial letter. You must send your appeal within 30 days from the date you receive that letter or from the date you receive the records released as a partial grant of your request, whichever is later.

(b) *Letter of appeal.* The appeal letter should state reasons why you believe that the FOIA exemption(s) we cited do not apply to the records that you requested, or give reasons why they should be released regardless of whether the exemption(s) apply. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your request by explaining your reasons for wanting the records. However, you are not required to give any explanation.

(c) *Review process.* Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to ensure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in § 5.31 of this part. When we decide to release records, we will actually provide the records, or let you inspect them, as soon as possible after that decision.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate review official

(c) *Extension of time limits.* FOI Officers of review officials may extend the time limits in unusual circumstances. Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:

(1) Search for and collect records from field facilites, archives, or locations other than the office processing the request.

(2) Search for, collect, or examine a great many records in response to a single request.

(3) Consult with another office or agency that has substantial interest in the determination of the request.

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

Subpart D—Fees

§ 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45 or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of documents. Also, HHS will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a)

or (b) of this section, then HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

§ 5.42 Fees to be charged—general provisions.

(a) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we well reduce the total search fees by the average hourly rate for the operator's time, multipled by two.

(c) If we are not charging you for the first 100 pages of duplication, under § 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.

(d) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. As of May 1987, such costs among the units HHS ranged between $6.00 and $12.50.

(e) If we determine that you (acting either alone or together with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of Part 30 of this Title in assessing interest, administrative costs, and penalties and in taking actions to encourage payment.

(g) This subpart does not apply to requests for Social Security program records on Social Security number holders, wage earners, employers, and claimants, where the requests are governed by section 1106 of the Social Security Act, 42 U.S.C. 1306(c), and by 20 CFR 442.441.

§ 5.43 Fee schedule

HHS charges the following fees:

(a) Manual searching for or reviewing of records—when the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November 25, 1988, these rates were $10, $20, and $37 respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.

(b) Computer searching and printing—the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(c) Photocopying standard size pages—$0.10 per page. FOI Officers may charge lower fees for particular documents where—

(1) The document has already been printed in large numbers,

(2) The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and

(3) The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(d) Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes)—the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) Certifying that records are true copies. This service is not required by the FOIA. If we agree to provide it, we will charge $10 per certification.

(f) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.

(g) Performing any other special service that you request and we agree to—actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(b) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding $250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 of the part (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(c) *Billing and payment.* We will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to your requests.

§ 5.45 Waiver or reduction of fees.

(a) *Standard.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests:

(1) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) It is not primarily in the commercial interest of the requester.

These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors.

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?

(3) Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? Under this factor we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, we will consider the following factors:

(1) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOI Officers may make the decision whether to waive, or reduce, the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our denial letter. The process prescribed in § 5.34(c) of this part will also apply to these appeals.

Subpart E—Records Available for Public Inspection

§ 5.51 Records available.

(a) *Records of general interest.* We will make the following records of general interest available for your inspection and copying. Before releasing them, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 5.67 of this part.)

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office for Civil Rights in civil rights complaints, and Social Security Rulings. (See § 5.66 of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but have not published in the **Federal Register.**

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in §§ 5.63 and 5.68 of this part.)

(b) *Other records.* In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and Subpart F of this regulation.

§ 5.52 Indexes of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indexes of the records described in § 5.51(a). We will also publish and distribute copies of the indexes unless we announce in the **Federal Register** that it is unnecessary or impracticable to do so. For assistance in locating indexes maintained in the Department, you may contact the HHS Freedom of Information Officer at the address and telephone number in § 5.31(c).

(b) *Record citation as precedent.* We will not use or cite any record described in § 5.51(a) as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

Subpart F—Reasons for Withholding Some Records

§ 5.61 General.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions below and explain how this Department applies them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the Department from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

§ 5.62 Exemption one: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are "(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order." Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so, as explained in § 5.23.

§ 5.63 Exemption two: Internal personnel rules and practices.

We are not required to release records that are "related solely to the internal personnel rules and practices of an agency." Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

§ 5.64 Exemption three: Records exempted by other statutes.

We are not required to release records if another statute specifically allows us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

§ 5.65 Exemption four: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

(a) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

(b) *Commercial or financial information.* We will not disclose records whose information is "commercial or financial," is obtained from a person, and is "privileged or confidential."

(1) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(2) Information is "obtained from a person" if HHS or another agency has obtained it from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by HHS or another federal agency. However, information is "obtained from a person" if it is provided by someone, including but not limited to an agency employee, who retains a commercial or financial interest in the information.

(3) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless the providing of the information to the government rendered the information no longer protectable in civil discovery.

(4) Information is "confidential" if it meets one of the following tests:

(i) Disclosure may impair the government's ability to obtain necessary information in the future;

(ii) Disclosure would substantially harm the competitive position of the person who submitted the information;

(iii) Disclosure would impair other government interests, such as program effectiveness and compliance; or

(iv) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

The following questions may be relevant in analyzing whether a record meets one of more of the above tests: Is the information of a type customarily held in strict confidence and not disclosed to the public by the person to whom it belongs? What is the general custom or usage with respect to such information in the relevant occupation or business? How many, and what types of, individuals have access to the information? What kind and degree of financial injury can be expected if the information is disclosed?

(c) *Designation of certain confidential information.* A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(d) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (c) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (e) of this section.

(1) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain its objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (d)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (d)(3) of this section, we will notify the requester of this fact.

(e) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d) of this section do not apply in the following situations:

(1) We decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (c) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (d) of this section; or

(5) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (d)(5) of this section.

§ 5.66 Exemption five: Internal memoranda.

This exemption covers internal government communications and notes that fall within a generally recognized evidentiary privilege. Internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs.

(a) *Deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of the privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. We will release purely factual material in a deliberative docment unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made.

(b) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (typically, HHS attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

§ 5.67 Exemption six: Clearly unwarranted invasion of personal privacy.

(a) *Documents affected.* We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

(c) *Examples.* Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; medical information about individuals participating in clinical research studies; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earning records, claim files, and other personal information maintained by the Social Security Administration, the Public Health Service, and the Health Care Financing Administration.

§ 5.68 Exemption seven: Law enforcement.

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* We may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* We may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information

under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

§ 5.69 Exemptions 8 and 9: Records on financial institutions; records on wells.

Exemption eight permits us to withhold records about regulation or supervision of financial institutions. Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

Date: September 9, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-27239 Filed 11-23-88; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

45 CFR Part 303

Office of Child Support Enforcement; Federal Income Tax Refund Offset

AGENCY: Office of Child Support Enforcement (OCSE), FSA, HHS.

ACTION: Final rule.

SUMMARY: This regulation revises Federal tax refund offset regulations to provide that the Office of Child Support Enforcement (OCSE) will recover its costs from the States for certain services provided in the Federal tax refund offset process. These services are limited to printing and mailing pre-offset notices when OCSE provides this service.

In addition, this regulation makes necessary changes to conform OCSE regulations with the revised method the Internal Revenue Service (IRS) will use beginning in processing year 1988 to recover costs of the offset procedure. The IRS fee will no longer be billed to the State and collected by the Secretary of Health and Human Services. Beginning with the 1988 processing year, the IRS deducted its fee from the offset amount, although States are still required to credit the obligor with the full amount of the offset.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson, OCSE Policy Branch, (202) 252-5362.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal tax refund offset program, States are required to send the absent parent advance notice that his or her case will be referred for offset, pursuant to section 464(a)(3)(A) of the Social Security Act (the Act). During the initial years of the Federal tax refund offset program, OCSE, under its regulatory authority, chose to provide States with the option of having OCSE send the advance notice on behalf of the State IV-D agency, if requested to do so, to encourage use of the offset mechanism. In processing year 1988, 39 States and jurisdictions requested OCSE to provide the advance notice to absent parents for them.

OCSE has always had the statutory authority to charge fees for this service, but until now has not done so to give States an incentive to implement the offset procedure. OCSE believes that State programs have sufficiently developed now so that it is no longer necessary to provide this technical assistance, without cost to States. Moreover, in light of the Federal deficit it is no longer appropriate to provide a service at no cost which is clearly the obligation of the State. Accordingly, OCSE will now charge for services it provides in the Federal tax refund offset process. These services include printing and mailing pre-offset notices on behalf of the States. Any fees charged the State will be reimbursable at the current Federal matching rate for child support administrative expenses so that the Federal Government will still bear the majority of the cost (68 percent in FY 1988 and 1989). Additional information, including the amount of the fee and its effective date, was issued in Program Instructions dated July 12, 1988 (OCSE-AT-88-12).

Another provision of the Federal tax refund offset program is that the IRS shall charge the State a fee for its costs of applying the offset procedure. Prior to the 1988 processing year, this fee was billed and collected from the State IV-D agency by the Secretary of Health and Human Services (HHS). However, the IRS has changed its cost recovery method, and beginning with the 1988 processing year deducted its fee directly from the offset amount. Therefore, these regulations delete the requirement that the IRS fee be billed and collected from the State IV-D agency by HHS.

In addition to publication of the proposed rule, States were notified well in advance, and through several different media (conferences, action transmittal, letters) of the pending IRS change in its method of recovering costs under the offset procedure. While a small number of States may have difficulties with these changes in conforming State legislative changes are necessary, States have had ample warning and opportunity to implement necessary legislation. In 1986, the IRS notified OCSE of its intention to deduct its fee directly from the offset amount and OCSE informed States in a "Dear Colleague" letter of IRS' intention and asked for comments on whether or not this change would pose any problems. Although the IRS did not implement its proposal in the 1987 processing year, States have been on notice since that time of a potential change in the IRS method for cost recovery.

The revised cost recovery method used by the IRS does not affect current IV-D collection and distribution policy. The State IV-D agency must consider the total amount offset as a support collection and distribute this amount pursuant to Federal regulations at 45 CFR 303.72(h). For example, if the State certifies $2,000 for Federal tax refund offset and the IRS offsets $2,000 and deducts the IRS offset fee from this amount, the State must credit the absent parent with a $2,000 payment and distribute $2,000, not $2,000 less the IRS fee. The State may recover the IRS fee in non-AFDC cases pursuant to regulations at 45 CFR 302.33(d).

Statutory Authority

Section 464(a)(3) of the Act requires the State to send notice to an individual that a Federal tax refund offset will be

made. Section 464(b)(1) provides that the Secretary of the Treasury shall prescribe the fee that State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure.

Section 1102 authorizes the Secretary of HHS to publish regulations (not inconsistent with the Act) necessary to efficiently administer his functions under the Act. Under the title IV–D State plan requirement contained in section 454(13) of the Act, the Secretary may prescribe, and the State must comply with, requirements and standards necessary to establish an effective title IV–D program.

General authority for the Federal government to charge for certain specialized or technical services which it may perform is found in the Intergovernmental Cooperation Act at 31 U.S.C. 6505. This statute states that services may be provided if requested by the State in writing and payment is made.

OMB Circular No. A–97 promulgates rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under title III of the Intergovernmental Cooperation Act. Specifically, this Circular permits Federal agencies to provide (among other services) technical information, data processing, communications and personnel management systems services, and technical advice on improving logistical and management services which the Federal agency normally provides for itself or others under existing authorities. We believe that sending the pre-offset notice on behalf of States meets the above criterion because it provides data processing services which improve the Federal tax refund offset process by ensuring that the offset notice is accurate and timely. The authority for OCSE to provide this service exists because OCSE serves as the agent between the State and the IRS for the offset process. Therefore, OCSE is intrinsically involved in the actual Federal tax refund offset process and this is just one aspect of that process.

Prior Regulatory Provisions

45 CFR 303.72(e)(1) stated that OCSE or the State IV–D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset.

45 CFR 303.72(i)(1) stated that a refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of HHS have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV–D agency by the Secretary of HHS or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection.

Regulatory Changes

This regulation revises 45 CFR 303.72(e)(1) to require that the State IV–D agency, or OCSE, if the State requests and OCSE agrees, shall send the advance notice. This revision is consistent with section 464(a)(3) of the Act. The revised language merely clarifies that the State is ultimately responsible for sending the advance notice and that OCSE is providing technical assistance to the State when it sends the advance notice on behalf of the State.

Paragraph (i)(1) of this secton is revised by deleting the reference to the IRS cost recovery procedure, i.e., the IRS fee is billed and collected from the IV–D agency by the Secretary of HHS. This change is necessary to conform OCSE regulations to the change in the IRS method for collecting the IRS offset fee. Beginning in processing year 1988, the IRS deducted its fee from the offset collection instead of billing the State and having HHS collect the fee.

A new paragraph (i)(3) has been added to this section. This paragraph provides that a fee will be charged to any State which requests OCSE to send advance written notice in regard to the Federal tax refund offset process, including the printing and mailing of pre-offset notices on behalf of the State. The amount of the fee and the effective date for charging a fee will be established by OCSE in instructions.

Response to Comments

Seven State agencies submitted comments in response to the notice of proposed rulemaking published in the **Federal Register** (53 FR 12041) on April 12, 1988. A discussion of these comments and our responses follow:

Fee for Printing and Mailing Pre-Offset Notices

Comment 1: Three State agencies expressed concern over the cost to State and local governments resulting from the fee which OCSE will now charge for printing and mailing pre-offset notices.

Response: These regulations at § 303.72, which specify that States requesting OCSE to send pre-offset notices will be charged a fee, will result in some increased costs to State and local governments which opt to have OCSE send their pre-offset notices. Although section 464(a)(3)(A) of the Act clearly requires States to send pre-offset notices to absent parents, OCSE previously provided these services without charge to encourage use of the offset procedure and to assist States during the developmental stages of implementation. Such assistance is no longer necessary. We believe the cost to States will be minimal, since States will receive Federal funding for these expenditures at the applicable matching rate.

Comment 2: One State agency inquired how States will be reimbursed for any overpayment of OCSE's fee.

Response: Refunds will be issued after the printing and sending of pre-offset notices have been completed. Program instructions, issued in an action transmittal (OCSE–AT–88–12) on July 12, 1988, specifically discuss the payment process.

Comment 3: One State agency requested that we revise the proposed regulation at § 303.72(i)(3) to clarify that "the State" refers to States which request OCSE to mail its pre-offset notices.

Response: In response to the commentor's recommendation, final regulations at § 303.72(i)(3) specify that a State which requests OCSE to send written advance notice to absent parents will be charged a corresponding fee.

Comment 4: One State agency suggested that it would be more cost effective for the State agency to send a combined Federal and State pre-offset notice.

Response: States may send a combined State and Federal pre-offset notice if all notice requirements for both processes are met. As we have previously stated in the **Federal Register** (50 FR 19636) on May 9, 1985, Federal regulations do not have the same notice requirements for Federal and State offset since procedures, distribution policy and the agency responsible for Federal and State offset may be different depending on State practice. However, many States do use a combined notice, which is cost effective, and we encourage other States to adopt such procedures if feasible.

IRS Cost Recovery Method

Comment 1. Two State agencies expressed concern over the administrative and financial impact of the new IRS cost recovery method indicating that there will have to be changes made to automated systems and accounting procedures as well as increased budget authority. They requested that the collection method

remain unchanged or be delayed for six months to allow time for automated systems and budgetary changes.

Response. Beginning with the 1988 processing year, the IRS deducted the offset fee from the offset amount. Regulations at § 303.72(i)(1) simply reflect changes already made by the IRS to their cost recovery method and these revisions do not increase the fee charged by the IRS for refund offsets. States have always been responsible for paying these fees. The States have had ample notice of this change since 1986 and we believe any additional costs incurred to accommodate this new method will be minimal. The States will be reimbursed for the IRS offset fee at the applicable matching rate.

Comment 2. One State agency asked what authority the IRS has to change their fee collection method.

Response. The revised IRS fee collection method corresponds with the cost recovery method the IRS employs with Federal agencies using the tax refund offset process to collect outstanding debts. This method is routinely applied between Federal and State governments and facilitates efficient settlement of accounts especially in the elimination of delinquent accounts. While alternative methods were considered in regard to the Child Support Enforcement Program, the IRS decided to have one method for collecting fees for all tax refund offset programs. There is no legal prohibition against this method in section 464 of the Act.

Comment 3. One State agency indicated it could find no statutory requirement that the State must credit the full amount of the offset against the obligor's payment record. They would prefer to deduct the IRS fee from the offset before crediting the obligor's account and credit the obligor's account only for the amount the State actually receives from the IRS.

Response. Federal statute and regulations require that the total amount offset must be distributed to or on behalf of the child. Section 464(a)(2)(A) of the Act specifically states that the "State agency shall * * * distribute such amount to or on behalf of the child to whom the support was owed." The term "such amount" directly refers to the amount offset by the IRS. Federal regulations at 45 CFR 303.72(h) specify that for AFDC and non-AFDC offset collections, the offset shall be distributed as past due support as required under §§ 302.51(b) (4) and (5). However, in States which choose to recover costs in non-AFDC cases, the IRS fee may be recovered pursuant to regulations at 45 CFR 302.33(d).

Executive Order 12291

Comment. One agency disagreed that this rule will not result in a major increase in costs or prices for State or local governments as defined by Executive Order 12291.

Response. This regulation will not result in a major increase in costs to State or local government agencies. States requesting OCSE to print and mail their pre-offset notices will be charged $.27 per notice for processing year 1989 and will receive 68 percent Federal funding for these expenditures. We estimate OCSE's total cost for printing and mailing pre-offset notices in processing year 1989 to be approximately $380,000, based on requests by 39 States and jurisdictions for this service in processing year 1988. Therefore, the cost to each requesting State for providing this service is not expected to be substantial. With respect to the IRS fee to cover the costs of offset, the methodology for recovering the fee, not the States' responsibility to pay the fee, is changing. States are, and have been since the outset, responsible for paying the IRS fee.

Paperwork Reduction Act

Section 303.72 of this final rule contains information collection requirements. These requirements have been approved by the Office of Management and Budget (OMB) control number as follows: § 303.72—OMB Control No. 0960–0253.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major rule. This regulation permits OCSE to charge the State for providing the advance notice of tax refund offset to the absent parent. In addition, this regulation revises OCSE regulations to conform to the revised cost recovery procedures established by the IRS for collecting offset fees. The cost for sending advance notice to an absent parent is allocated differently, but total expenditures remain the same. The method used by the IRS to recover costs of the offset program is revised, but the IRS fee is not affected by this regulation. Therefore, this rule will have little or no economic effect.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments, which are not considered small entities under the Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Date: August 17, 1988.

Robert C. Harris,

Associate Deputy Director, Office of Child Support Enforcement.

Approved: October 4, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, Chapter III of Title 45 of the Code of Federal Regulations is amended as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 303.72 is amended by revising paragraphs (e)(1) introductory test and (i)(1) and adding a new paragraph (i)(3) to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

* * * * *

(e) *Notices of offset.*—(1) *Advance.* The State IV–D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must inform absent parents:

* * * * *

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have

agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

* * * * *

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

* * * * *

[FR Doc. 88-27237 Filed 11-23-88; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 87-265; FCC 88-318]

Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order*, the FCC is amending the GMRS to: (1) Provide for greater transient use of repeater stations in other GMRS systems by broadening station operator eligibility; (2) enhance channel selection by allowing each GMRS system licensed to an individual two primary channels or channel pairs along with a third channel for emergencies and traveler assistance; (3) create small base stations thereby permitting the use of commonly available mobile transceivers for base station operation; (4) prohibit simplex operation on repeater input channels within 5 years; and (5) create new interstitial channels to accommodate and promote spectrum-efficient non-repeater-assisted communications. The FCC is taking this action in order to increase user flexibility, reflect improvements in technology and enhance the GMRS for personal radio users.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John B. Johnston, Chief, Personal Radio Branch, Private Radio Bureau, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 88-318, adopted October 13, 1988, and released November 10, 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.

Summary of Report and Order

1. On July 16, 1987, we adopted a *Notice of Proposed Rule Making* (*Notice*), 2 FCC Rcd 4490 (1987), in the above-captioned proceeding. In the *Notice* we proposed to modify the General Mobile Radio Service (GMRS) Rules to increase the flexibility of the GMRS for personal communications. Our objective was to make the service more efficient and effective for personal users.

2. The keystone of our proposal was to limit eligibility for obtaining a new GMRS system license to an individual (one man or one woman) in order to encourage personal uses and discourage large commercial operations. We also proposed (1) to provide for greater transient use of mobile relay stations (repeaters) by broadening station operator eligibility; (2) to eliminate the need to re-license a GMRS system in order to change the transmitting channel; (3) to define and provide for the small base station, a new class of land station in GMRS systems; and (4) to authorize new interstitial channels. We received fifty-two comments and fourteen reply comments.

3. The GMRS is one of the three personal radio services contained in Part 95 of the Rules. The GMRS rules, however, permit both personal and business communications. This has resulted in a very broad mix of GMRS system licensees: Personal users, volunteer public service groups and small and large commercial organizations. The diverse operating patterns of these users often result in major incompatibilities, particularly between large commercial organizations and personal users. In areas of large population density use of the eight available GMRS channel pairs by high-traffic-volume commercial dispatch operations often effectively precludes personal use.

4. Further, as presently structured, the GMRS rules limit the flexibility of users to take advantage of new technology and equipment. For example, under the present rules GMRS users cannot use the repeaters of other GMRS systems without first obtaining a modification of their licensees.

5. Under current rules, GMRS station operators must confine their communications to the channel assigned to their home GMRS system and may only use simplex (non-repeated) transmissions. They can communicate with station operators in other GMRS systems that share their home GMRS system channel, including repeater transmissions, but they are prohibited from using repeaters in other GMRS systems to communicate with station operators from their own GMRS system unless they have obtained a modification of the licenses. These requirements are unwieldy and, for all practical purposes, preclude effective transient operation.

6. We have expressed a continuing concern that personal communications needs be adequately met. The Citizens Band (CB) Radio Service provides short-range communications capability, with low power and low antenna height. Because of its propagation characteristics, however, CB radio is not suited to many traditional communications options desirable for personal users, such as repeaters. We have sought alternatives for personal users who seek a more complete communications package. *See* General Docket No. 83-26; *see also* PR Docket No. 86-38. By this proceeding we seek to determine whether specific improvements to augment personal use in the GMRS would be desirable.

7. *License Eligibility.* In the *Notice* we proposed to limit the eligibility for new GMRS system licenses to individuals in order to focus the usage of the very limited number of GMRS channels (8 channel pairs) toward the needs of the personal user. Commercial organizations are eligible for systems in other private land mobile radio services having comparable communications performance capability (repeaters, FM quieting and capture, freedom from "skip," etc.). Personal users, on the other hand, generally are not eligible in the other private land mobile services. There are no comparable alternatives to the GMRS for the personal user.

8. We did not propose to terminate business communications in the GMRS. While the proposed licensing

requirements would discourage large business users, small businesses with few employees could still find the GMRS attractive. Further, recognizing that roughly one-half of all GMRS system licensees are commercial organizations, we proposed to grandfather those commercial user GMRS systems that were licensed before July 31, 1987. These systems, however, would have to remain configured as currently licensed. No changes would be authorized to such grandfathered systems. We advanced this proposal to encourage the large commercial organizations to relocate their systems to the Business Radio Service.

9. As a personal radio service, the GMRS should not be compromised for the benefit of commercial users at the expense of personal users. Business communication needs, particular the needs of large-volume dispatch operations, should be satisfied through the use of communications alternatives other than GMRS. Licensing new GMRS systems to individuals will encourage personal and small business use while discouraging large commercial operations. We emphasize again that this change will not preclude or otherwise limit business communications from being transmitted by GMRS licensees.

10. We specifically reject a content regulation approach to enhancing personal use in the GMRS. Discontinuing business communications would unnecessarily disrupt the GMRS. It would not be in the public interest to prescribe in detail the types of communications that could be conducted by GMRS users. Indeed, some personal users may find that the GMRS suits their needs to accomplish infrequent communications for a small business. Those individuals eligible for a new GMRS system license may find the service entirely suitable for both their personal and small business communications. We do not want to discourage these uses.

11. Under the existing rules, individual licensees of GMRS systems could allow employees to be station operators without obtaining their own GMRS system licenses. This is consistent with a commercial dispatch regulatory approach, and grandfathered commercial GMRS systems may continue to permit employees to be station operators consistent with our former rules. Under the new rules that apply to GMRS systems licensed to individuals, however, such an approach would frustrate the new regulatory framework based upon responsibility for one's own communications as an individual GMRS system licensee. Therefore, employees may not be station operators of GMRS systems licensed to individuals unless they have their own GMRS system licenses.

12. Some commenters sought separate licensing eligibility for volunteer public service teams such as REACT (providing CB Channel 9 response) and neighborhood watch groups if we adopt general rules limiting GMRS systems to individuals. We recognize the additional communications assets these organizations bring to bear in times of emergency. There is no way to create an exemption for them, however, without serious risk of compromising the new eligibility requirements.

13. *Improved Transient Operation.* In line with our intention to make the GMRS more efficient and effective for personal users, we proposed to model repeater usage in the GMRS more closely after repeater usage in the amateur service. A salient characteristic of amateur service repeater operation is extensive transient use. We proposed, therefore, to permit use of a GMRS system repeater by station operators of GMRS systems licensed to individuals who have the permission of the GMRS system licensee whose repeater is being used. The persons eligible to be station operators in a GMRS system would include the members of the licensee's family for whom the licensee is willing to take responsibility. We also proposed to construe as open and available for transient use any GMRS system repeater that does not employ some technical means to limit user access to the repeater, such as tone operated squelch or digital access codes. We requested comment on the merits of this approach versus the need to require GMRS system licensee permission for transient use of repeaters.

14. *Discussion.* The flexibility of personal communications in the GMRS would be greatly improved through the proposed relaxation of station operator eligibility requirements. This relaxation of the rules would facilitate transient use of repeaters and greatly increase the convenience and usefulness of the GMRS to individuals. To that end we are adopting the rules we proposed.

15. We are adopting rules to liberalize station operator eligibility. The purpose of these rules is to increase the convenience and usefulness of GMRS systems licensed to individuals. Thus, the liberalized station operator standards will not apply to grandfathered GMRS systems licensed to commercial entities. Also, the old GMRS rules placed message content restrictions upon each station operator, depending upon the station operator's relationship to the licensee. As proposed, we are abolishing these message content regulations with respect to GMRS systems licensed to individuals. Any individual station operator (*i.e.*, GMRS licensee or family member) may engage in any communication.

16. We are also adopting rules to allow the station operators of GMRS systems licensed to individuals to use mobile relay stations in other GMRS systems with the permission of the licensees of the other systems. Of course, both systems must be authorized for the channel or channel pair used for such a communication. In the *Notice* we took the position that we would prospectively construe these rules to mean that any GMRS open repeater would be a repeater for which the GMRS system licensee had given tacit permission for such transient use. We are persuaded by the comments, however, that such a construction does not allow a GMRS system licensee sufficient latitude to restrict the users of that system to those operators the licensee desires. This then impinges on the licensee's ability to adequately discharge required control functions under the Rules. Therefore, we are adopting rules requiring system licensee permission before engaging in transient use of another system's mobile relay station; however, we decline to implement our proposed construction of these rules to allow transient use of any open GMRS repeater.

17. *All-Channel Operation.* We proposed rules to permit each GMRS system licensed to an individual to use the best channel available for its stations at any given time and place. Currently, each GMRS licensee normally receives authorization for one specific shared channel or channel pair at one specific location. A personal user is unable to communicate if the channel assigned to the GMRS system is busy, even if other channels are clear. When traveling, the personal user is confined to the channel of the home GMRS system. To use a different channel, the GMRS system licensee has to obtain a license modification. To do this, the GMRS system licensee must request another specific channel on the application form.

18. Upon further review of our proposal, we conclude that elimination of Commission assignment of channels and channel pairs to GMRS systems would be too drastic a step to take at this time. Instead, we are adopting a "two-channel plus 675" concept. All GMRS systems licensed to individuals

may be assigned two requested channels or channel pairs, and an additional nationwide channel pair (462.675 MHz/467.675 MHz) will be made available for emergency and traveler assistance communications. This alternative provides much of the flexibility we sought in advancing the all-channel concept, but at the same time preserves the current nature of the GMRS primary channels and channel pairs in order to allow for a more gradual and user-acceptable application of existing and new technologies in the GMRS.

19. We are adopting rules that allow the mobile stations of any GMRS system that is not specifically assigned the 462.675 MHz/467.675 MHz channel pair to use this channel pair for emergency communications or traveler assistance. This would allow each GMRS licensee to communicate on the frequency most commonly used nationally in the GMRS by volunteer public service teams for emergency and traveler assistance communications.

20. We are also adopting rules to permit two channels or channel pairs to be assigned to a GMRS system licensed to an individual. Granting a second channel or channel pair upon request provides each GMRS system with additional flexibility without severely disrupting current rules or licensing policies.

21. We are also taking two additional steps to assure against the proliferation of unauthorized user-programmable equipment. First, we will not type accept a GMRS transmitter that can transmit in spectrum assigned to another service unless it is also type-accepted for use in that other service. Second, we will require that the mechanism for installing or programming the assigned channel frequencies into all transmitters type accepted for use in GMRS systems be internal to the transmitter and inaccessible to the station operators. Our intent is that the GMRS system licensee will make, or cause to have made, the necessary internal installation or programming of the assigned channels such that only the channels authorized to the GMRS system are available to the station operators for their selection.

22. *Small Base Stations.* Many GMRS personal users only acquire and operate one or more mobile units. The current rules place constraints upon a personal user who on occasion wants to operate a mobile transmitter from a fixed location, such as the home or office. We proposed to create a new type of base station called a small base station to accommodate this requirement. Licensing requirements for this type of base station would be considerably less detailed than those for a typical base station.

23. The concept of the small base station is largely based upon the existing small control station. Nonetheless, we proposed a different maximum power limitation for small base stations. Small base stations would be limited to a maximum effective radiated power (ERP) of 5 watts. Small control stations may employe up to 50 watts ERP unless they transmit north of Line A or east of Line C, in which case they are also limited to 5 watts ERP. We proposed to limit small base stations to a maximum of 5 watts ERP regardless of geographic location. This should be sufficient for the limited intended local use. Moreover, allowing small base stations to transmit with high power at the reduced frequency tolerance we proposed could greatly increase interference potential if they are authorized to transmit on interstitial frequencies.

24. A small base station would employ an antenna no more than 20 feet above the ground or above the building or tree on which it is mounted. To facilitate use of low-power "mobile" equipment as small base stations, we proposed to permit small base stations the frequency tolerance currently allowed for mobile stations (0.0005%), rather than the frequency tolerance currently required for base stations (0.00025%). We believed this was an acceptable tradeoff to achieve personal user flexibility. Small base stations would employ at a maximum no more than one tenth the power available to other land stations, and therefore would not require as tight of frequency tolerance.

25. Small base stations are unlikely to cause significant interference to other lawful uses and users. Allowing small base stations will encourage GMRS users to utilize short range equipment so that more users can be accommodated. Therefore, we are adopting rules to allow GMRS systems licensed to individual to use small base stations. A small base station may operate on the primary 462 MHz channel(s) assigned to the GMRS system for the small base station as requested. In addition, a small base station may operate on any of the new interstitial channels.

26. *Simplex Channels.* We inquired about the need to minimize harmful interference to repeater channels, and whether we should consider discouraging or prohibiting simplex operation on repeater mobile input channels. Upon reviewing the comments, we conclude that significant interference to GMRS repeater operation is virtually inevitable due to non-repeater operations conducted on 467 MHz frequencies. We are, therefore, adopting new § 95.29(a)(3) restricting 467 MHz channels to accessing and controlling mobile relay stations. We have chosen, however, to postpone the effective date of this particular action until December 31, 1993. This is to give GMRS licensees involved in two-frequency direct operation or mobile-to-mobile station operation on 467 MHz frequencies sufficient time to reconfigure their GMRS systems or otherwise reaccommodate their communications needs.

27. *Adding Interstitial Frequencies.* We proposed the addition of three interstitial (12.5 kHz offset) GMRS channels in the 462 MHz frequency band to facilitate personal communication. We proposed these channels to satisfy the need for short-range GMRS communications that do not require use of a repeater. We also propose that four interstitial channels be established in the 467 MHz frequency band. We proposed to restrict transmissions on these channels to low power one-way non-voice communications solely for repeater control.

28. Because we are adopting rules to prohibit simplex operation on the input frequencies of repeaters, effective in roughly five years, we have decided not to release any of the 467 MHz interstitial channels at this time. Premature release of the 467 MHz interstitial channels may compromise the evolution of repeater technology in the GMRS.

29. On the other hand, the Notice sought to provide for direct (non-repeater-assisted) communications that do not risk substantial interference from repeater operation by proposing release of several 462 MHz interstitial channels for low-power use by mobile stations and small base stations. The comments indicate that it is desirable to provide additional channels for personal communications exchanges that can be conducted without a repeater. Moreover, releasing all seven of the 462 MHz segment interstitial channels for the use of mobile stations and small base stations in GMRS systems licensed to individuals would provide any GMRS systems licensed to individuals that are displaced by the prospective 1993 changes at 467 MHz with a GMRS alternative for their communications needs. Accordingly, we are releasing all seven 462 MHz interstitial channels for use by mobile stations and small base stations in GMRS systems licensed to individuals.

30. *Grandfathered GMRS Systems.* On September 17, 1987, we released a Public Notice further explaining the policies for

GMRS systems that would be grandfathered under the proposed rules. *Public Notice*, Interim Policies for GMRS, No. 4872, September 17, 1987. In the *Notice of Proposed Rule Making*, we proposed that GMRS systems licensed to non-individuals on or before July 30, 1987, would be grandfathered. The Public Notice clarified that pending adoption of the proposed rules, we would continue to grant GMRS systems to non-individuals. Should the proposed rules be adopted, however, GMRS system licensees granted to non-individuals on or after July 31, 1987, would become subject to the new rules at the expiration of the license terms and, hence, would not be renewed. We further stated that GMRS systems licensed to non-individuals that were substantially modified after July 31, 1987, would be considered newly licensed as of the date of grant of such modification by the Commission. The Public Notice indicated that any modification to increase the power of any transmitter, increase the number of mobile units, add any stations, increase any antenna heights, change any land station location, or change any area of operation would constitute a substantial modification. Any such modified GMRS system license granted to a non-individual on or after July 31, 1987, would not be grandfathered and would be subject to the new rules after the expiration of the license terms.

31. In proposed § 95.5(b) we had listed six substantial modifications that we would not allow grandfathered entities. The new rule we are adopting, § 95.71(e), adds one more: Changing or adding assigned frequencies. This is consistent with traditional concepts of substantial modification as well as with our decision to draw a distinction between GMRS systems licensed to individuals and to non-individuals with respect to channel availability.

32. We intend to strictly adhere to the provisions we are adopting with respect to grandfathering. Only GMRS systems licensed to non-individuals before July 31, 1987, will be grandfathered. The rules governing eligibility will be applied prospectively to all other existing GMRS systems upon expiration of their licenses. Any GMRS systems licensed to non-individuals that made the substantial modifications described in § 95.71(e) of the new rules between July 31, 1987, and December 31, 1988, will be considered newly licensed as of the date of grant of such modification(s) and will not be grandfathered. Their licenses, valid until the expiration of their terms, will become subject to the new rules governing eligibility. Similarly, new GMRS systems licensed to non-individuals on or after July 31, 1987, will not be grandfathered. Their licenses, valid until the expiration of their terms, will not be renewed.

33. In addition, we have decided to permit non-individuals to file applications for new or substantially modified GMRS system licenses through December 31, 1988. Applications for new or substantially modified GMRS system licenses by non-individuals will not be accepted for filing on or after January 1, 1989. All applications for new or modified GMRS system licenses by non-individuals filed on or before December 31, 1988, will be processed. New or substantially modified GMRS system licenses granted to these non-individuals, however, will not be grandfathered. Thus, their licenses, valid until the expiration of their terms, will not be renewed.

34. It is currently our policy to routinely grant an application to reinstate an expired GMRS system license filed within six months of the date of expiration of that license, provided that it is accompanied by a GMRS system renewal application. We intend to continue to follow this policy for both grandfathered and individually licensed GMRS systems. For this reason we are codifying this "grace period" at new § 95.89(e). Applications for reinstatement of a GMRS system license filed more than six months after the expiration of that license must include an extraordinary showing to be granted.

35. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) we certified that these rules will not have a significant economic impact on a substantial number of small entities. Although these changes allow the personal radio community greater flexibility and convenience, they will not cause a significant economic impact on any small entities.

36. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden that the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

37. For the reasons stated above, *it is ordered* that effective January 1, 1989, Subparts A and E of Part 95 of the Commission's Rules, 47 CFR Subparts A and E, *are amended* as set forth below. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

38. *It is further ordered* that a copy of this *Report and Order* shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

39. *It is further ordered* that this proceeding *is terminated*.

List of Subjects in 47 CFR Part 95

Communications equipment, General Mobile radio.

Subparts A and E of Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Subpart A—General Mobile Radio Service (GMRS)

2. Paragraph (a) of § 95.1 is revised to read as follows:

§ 95.1 The General Mobile Radio Service (GMRS).

(a) The *GMRS* is a land mobile radio service available to persons for short-distance two-way communications to facilitate the activities of licensees and their immediate family members. Each licensee manages a system consisting of one or more stations.

* * * * *

3. Section 95.3 is revised to read as follows:

§ 95.3 License required.

Before any station transmits on any channel authorized in the GMRS from any *point* (a geographical location) within or over the territorial limits of any area where radio services are regulated by the FCC, the responsible party must obtain a *license* (a written authorization from the FCC for a GMRS system).

4. Section 95.5 is revised to read as follows:

§ 95.5 License eligibility.

An *individual* (one man or one woman) is eligible to obtain, renew and have modified a GMRS system license if that individual is 18 years or age or older and is not a representative of a foreign government. A *non-individual* (an entity other than an individual) is ineligible to obtain a new GMRS system license or to make a major modification to an existing GMRS system license (see § 95.71(e)). Certain non-individuals are

eligible to renew existing GMRS system license (see § 95.89 (c) and (d)).

5. Paragraph (a) of § 95.7 is revised to read as follows:

§ 95.7 Channel sharing.

(a) Channels or channel pairs are available to GMRS systems only on a shared basis and will not be assigned for the exclusive use of any licensee. All station operators and GMRS system licensees must cooperate in the selection and use of channels to reduce interference and to make the most effective use of the facilities.

* * * * *

6. In § 95.25, paragraph (d)(2)(ii) is revised, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows ((d) and (d)(2) introductory texts are republished):

§ 95.25 Land station description.

* * * * *

(d) A *small control station* is any control station which * * *

(2) *Is:*

* * * * *

(ii) North of Line A or east of Line C, and the station transmits with no more than 5 watts *ERP* (effective radiated power).

(e) A *small base station* is any base station that:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree or which it is mounted (see § 95.51); and

(2) Transmits with no more than 5 watts ERP.

7. Section 95.29 is revised to read as follows:

§ 95.29 Channels available.

(a) The licensee of the GMRS system must select the transmitting channel or channel pair for the stations in the GMRS system from the following lists:

(1) For a base station, mobile relay station, fixed station or mobile station, the following 462 *MHz* (megahertz) channels;

462.5500, 462.5750, 462.6000, 462.6250, 462.6500, 462.6750, 462.7000 and 462.7250.

(2) For a mobile station, control station or fixed station operated in the duplex mode, the following 467 MHz channels:

467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000, and 467.7250.

(3) As of December 31, 1993, the 467 MHz channels may be used only to transmit communications through a mobile relay station and for remotely controlling a mobile relay station. As of December 31, 1993, no station in a GMRS system may transmit communications *directly* (not through a mobile relay station) on the 467 MHz channels.

(b) The FCC will normally assign only one channel or one *channel pair* (one 462 MHz channel and its counterpart 5 MHz spaced 467 MHz channel) to a GMRS system comprised of stations intended for operation in the simplex mode. A second channel or channel pair will be assigned at the request of the applicant.

(c) The FCC will normally assign only one channel pair to a GMRS system comprised of stations intended for operation in the duplex mode. A second channel pair will be assigned at the request of the applicant.

(d) No GMRS system may be assigned more than two channels or channel pairs. Stations in certain GMRS systems may, however, also transmit on additional frequencies listed in the following paragraphs, in accord with the conditions specified.

(e) Mobile stations in a GMRS system licensed to an individual that is not specifically authorized for the 462.675 MHz/467.675 MHz channel pair may transmit on that channel pair with the following limitations:

(1) The communications must be for the purpose of soliciting or rendering assistance to a traveler, or for comunicating in an emergency pertaining to the immediate safety of life or the immediate protection of property; and

(2) The frequency 467.675 MHz may be used only for the purposes of accessing and communicating through a mobile relay station transmitting on 462.675 MHz.

(f) Except for a GMRS system licensed to a non-individual, a mobile station or a small base station operating in the simplex mode may transmit on the following 462 MHz interstitial channels:

462.5625, 462.5875, 462.6125, 462,6375, 462.6625, 462.6875 and 462.7125.

These channels may be used only under the following conditions:

(1) Only voice type emissions may be transmitted;

(2) The station does not transmit one-way pages; and

(3) The station transmits with no more than 5 watts ERP.

(g) Fixed stations in GMRS systems authorized before March 18, 1968, located 160 kilometers (100 miles) or more from the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 50 that were authorized to transmit on channels other than those listed in this section may continue to transmit on their originally assigned channels provided that they cause no interference to the operation of stations in any of the Part 90 private land mobile radio services.

8. Section 95.39 is revised to read as follows:

§ 95.39 Considerations near FCC monitoring facilities.

The FCC may impose additional restrictions on a land station in a GMRS system if it is at a point within 4.8 kilometers (3 miles) of an FCC monitoring facility and the station's transmissions degrade, obstruct, or repeatedly interrupt the operation of the equipment at the FCC monitoring facility. Before applying for license to put a land station at such a point, or before applying to change anything in a station already licensed for such a point, you should consult the FCC by writing to the Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

9. Paragraph (f) 95.51 is revised to read as follows:

§ 95.51 Antenna height.

* * * * *

(f) The antenna for a small base stations or for a small control station must not be more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted.

10. In § 9553, introductory paragraph (a), introductory paragraph (c), paragraph (d), introductory paragraph (f) and paragraph (f)(1) are revised, and a new paragraph (g) is added to read as follows:

§ 95.53 Mobile station communication points.

(a) A mobile station unit may transmit communications directly to:

* * * * *

(c) A mobile station unit authorized to transmit on a channel assigned to a mobile relay station in another GMRS system may transmit communications through that mobile relay station to:

* * * * *

(d) A mobile station unit in a GMRS system licensed to an individual authorized to transmit on a channel assigned to a mobile relay station in another GMRS systgem may transmit communications through that mobile relay station with the permission of the licensee of the other GMRS system to:

(1) Other mobile station units in the same GMRS system; and

(2) Mobile station units in another GMRS system having permission to

transmit communications through the mobile relay station.

* * * * *

(f) A mobile station unit must not transmit communications through a mobile relay station in another GMRS system, for retransmission to:

(1) Other mobile station units in its own GMRS system, unless:

(i) The mobile station units are in a GMRS system licensed to an individual; and

(ii) The licensee of the other GMRS system has given permission to use the mobile relay station for this purpose.

* * * * *

(g) A mobile station unit may transmit communications as a radio control link (see § 95.127) to a remotely controlled station.

11. Section 95.57 is amended by revising introductory paragraph (b) and paragraph (b)(1) to read as follows:

§ 95.57 Mobile relay station communication points.

* * * * *

(b) A mobile relay station in a GMRS system must not automatically retransmit communications between:

(1) A mobile station unit in any other GMRS system *and* another unit of the same mobile station, unless:

(i) The other GMRS system is licensed to an individual; and

(ii) The licensee of the GMRS system with the mobile relay station has given permission to use the mobile relay station for this purpose;

* * * * *

12. Paragraph (a) of § 95.71 is revised, and new paragraphs (e) and (f) are added to read as follows:

§ 95.71 Applying for a new or modified license.

(a) An individual applies for a license for a new GMRS system by filling out an application form and attaching all additional information required. An individual applies to modify a license for an existing GMRS system using the same form and in the same manner as applying for a new GMRS system. Individuals should submit their applications, together with the filing fee, to the Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373.

* * * * *

(e) A non-individual may not obtain a new GMRS system license. A non-individual that held a GMRS system license issued before July 31, 1987, may not make the following major modifications:

(1) Change the area of operation of the GMRS system;

(2) Add any stations to the GMRS system;

(3) Increase the number of units of the mobile station;

(4) Change the location of any land station in the GMRS system;

(5) Add one or more channels or channel pairs and/or change the assigned channel(s) or channel pair(s);

(6) Increase the transmitter power of an station in the GMRS system; or

(7) Increase the height of a station antenna in the GMRS system.

(f) A GMRS system licensee may notify the FCC or a change of name or a change of mailing address by sending a letter to the Federal Communications Commission, Gettysburg, PA 17326. This does not, however, permit GMRS system license transferability (see § 95.109). Nor does this suffice for corporate transfer of control—the provisions of § 95.111 apply instead.

13. Paragraph (c) of § 95.73 is revised to read as follows:

§ 95.73 System licensing.

* * * * *

(c) One form must be used to apply for the following stations in a GMRS system:

(1) The mobile station;

(2) All small base stations (see § 95.25(e));

(3) All small control stations (see § 95.25(d)); and

(4) All other land stations (at no more than 6 locations).

* * * * *

14. Paragraph (g), introductory paragraph (h), introductory paragraph (i), and paragraphs (j) and (n) of § 95.75 are revised to read as follows:

§ 95.75 Basic information.

* * * * *

(g) Transmitter power as follows:

(1) Transmitter output power in watts for all stations.

(2) Station ERP in watts for all stations other than mobile stations, small base stations and small control stations.

(h) Each land station point (except small base stations and small control stations):

* * * * *

(i) Each control point for each remotely controlled land station (see § 95.127), including small base stations and small control stations:

* * * * *

(j) Antenna height (see § 95.51) and antenna ground elevation for each land station, except for small base stations and small control stations;

* * * * *

(n) *Emission designator.* In the GMRS, emission F3E will be considered to include use of a *selective calling tone, or a tone or digitally operated squelch* (a tone code used to address a particular station) in conjunction with voice communications;

* * * * *

15. Section 95.77 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 95.77 Additional information for GMRS systems with land stations at four or more locations.

(a) An application for a new or modified GMRS system having land stations (except for small control stations or small base stations) at 4 or more locations must include a *functional system diagram* (a drawing showing details of the GMRS system, including the points between which communications with other stations in the system will be exchanged.)

(b) [Reserved]

* * * * *

16. Paragraph (b) of § 95.83 is revised to read as follows:

§ 95.83 Additional information for stations with antennas higher than normally allowed.

* * * * *

(b) Each base station and each control station with an antenna height greater than 6.1 meters (20 feet) must be separately identified on Form 574 (see §§ 95.25 (d) and (e) and 95.51(f)).

17. Section 95.89 is revised to read as follows:

§ 95.89 Renewing a license.

(a) The licensee of a GMRS system may apply to the FCC to renew the license for another term (see § 95.105) by filling out FCC Form 574–R (or FCC Form 405–A when the licensee has not gotten FCC Form 574–R within 30 days of the expiration of the license) and sending it to: Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 360559M, Pittsburgh, PA 15251–6559 (unless the licensee is a governmental entity, in which case the renewal application should be sent to Federal Communications Commission, Gettysburg, PA 17326).

(b) If the renewal application is sent to the FCC before the existing license term expires, the renewal application is timely filed. Except for GMRS systems whose licenses may not be renewed (see § 95.89 (c)(3) and (d)), stations in a

GMRS system whose application is timely filed may continue to transmit under the expired license until the FCC acts on the renewal application. A copy of the renewal application sent to the FCC must be kept in the GMRS system records (see § 95.113) until the renewed license, or notification of other FCC action, is received.

(c) A GMRS system licensed to a non-individual before July 31, 1987, is eligible to renew that license and all subsequent licenses based upon it if:

(1) The non-individual is:

(i) A partnership, and each partner is 18 years of age or older;

(ii) A corporation;

(iii) An association;

(iv) A state, territorial or local government unit; or

(v) Other legal entity;

(2) The non-individual is not:

(i) A foreign government;

(ii) A representative of a foreign government; or

(iii) A federal government agency; and

(3) The licensee has not been granted any of the modifications to its GMRS system license specified in § 95.71(e).

(d) A GMRS system licensed to a non-individual on or after July 31, 1987, may not be renewed.

(e) If a GMRS system license is allowed to expire, the former licensee may file an application to reinstate the expired license within six months after the expiration date. The application to reinstate must be accompanied by a renewal application. An expired GMRS system license for which a timely renewal application has not been filed is not valid. No station of such a GMRS system may transmit until the licensee has received a new GMRS system license based on the late-filed renewal application.

18. Paragraph (c)(2) of § 95.103 is revised to read as follows:

§ 95.103 Licensee duties.

* * * * *

(c) * * *

(2) If the status of a non-individual GMRS system licensee changes (for example, when a corporation is dissolved and a new corporation stands in its place, or a partnership becomes a corporation), the licensee must send the license to the FCC for cancellation (see § 95.117(b)).

* * * * *

§ 95.113 [Amended]

19. Paragraph (b)(2) of § 95.113 is removed and reserved.

§ 95.117 [Amended]

20. In § 95.117, the zip code in the introductory language of paragraph (b) is corrected to read 17326, paragraph (b)(2) is removed and reserved, and paragraph (c) is removed and reserved.

21. Section 95.121 is revised to read as follows:

§ 95.121 Transmitting channel.

Each station in a GMRS system must transmit only on the channel(s) or channel pair(s) (see §§ 95.7 and 95.29) printed on the license for that station, or authorized by these Rules for use by that station (see § 95.29 (e) and (f)).

22. Paragraph (b)(3) of § 97.129 is removed and reserved.

Also, paragraph (d) of § 95.129 is revised to read as follows:

§ 95.129 Station equipment.

* * * * *

(d) Every small base station and every small control station must use an antenna no more than 6.1 meters (20 feet) high (see § 95.25 (d) and (e)).

23. Paragraph (a) and the heading of § 95.131 are revised to read as follows:

§ 95.131 Servicing station transmitters.

(a) The GMRS system licensee shall be responsible for the proper operation of all stations in the GMRS system at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

* * * * *

24. Paragraph (b)(2) of § 95.133 is revised to read as follows:

§ 95.133 Modification to station transmitters.

* * * * *

(b) * * *

(2) In accordance with the original manufacturer's instructions.

25. In § 95.135, the heading and paragraph (c) are revised, and a new paragraph (e) is added to read as follows:

§ 95.135 Maximum authorized transmitting power.

* * * * *

(c) A small control station at a point north of Line A or east of Line C must transmit with no more than 5 watts ERP.

* * * * *

(e) A small base station must transmit with no more than 5 watts ERP.

26. Section 95.137 is revised to read as follows:

§ 95.137 Moving a small base station or a small control station.

(a) A small base station (see § 95.25(e)) or a small control station (see § 95.25(d)) in a GMRS system may be moved from the point specified on the license to any other point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) to show the new point within 30 days after the small base station or the small control station is moved.

27. Section 95.139 is revised to read as follows:

§ 95.139 Adding a small base station or a small control station.

(a) Except for a GMRS system licensed to a non-individual, one or more small base stations or a small control station may be added to a GMRS system at any point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) within 30 days after each small base station or small control station is added.

(c) Non-individual licensees may not add any small base station or small control stations to their GMRS systems.

28. Section 95.141 is revised to read as follows:

§ 95.141 Interconnection prohibited.

No station in a GMRS system may be interconnected to the public switched telephone network except as and in accordance with the requirements and restrictions applied to a wireline control link (see § 95.127).

29. The heading and introductory language of § 95.175 are revised to read as follows:

§ 95.175 Cooperation in sharing channels.

The station operator must cooperate in *sharing* each channel with station operators of other stations by:

* * * * *

30. Paragraphs (b), (d), (e), and (f) of § 95.179 are revised to read as follows:

§ 95.175 Individuals who may be station operators.

* * * * *

(b) In a GMRS system licensed to a non-individual, eligible station operators are limited to the persons listed in paragraph (b)(1) of this section with the conditions listed in paragraph (b)(2) of this section as follows:

(1) Only the following persons may be permitted to operate under the authority of a GMRS system licensed to a non-individual:

If the GMRS system licensee is—	These persons may be station operators—
(i) A partnership	Licensee's partners and employees.

If the GMRS system licensee is—	These persons may be station operators—
(ii) A corporation	Licensee's officers, directors, members and employees.
(iii) An association	Licensee's members and employees.
(iv) A governmental unit.	Licensee's employees.

(2) These persons may only communicate messages about the licensee's business activities. Employees of the licensee may communicate messages while acting within the scope of their employment, and only about the licensee's business activities.

* * * * *

(d) The station operator of a GMRS system licensed to an individual may be a station operator in any other GMRS system if he/she has permission from the licensee of the other GMRS system.

(e) The provisions of § 95.33 regarding cooperative use do not apply to or govern the authority of a GMRS licensee to designate station operators in accordance with the provisions of this section.

(f) Except for emergency communications (see § 95.143), only persons specified in paragraphs (a) through (d) may be GMRS station operators.

Subpart E—Technical Regulations

31. Section 95.621 is revised to read as follows:

§ 95.621 GMRS transmitter channel frequencies.

(a) The GMRS transmitter *channel frequencies* (reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance) are 462.5500, 462.5625, 462.5750, 462.5875, 462.6000, 462.6125, 462.6250, 462.6375, 462.6500, 462.6625, 462.6750, 462.6875, 462.7000, 462.7125, 462.7250, 467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000, and 467.7250.

Note.—Certain GMRS transmitter channel frequencies are authorized only for certain station classes and station locations. *See* Part 95, Subpart A.

(b) Each GMRS transmitter for mobile station, small base station and control station operation must be maintained within a frequency tolerance of 0.0005%. Each GMRS transmitter for base station (except small base), mobile relay station or fixed station operation must be maintained within a frequency tolerance of 0.00025%.

32. A new § 95.651 is added under Type Acceptance Requirements to read as follows:

§ 95.651 Frequency capability.

(a) No transmitter will be type accepted for use in the CB service if it is equipped with a frequency capability not listed in § 95.625, and no transmitter will be type accepted for use in the GMRS if it is equipped with a frequency capability not listed in § 95.621, unless such transmitter is also type accepted for use in another radio service for which the frequency is authorized and for which type acceptance is also required. (Transmitters with frequency capability for the Amateur Radio Services, Military Affiliate Radio System and Civil Air Patrol will not be type accepted.)

(b) All frequency determining circuitry (including crystals) and programming controls in each CB transmitter and in each GMRS transmitter must be internal to the transmitter and must not be accessible from the exterior of the transmitter operating panel or from the exterior of the transmitter enclosure.

(c) No add-on device, whether internal or external, the function of which is to extend the transmitting frequency capability of a CB transmitter beyond its original capability, shall be manufactured, sold or attached to any CB station transmitter.

§ 95.661 [Removed and Reserved]

33. Section 95.661 is removed and reserved.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 88-27111 Filed 11-23-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for king mackerel from the Atlantic migratory group in the exclusive economic zone (EEZ). The Secretary has determined that the commercial allocation for king mackerel from the Atlantic migratory group will be reached on November 22, 1988. This closure is necessary to protect the Atlantic king mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, November 23, 1988, until 12:00 p.m. (midnight), local time, March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, (53 FR 25611, July 8, 1988) implemented catch limits recommended by the Councils for the Atlantic migratory group of king mackerel for the current fishing year (April 1, 1988, through March 31, 1989). Those regulations set the commercial allocation for Atlantic migratory group king mackerel at 2.60 million pounds. By emergency interim rule (53 FR 45097, November 8, 1988), the Secretary increased the commercial allocation for Atlantic migratory group king mackerel to 2.866 million pounds. The emergency interim rule added to the commercial allocation the amount of recreationally caught king mackerel that had been sold and counted against the commercial allocation.

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial allocation, as amended, for the Atlantic migratory group of king mackerel will be reached on November 22, 1988. Hence, the commercial fishery for king mackerel from the Atlantic migratory group is closed effective 12:01 a.m., November 23, 1988, through March 31, 1989, the end of the fishing year.

Pursuant to § 642.29, for the remainder of the fishing year, the management area for the Atlantic migratory group of king mackerel extends from the Virginia/North Carolina border to a line extending directly east from the Volusia/Flagler County, Florida, boundary (29° 25'N. latitude).

During the closure, king mackerel from the Atlantic migratory group may not be harvested from or possessed in

the EEZ in the commercial fishery and such king mackerel taken in either the commercial or recreational fishery in the EEZ may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in Atlantic group king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: November 21, 1988.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27268 Filed 11-21-88; 4:57 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 227
Friday, November 25, 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

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. This action is initiated in accordance with the provisions of section 103A(a)(E) (i) through (iii) of the Agricultural Act of 1949, as amended, and will enhance the effectiveness of the upland cotton price suport program.

DATE: Comments must be received by December 27, 1988 in order to be assured of consideration.

ADDRESS: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major" It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these proposed amendments. Therefore, a new Regulatory Flexibility analysis has not been prepared.

It has been detemined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

Statutory Background

Section 103A(a)(5) (i) of the Agricultural Act of 1949, as amended (the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(i) A formula to define the prevailing world market price for cotton; and

(ii) A mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

The Act also provides that the prevailing world market price for cotton shall be adjusted to United States quality and location (the "adjusted world price"). The regulations which set forth the formula used to determine the prevailing world market price for cotton, the mechanism for periodically announcing such prevailing world market price and the procedure for adjusting the prevailing world market price to United States quality and location are found at 7 CFR Part 26.

Northern Europe Price

7 CFR 26.2 provides that the prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance and freight), northern Europe (hereinafter referred to as the "Northern Europe price"). If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

Only one daily price quotation for each growth has been available for purposes of calculating the Northern Europe price. Beginning with the 1988 marketing year, two daily price quotations will be available for each growth during a certain period. One price quotation will be for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and the other price quotation will be for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price"). Forward shipment prices will be introduced during the early months of each calendar year. From the time of introduction through July 31 of that year, both current shipment prices and forward shipment prices will be quoted daily. From August 1 until early the following calendar year when forward shipment prices are again introduced, only one daily price quotation for each growth will be available.

Accordingly, it is proposed that, in determining the Northern Europe price in accordance with § 26.2 during the period when both current shipment prices and forward shipment prices are quoted, the following procedure be implemented which provides for a gradual transition over a six-week period from using all current shipment prices to using all forward shipment prices.

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the following method for calculating the Northern Europe price shall be in effect:

Weeks 1 and 2: Northern Europe price = (2 × Northern Europe current price + Northern Europe forward price)/3.

Weeks 3 and 4: Northern Europe price = (Northern Europe current price + Northern Europe forward price)/2.

Weeks 5 and 6: Northern Europe price = (Northern Europe current price + 2 × Northern Europe forward price)/3.

During the period covering Week 7 through July 31 of that year, the Northern Europe price shall equal the Northern Europe forward price.

The week covering the period Friday through Thursday which includes April 15 is proposed as the period to begin the transition from using current shipment prices to using forward shipment prices because generally, by April, most U.S. cotton sales for export consist of new-crop cotton. Due to the often sizable differences between new and old crop price quotes, a six-week transition period is proposed in order to avoid a dramatic change in the adjusted world price that might occur with no transition period.

Adjusting the Northern Europe Price to Average Designated U.S. Spot Market Location

7 CFR 26.3(b)(1) provides that the adjusted world price for upland cotton shall equal the Northern Europe price, as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between: (i) The average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe; and (ii) the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

As with the determination of the Northern Europe price which is made under § 26.2, beginning with the 1988 marketing year, current shipment prices and forward shipment prices will be quoted during a certain period for U.S. Memphis territory and California/Arizona territory M 1 3/32 inch cotton C.I.F. northern Europe. Whenever both current shipment prices and forward shipment prices for U.S. Memphis territory and California/Arizona territory M 1 3/32 inch cotton C.I.F. northern Europe are available, it is proposed that current shipment prices be used to calculate the adjustment in the Northern Europe price to average designated U.S. spot market location. During the period when both current shipment prices and forward shipment prices are available, current shipment prices are more comparable to the U.S. spot market quotations.

Price quotations for June, July and August have not been taken into consideration in the calculation of the adjustment of the Northern Europe price to average designated U.S. spot market location because there were the months during which the northern Europe price quotations have historically been changed from old crop price quotations to new crop price quotations. The northern Europe price quotations for Memphis territory and California/Arizona territory have generally changed from old crop to new crop price quotations in the period immediately preceding August 1, the beginning of the new crop marketing year. U.S. designated spot market quotations are for current shipment of upland cotton. Thus, in order to ensure that the transition from old crop price quotations to new crop price quotations did not cause undue aberrations in the adjustment calculation, price data from weeks during which shipment periods may not have corresponded have been disregarded in calculating the adjustment in the Northern Europe price to average U.S. designated spot market location.

Use of current shipment prices in the calculation of the adjustment of the Northern Europe price to average designated U.S. spot market location during June and July should eliminate most of the transitional problems. However, there may be weeks at any time during the year when the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets may be substantially above or below actual transportation costs thereby resulting in a 52-week average that is not reflective of actual costs. Therefore, in determining the 52-week average it is proposed that any week in which the difference between the averages of the two prices is:

(1) More than 115 percent of the estimated actual costs of transporting U.S. cotton to northern Europe, then 115 percent of such estimated actual costs shall be substituted in lieu thereof for such week.

(2) Less then 85 percent of the estimated actual cost of transporting U.S. cotton to northern Europe, then 85 percent of such actual costs shall be substituted in lieu thereof for such week.

Northern Europe Coarse Count Price

7 CFR 26.3(e)(1) provides that the adjusted world price, as determined in accordance with paragraph (b) of § 26.3, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter, and to the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

7 CFR 26.3(e)(2) provides that the adjustment for upland cotton under the provisions of paragraph (e)(1) shall be determined by deducting from the adjusted world price: (i) The difference between the Northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of

the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus (ii) the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

7 CFR 26.3(e)(3) provides that, with respect to the determination of the Northern Europe coarse count price in accordance with paragraph (e)(2)(i) of § 26.3: (1) If no quotes are available for one or more days of the five-day period, the available quotes will be used; (ii) if quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and (iii) if quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with subparagraph (e)(2) for the latest available week will continue to be applicable.

As with the determination of the Northern Europe price which is made under § 26.2, beginning with the 1988 marketing year, current shipment prices and forward shipment prices will be quoted during a certain period for "coarse count" cotton C.I.F. northern Europe.

Accordingly, it is proposed that, in determining the Northern Europe coarse count price during the period when both current shipment prices and forward shipment prices are quoted, the following procedure be implemented which provides for a gradual transition over a six-week period from using all current shipment prices to using all forward shipment prices.

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available, the following method for calculating the Northern Europe coarse count price shall be in effect:

Weeks 1 and 2: Northern Europe coarse count price = (2 × Northern Europe coarse count current price + Northern Europe coarse count forward price)/3.

Weeks 3 and 4: Northern Europe coarse count price = (Northern Europe coarse count current price + Northern Europe coarse count forward price)/2.

Weeks 5 and 6: Northern Europe coarse count price = (Northern Europe coarse count current price + 2 × Northern Europe coarse count forward price)/3.

During the period covering Week 7 through July 31 of that year, the Northern Europe coarse count price shall equal the Northern Europe coarse count forward price.

The week covering the period Friday through Thursday which includes April 15 is proposed as the period to begin the transition from using current shipment prices to using forward shipment prices for the same reason as cited above for the determination of the Northern Europe price.

Interested persons are invited to submit written comments on the proposed rules changes. Comments must be received by December 27, 1988 in order to be assured of consideration.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Proposed Rule

Accordingly, it is proposed to amend the regulations found at 7 CFR Part 26, Subpart A as follows:

1. The authority citation for Part 26, Subpart A continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81-439, 639 Stat. 1031, as amended (7 U.S.C. 1444-1(a)(5)(E)).

2. Section 26.2 is revised to read as follows:

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture as follows:

(a) During the period when ony one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(b) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price") are available for the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

Weeks 1 and 2: Northern Europe price = (2 × Northern Europe current price + Northern Europe forward price)/3.

Weeks 3 and 4: Northern Europe price = (Northern Europe current price + Northern Europe forward price)/2.

Weeks 5 and 6: Northern Europe price = (Northern Europe current price + 2 × Northern Europe forward price)/3.

Weeks 7 through July 31: Northern Europe price = Northern Europe forward price.

(c) The prevailing world market price for upland cotton as determined in accordance with § 26.2 (a) or (b) shall hereinafter be referred to as the "Northern Europe price."

(d) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market

price shall be based upon the best available world price information, as determined by the Secretary.

3. Section 26.3(b)(1) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) * * *

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * *

4. Section 26.3(c) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(c) In determining the average difference in the 52-week period as provided in paragraph (b)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If Thursday price quotations are not available for either the northern Europe or the spot market quotations for any week, that we will not be taken into consideration.

* * * * *

5. Section 26.3(e)(2) is revised to read as follows:

* * * * *

(e) * * *

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(1) *Weeks 1 and 2:* Northern Europe coarse count price = (2 × Northern Europe coarse count current price + Northern Europe coarse count forward price)/3.

(2) *Weeks 3 and 4:* Northern Europe coarse count price = (Northern Europe coarse count current price + Northern Europe coarse count forward price)/2.

(3) *Weeks 5 and 6:* Northern Europe coarse count price = (Northern Europe coarse count current price + 2 × Northern Europe coarse count forward price)/3.

(4) *Week 7 through July 31:* The Northern Europe coarse count forward price, minus—

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

(iii) The result of the calculation as determined in accordance with § 26.3(e)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

* * * * *

Signed at Washington, D.C. on November 8, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-27258 Filed 11-23-88; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 354

Deposit Liabilities

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to create a new part in its regulations pursuant to section 3(*l*)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*)(5), which allows the FDIC to find and prescribe by regulation that certain liabilities of a bank are deposit liabilities by general usage. The proposed regulation would find that a bank's liability on a promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the insured bank as a means of obtaining funds is a deposit liability. There would, however, be a number of enumerated exceptions to the general proviso.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on business days.

DATES: Comments must be received by January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Katharine H. Haygood, Senior Attorney, Legal Division, (202) 898-3732, or Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank

Supervision, (202) 898–8906, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this Notice; and, consequently, no information has been submitted to the Office of Management and Budget for review.

Discussion

Over the last several years, the FDIC has become aware of the issuance by banks of instruments known generically as "deposit notes." Although the FDIC lacks complete information regarding these offerings, based on documentation reviewed and information received from the general public, when they first appeared they generally were treated as deposits by the issuing institutions. The instruments have usually had the following characteristics: A general creditor status with no default provisions, use of the term "deposit," a statement that the issuance is (or the issuer believes that it is) a deposit, payment of deposit insurance assessments, and inclusion of the liability as a deposit on the issuer's report of condition ("Call Report"). In such cases, the FDIC has taken the position that the issuances are deposits and, therefore, insured by the FDIC to the extent provided by law. In fact, such an issuance could be styled a certificate of deposit but has not been, apparently because of the desire to attract sources which normally buy "securities" and not "certificates of deposit." In addition to issuances considered to be deposits, there also have been instruments issued by banks (sometimes by the same issuer) that have not been considered by the issuer to be deposits (sometimes called "bank notes"). The basic provisions of both types of issuances appear to have been the same, except that the "non-deposit" type may or may not specifically use the term "deposit" and may have no statement regarding the issuance's status as a deposit. (Of course, in these latter cases, no deposit insurance assessments are paid, and the liability is shown as something other than a deposit on the bank's Call Report.) The "non-deposit" type of issuance recently appears to have gained prominence in the market.

There are a number of difficulties with this situation. First, there is a substantial danger of confusion. If the FDIC insures one liability which looks exactly like another uninsured liability except for its name and perhaps a simple statement as to whether the liability is a deposit, the consumer may be confused as to what type of liability he has purchased. We would note in that regard that many of these deposits may be broken down into small denominations; purchases are not necessarily in large denominations. Although there are, of course, arguments that purchasers of large instruments do not care about deposit insurance coverage, in the FDIC's experience such a lack of concern disappears when there is a bank failure. Moreover, in addition to deposit insurance, the status of the instruments is important to large and small depositors, and therefore to the FDIC, in states that provide a preference for depositors in the event a bank is closed and liquidated. Further, the FDIC believes that many of the liabilities are already within the definition of "deposit," and the FDIC would be required to insure them in the event of a bank failure. Yet these liabilities currently are not being assessed and, consequently, the issuers of such obligations are not paying their appropriate share into the deposit insurance fund.

Although the FDIC believes that many of the transactions in question fall within section 3(*1*)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*1*)(1), the FDIC has decided to use its power under section 3(*1*)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*1*)(5), to determine that certain liabilities, including deposit notes, are deposits by general usage. As required, the FDIC has consulted the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. Their comments and views concerning this proposed regulation have been considered in formulating the proposal.

As indicated above, this clarification of the definition of "deposit" has been occasioned by the issuance of instruments such as "deposit notes," but such issuances do not represent the only transactions which are now fulfilling the traditional function of deposits. Banking has changed substantially since the creation of the FDIC in 1933, and the FDIC is aware that banks are accepting liabilities other than traditional deposits for the purpose of obtaining funds to use in the banking business. This situation is largely a by-product of deregulation, with its increased competition, and of the many alternatives to depositing funds with banks which currently exist in the marketplace. The FDIC believes that the liabilities named in the proposed regulation, that is, notes, bonds, acknowledgements of advance, and similar liabilities which are undertaken as a means of obtaining funds, constitute deposits by general usage. As reported by the *Wall Street Journal*, "The market in these so-called deposit notes, which didn't exist before 1985, has mushroomed to almost $20 billion in less than two years and by year end could reach $30 billion, or 30% of all banking company bonds and notes expected to be issued this year * * *." Winkler, *Credit Gap Between Banks, Parent Firms Helps Create Big Market in Deposit Notes*, Wall St. J., Mar. 1, 1988, at 42, col. 4–6, 4. The current trend is likely to continue, and deposit notes are likely to become "an increasingly important bank funding source." Griep, *Deposit Note Issues Rise, Standard & Poor's Credit Week*, Oct. 5, 1987, at 14. As stated previously, there appears to be little distinction in the marketplace currently among the issuance calling themselves deposits and those not.

Although a deposit for reserve requirement purposes is not necessarily the same as a deposit for insurance and assessment purposes, most of the liabilities covered in the proposal are already deposits for reserve purposes (although they may be otherwise exempted from reserve requirements). *See, e.g.*, 12 CFR 204.2(f)(3), 204.9(a)(1). The FDIC has used the Federal Reserve's Regulation D, Reserve Requirements of Depository Institutions, 12 CFR Part 204, as a beginning point for the proposed regulation, largely because of the banking industry's familiarity with that regulation. The proposed regulation is not in any way intended to parallel Regulation D directly, however. The FDIC has, in addition, made accommodation for transactions which create deposits for insurance and assessment purposes but do not for reserve purposes; for instance, dealer reserves are deposits for the former but not the latter. In addition, we have allowed for items which are not classified as deposits under the Call Report instructions or in general practice; for instance, due bills are not currently deposits and do not become deposits under the proposal.

The structure of the proposal begins by determining that any liability of an insured bank on a promissory note, bond, acknowledgement of advance, or similar obligation issued or undertaken as a means of obtaining funds is a deposit. The regulation then specifies a series of exceptions to the broad pronouncement.

This regulatory definition of deposit is supplementary and complementary to that in the statute. Any transaction which is a deposit under the statutory provisions continues to be a deposit and

is not excluded by any of the regulatory provisions. Likewise, no transaction explicitly exempted from the assessment base by the statute itself is intended to be covered. *See, e.g.*, 12 U.S.C. 1817(a)(4) (deposits accumulated to pay personal loans). The proposed regulation would state that a liability of a bank on a promissory note, bond, acknowledgement of advance, or similar liability undertaken as a means of obtaining funds is a deposit. If a liability falls within the stated class, it may not be a deposit under the regulation if it is within one of the enumerated exemptions. For example, a bank which issues a cashier's check to purchase business equipment must consider that cashier's check to be a deposit; the cashier's check is a deposit under 12 U.S.C. 1813(*l*) and is not exempted under proposed § 354.2(a)(9). Further, there are many transactions in which there is no note, bond, acknowledgement of advance, or similar obligation involved; such transactions do not constitute deposits under this proposed regulation. Such transactions may occur in the context of conditional or endorser's liabilities, dividends declared but not yet paid, accounts payable, and overdrawn "due from" accounts.

Several of the exemptions relate to "government" transactions and certain interbank transactions. The first three exemptions, at proposed § 354.2(a) (1), (2), and (3), relate, respectively, to transactions with a Federal Reserve Bank, a bank's borrowing of federal funds for one business day or under a continuing contract, and a borrowing by a bank from another depository institution of immediately available funds maturing in more than one business day. These funds have not traditionally been considered to the deposits and continue to be considered to be borrowings for purposes of deposit insurance and assessments. Proposed § 354.2(a)(4) specifies that the Treasury Tax and Loan Transaction in which the bank puts funds collected on behalf of the Department of Treasury into a note ("Note Option") does not constitute a deposit for insurance or assessment purposes. Proposed § 354.2(a)(5) similarly would exempt advances either from a Federal Home Loan Bank or from the Federal Savings and Loan Insurance Corporation.

Several traditional banking transactions would be exempted from the definition of deposit. The proposal would exempt repurchase agreements (§ 354.2(a)(6)), banker's acceptances (§ 354.2(a)(8)), short positions (§ 354.2(a)(12)), due bills (§ 354.2(a)(13)), and retentions of risk in assets or pools of assets sold to third parties (§ 354.2(a)(10)). It should be noted that the proposal does not purport to cover matters such as the advisability of issuing thee or other liabilities mentioned not proper disclosures when so doing. Banks issuing such obligations should consider the adoption of disclosure guidelines to ensure compliance with the anti-fraud provisions of the federal securities laws; this proposal does not preclude consideration of formal disclosure policy by the bank regulatory agencies. Any of the liabilities which are issued and represented by mortgage-backed bonds, collateralized mortgage obligations, or other similar obligations backed by mortgages or other assets also would be exempted (§ 354.2(a)(11)). Finally, the proposed regulation, at § 354.2(a)(14), would exempt any such liabilities which represent the liability of an insured branch of a foreign bank to any other office, branch, agency, or wholly-owned subsidiary of the same foreign bank. This provision would be included here simply because such liabilities are neither insurable nor assessable. *See* 12 CFR 330.1(d)(3), 346.22.

More generally, the proposed regulation would allow one of the covered liabilities to be exempted if the liability is subordinated to the claims of all creditors, including depositors as well as general creditors (§ 354.2(a)(7)). It would provide an exemption for one of the designated liabilities when it is issued as a part of a transaction solely for the purchase or lease of business premises, equipment, supplies, or business services for the bank (§ 354.2(a)(9)). Comment is specifically requested on whether such liabilities issued to third parties not directly involved in the transaction should be included in the exemption.

The FDIC is interested in any comments on the proposal. Particularly, the FDIC invites comments on whether or not any of the liabilities defined as deposits under this regulation should or should not be considered deposits, as well as whether liabilities not covered should be. In general, we are also interested in comments concerning the usage of any such instruments. The FDIC anticipates that any final regulation on this subject would be effective immediately and would be applicable to all offerings in existence on the publication of the regulation in the **Federal Register**. Comment is specifically invited, however, on whether the effective date should be delayed in its application to any specific transactions.[1]

Initial Regulatory Flexibility Analysis

This action is being taken because the FDIC believes that the liabilities concerned are in fact deposits by general usage and that they should be assessed. The deposit insurance scheme depends on the fact that assessments are paid on total deposits held by insured banks, not just on deposits of less than $100,000 or on deposits which will be paid in full. The FDIC believes that the great prevalence of the offerings, which are for all practical purposes identical but which in some cases are called deposits and in others not, is highly misleading and detrimental to the banking system in general. Further, the FDIC believes that if a bank issuing these instruments fails, there is a strong likelihood that the FDIC will be required, because a predominance of bank failures are handled by purchase and assumption transactions in which all general liabilities are assumed, to accord these instruments the benefit of insurance coverage whether or not they currently are defined as deposits.

This action is based primarily on 12 U.S.C. 1813(*l*)(5) which allows for the inclusion of deposit liabilities not specifically enumerated in 12 U.S.C. 1813(*l*) (1) through (4). In addition, 12 U.S.C. 1819 (Tenth) provides a basis for this action. Since all insured banks will be affected by this regulation, all insured banks, whether they be large or small, will have the same responsibilities under the regulation and will pay assessments at the same assessment rate, although banks with more deposits will of course pay greater assessements. It is the FDIC's belief, however, that currently most small banks are not issuing deposit notes, although they may be issuing others of the liabilities proposed to be covered by this regulation. The regulation has no specific reporting requirements, other than those reporting requirements which are required for every deposit.

[1] For instances, proposed § 354.2(a)(7) requires that a liability be subordinated to all creditors, not just depositors, in order to be excluded from the deposit base. The FDIC is interested in whether (and in what quantity) there are existing liabilities which are subordinated only to depositors. Further, since some notes subordinated to depositors may have been incldued in the computation of an institution's capital and the proposal would count such liabilities and others not subordinated to all creditors as deposits, the FDIC is interested in receiving comment on whether such practices present significant operational questions. Finally, comment is invited on whether a phase-in of the regulation's applicability to liabilities subordinated only to depositors is warranted.

Specifically, the Call Report will be affected, but it will not include liabilities not already covered by existing portions of the report. No new skills or other activities will be required by the bank. Since the question of which liabilities constitute deposits for assessment purposes is uniform for insured banks, there is no possibility for a tiered approach, because payment is a fixed percentage of total deposits. Accordingly, because smaller banks have fewer total deposits, they pay less in deposit insurance assessments.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, and to the foregoing discussion, it has been determined that a cost-benefit analysis, including a small bank impact statement is not required.

List of Subjects in 12 CFR Part 354

Assessments, Banks, banking, Bank deposit insurance.

For the reasons stated in this notice, and pursuant to the FDIC's authority under section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5), the FDIC proposes to add 12 CFR Pat 354 to read as follows:

PART 354—DEPOSIT LIABILITIES

Sec.
354.1 Purpose.
354.2 Deposits by general usage.

Authority: 12 U.S.C. 1813, 1819 (Tenth).

§ 354.1 Purpose.

Section 3(*l*) (1) through (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*) (1) through (4), defines certain transactions to be deposits. In addition, section 3(*l*)(5) of the Federal Deposit Insurance Act, 1813(*l*)(5), gives the FDIC the power, after consultation with the Board of Governors of the Federal Reserve System and the Comptroller of the Currency, to find and prescribe by regulation that other obligations are deposit liabilities by general usage. This part finds and prescribes certain liabilities, unless excepted, to be deposits. Such liabilities must be direct obligations of the insured bank itself; obligations of a subsidiary or other affiliated entity of the insured bank are not deposits. Any deposit liability under this part exists as a supplement or complement to the statutory definitions, and no exceptions to this part can override the fact that a liability is a deposit under the statutory definitions. In addition, liabilities which are not deposits or are excluded from the assessment base because of a specific statutory exclusion, such as international banking facility deposits (*see* 12 U.S.C. 1813(*l*)(5)(B)), are not covered by this part.

§ 354.2 Deposits by general usage.

The following direct obligations of an insured bank are deposits by general usage for purposes of 12 U.S.C. 1813(*l*)(5):

(a) Any liability of the insured bank on any promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the insured bank as a means of obtaining funds, except any obligation that:

(1) Is issued or undertaken and held for the account of a Federal Reserve Bank, which arises from a borrowing of proceeds from a Federal Reserve Bank or a transfer of deposit credit in a Federal Reserve Bank, or which represents other transactions by the insured bank with a Federal Reserve Bank;

(2) Involves the insured bank's borrowing (federal funds purchased) of immediately available funds for one business day or under a continuing contract (as those terms are used in the Instructions to the Report of Condition), regardless of the nature of the contract or collateral, if any;

(3) Represents a borrowing by the insured bank for another depository institution of immediately available funds which matures in more than one business day (as those terms are used in the Instructions to the Report of Condition);

(4) Arises from election of the Note Option by the insured bank acting as a Treasury tax and loan depository pursuant to regulations of the Department of the Treasury;

(5) Arises from an advance of funds to the insured bank from a Federal Home Loan Bank or from the Federal Savings and Loan Insurance Corporation;

(6) Arises from a transfer of direct obligations of another entity that the insured bank is obligated to repurchase;

(7) Is subordinated to the claims of creditors, including depositors and general creditors;

(8) Arises from the creation by the insured bank of its banker's acceptance;

(9) Is issued as part of a transaction solely for the purchase or lease of the bank's own business premises, equipment, supplies, or business services;

(10) Arises from the retention by the insured bank of the risk in an asset or pool of assets sold to third parties;

(11) Is represented by mortgage-backed bonds, collateralized mortgage obligations, and other similar obligations backed by mortgages or other assets which are issued or undertaken by the insured bank;

(12) Arises from an obligation to purchase assets sold by the insured bank which it does not own (commonly known as "short positions");

(13) Arises from obligations resulting when the insured bank undertakes to sell or deliver securities to, or purchase securities for the account of, any customer (including another depository institution) and involving either the receipt of funds by the bank, regardless of the use of the proceeds, or a debit to the account of the customer before the securities are delivered (commonly known as "due bills"); or

(14) Is a liability of a United States branch of a foreign bank, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, to another office, branch, agency, or wholly owned subsidiary of the same foreign bank.

(b) [Reserved].

By Order of the Board of Directors. Dated at Washington, DC this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-27014 Filed 11-23-88; 8:45 am]

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VETERANS ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

38 CFR Part 17

Contract Medical Care; Non-Federal Hospital Payment/Reimbursement Rates

AGENCY: Veterans Administration and Department of Health and Human Services.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) and the Department of Health and Human Services (HHS) are jointly proposing to amend VA's medical series of regulations to carry out provisions of Pub. L. 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. This measure requires the VA to publish regulations in conjunction with the Department of Health and Human Services (HHS), describing the admission practices, payment methodology and amounts for non-Federal public and private hospital care provided at VA expense. Payment methodology and amounts will be based on rates allowed by Medicare under the Prospective Payment System for similar services to Medicare beneficiaries.

Separately, HHS is also publishing regulations to implement section 233 of Pub. L. 99–576 to reflect the requirement that in order to participate in the Medicare program, hospitals must agree to provide needed hospital care to veterans and receive payment in accordance with the methodology established in these regulations.

DATES: Comments must be received on or before December 27, 1988. Comments will be available for public inspection until January 4, 1989. It is proposed to make these regulations, if promulgated, effective 30 days after final approval.

ADDRESSES: Interested persons are invited to submit comments, suggestions or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Administrator of Veterans Affairs and the Secretary of Health and Human Services jointly propose to amend applicable regulations in 38 CFR Part 17 to implement Section 233 of Pub. L. 99–576 which requires that any hospital that agrees to participate in the Medicare program and accept Medicare patients must also agree to provide needed hospital care to VA patients and accept payment from VA in an amount determined by the Federal Government. Many hospitals already accept VA patients, but the law will help assure that they will continue to do so. The public law also requires the VA to publish the methodology the VA will use to pay for non-Federal hospital care provided to veterans.

In certain circumstances, the VA authorizes eligible veterans to receive hospital care in non-VA facilities. Under 38 CFR 17.50d, the VA may authorize this non-VA hospital care either prior to the date the veteran is first admitted to the non-VA facility or, in an emergency, within the first 72 hours of the veteran's hospitalization.

In circumstances where the VA has not been notified within 72 hours of the emergency admission, 38 U.S.C. 628 authorizes VA to pay the provider or to reimburse the veteran for the cost of hospital care for any condition of a veteran rated permanently and totally disabled because of a service-connected disability, or of the emergency admission of a veteran for treatment of a service-connected disability or for certain other conditions in very limited circumstances. This proposed regulation establishes the methodology the VA will use to compute amounts paid or reimbursed in these situations.

The VA historically has paid for hospital care furnished by community hospitals in the amount the non-Federal hospital certifies is the usual and customary charge to the community for the same service. In practice, the result has been that the VA has paid all billed charges in full.

The proposed regulation would carry out the policy set in Pub. L. 99–576 and establish that community hospitals would be reimbursed in a manner similar to the Medicare program using a methodology based on payment rates established by the Health Care Financing Administration (HCFA), Department of Health and Human Services, under its Diagnosis-Related Groups (DRG-based) prospective payment system. Payment would be determined by the HCFA PRICER for each hospital discharge. Under this payment methodology VA would use the most current Medicare Grouper, geometric mean length of stay, outlier thresholds, and DRG relative weighting factors (within the meaning of those terms as used in Medicare regulations). Medicare pays hospitals the "net" DRG rate, i.e., the DRG rate less Medicare deductible and co-insurance amounts. The regulation will make it clear that veterans will not be required to pay deductible or co-insurance amounts applicable to Medicare beneficiaries. Therefore, the VA will pay non-Federal hospitals the full DRG rate without regard to any other copayments or deductibles not applicable to the VA required by any other Federal law. Payment by VA on behalf of a veteran for care authorized by VA shall constitute payment in full. Acceptance of such monies by any provider or agent thereof shall constitute acceptance of payment in full and agreement not to charge a veteran or his or her health care insurer for any authorized inpatient services for which payment is made by the VA.

Pursuant to and in furtherance of the provisions of section 233 of Pub. L. 99–576, the proposed regulation would require Medicare participating hospitals to agree to accept veterans for care authorized by the VA as a condition of participation in the Medicare program. The VA shall report any instances of a non-Federal hospital's failure to accept veterans for care authorized by the VA to the Secretary of Health and Human Services. Periodic reports are required to the Congress of any such episodes.

In the case of a hospital having an established agreement or contract with the VA for the mutual use or exchange of use of specialized medical resources under 38 U.S.C. 5053, all services and supplies provided under such agreement or contract will be paid at rates in accordance with the terms of the agreement or contract.

If a non-Federal hospital transfers a veteran, the proposed regulation provides that the VA will pay the transferring hospital a "per diem" rate (i.e., the prospective payment rate divided by the average length of stay for the specific DRG into which the case falls) for each day the veteran was hospitalized. The per diem rate would be determined by the HCFA PRICER. Total payment to the transferring hospital would not exceed the full DRG rate.

"Outliers" are cases involving patients who experience extremely long hospital stays or incur very high costs compared to other patients in the same DRG. Outliers can be "day" outliers or "cost" outliers. The day outlier is a case involving a patient whose length of stay falls outside the "DRG length-of-stay outlier threshold" for the specific DRG, and a cost outlier involves a patient whose cost of care exceeds a cost outlier threshold. HCFA has established a different DRG length of stay outlier threshold for each DRG. Under this proposed regulation, a per diem payment for day outliers would be made in addition to the full DRG rate for each day of care beyond the DRG outlier threshold. The per diem rate would be determined by the HCFA PRICER. The VA proposes to compute "cost outlier cases" by using the HCFA PRICER. Hospitals would be paid either the cost outlier or day outlier, but not both. The outlier resulting in the greater payment will be used. This outlier payment policy corresponds to the outlier payment policy in effect for the Medicare program as set forth in Subpart F of 42 CFR Part 412.

The VA will pay hospitals and distinct part hospital units excluded by Medicare from the DRG-based prospective payment system, as well as hospitals that do not participate in Medicare on the basis of reasonable cost, which will be calculated as a percentage of billed charges. HCFA has determined that the national ratio of Medicare inpatient operating cost to

charges is 0.64. Hence, the VA will reimburse hospitals at rates that are 64 percent of billed charges where billed charges are reasonable, usual, customary and not in excess of rates charged the general public for similar services in the community (unless the VA has negotiated to pay a hospital at lower rates).

The DRG rate associated with each discharge and paid to hospitals serves as total payment for inpatient operating costs for all items and services furnished, other than physicians' services furnished to individual patients. These include operating costs for routine services, ancillary services, and intensive care type unit services. However, the Medicare DRG rate does not currently cover capital-related costs and the costs of direct medical education of health care professionals. Therefore, under the proposed regulation, the VA would pay hospitals, in addition to the full DRG rate, a fixed additional amount to cover capital-related and educational costs. A fixed percentage add-on will be applied in an effort to recognize the additional costs incurred by hospitals that are not included in the DRG rate and, at the same time, reduce to a minimum the administrative burden associated with the revised payment system. The amount for capital expense would be 9 percent of the DRG rate (including outlier payments) for each discharge. The 9 percent add-on reflects the best estimate of capital expenses expressed as a percentage of DRG and outlier payments.

The amount for direct medical education (i.e., graduate medical education, nursing education, and allied health education) will be based on the interns/residents ratio (IR) contained in the HCFA PRICER. For IR ratios above 0.25 the amount will be 12 percent of the DRG rate (including outlier payments) for each discharge. For IR ratios greater than 0 and less than or equal to .25, the amount will be 4 percent of the DRG rate (including outlier payments) for each discharge. These percentages are approximations of the costs incurred by hospitals with graduate medical education programs of various sizes. For providers with IR ratio of 0 but with a training program in nursing or an allied health profession, the amount will be 1 percent of the DRG rate (including outlier payments) for each discharge. The percentage adjustments for the costs of capital and medical education are based on data from Medicare cost reports for fiscal years beginning on or after October 1, 1985, and before September 30, 1986. These add-on rates will be reevaluated periodically based on data from later cost reporting periods. In the case of a transfer, the amount for each would be made according to the above methodology based on the per diem rate payment.

Care furnished by non-Federal hospitals in the Commonwealth of Puerto Rico and hospitals in New Jersey and Maryland would be paid by the VA using the same methodology contained in the HFCA PRICER.

This amendment to VA regulations is considered non-major under the criteria of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The VA estimates that adoption of these proposed regulations will have an annual effect on the economy of approximately $4 million.

The Administrator of Veterans Affairs and the Secretary of Health and Human Services certify that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is as follows: No new regulatory, paperwork, or administrative burdens are imposed. The VA, unlike Medicare, is not requiring health care facilities to have an agreement with Utilization and Quality Control Peer Review Organizations or to provide physician certification as to the continued need for hospitalization. Also, any monetary impact on small entities would be insignificant because of the minimal part of the overall operation and income which this activity represents to any one medical facility. The VA estimates that adoption of this amendment would affect payment and/or reimbursement made by the VA for only about 15,000 episodes of non-VA hospital care annually furnished nationwide to eligible veterans. When this number of admissions is spread across the nation's 7,000 hospitals, all of which are potential providers of such care, it is apparent that no single hospital will be significantly affected.

The Catalog of Federal Domestic Assistance Program numbers are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: March 18, 1988.

Thomas K. Turnage,

Administrator.

October 24, 1988.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

Title 38 CFR Part 17, MEDICAL, is proposed to be amended to read as follows:

PART 17—[AMENDED]

1. The authority citation for § 17.50e is revised to read as follows:

§ 17.50e Use of hospitals under sharing agreements.

* * * * *

(Authority: 38 U.S.C. 5053).

2. Section 17.50f is revised to read as follows:

§ 17.50f Payment for authorized public or private hospital care.

Payment for public or private hospital care authorized under § 17.50b of this part shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Health Care Financing Administration (HCFA) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in Subpart D or G of 42 CFR Part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, the VA shall pay an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or

distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the hospital will receive a payment for each patient day of care not to exceed the amount provided in paragraph (i) of this section.

(c) The VA shall pay the providing facility the full DRG-based rate or reasonable cost without regard to any copayments or deductible required by any Federal law that is not applicable to the VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, the VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with Subpart F of 42 CFR Part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital costs and educational costs, calculated by:

(1) Taking 9 percent of amounts payable under paragraphs (a) and (d) of his section for capital costs and 12 percent of amounts payable under paragraphs (a) and (d) of this section for education costs, if the IR ratio is above 0.25, 4 percent if the hospital's IR ration contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(2) In the case of a veteran who was transferred to another facility before completion of care, by taking 9 percent of amounts payable under paragraphs (b) and (d) of this section for capital costs and 12 percent of the amounts payable under paragraphs (b) and (d) of this section for education costs if the IR ratio is above 0.25, 4 percent if the hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(f) Payment shall be made only for those services authorized by the VA.

(g) Payments made in accordance with this section shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR Part 412) shall be paid only to the extent they are reasonable and not in excess of rates or fees the provider of services charges the general public for similar services in the community.

(i) Hospitals or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid 64 percent of the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(Authority: Sec. 233, Pub. L. 99–576)

3. Section 17.87 is revised to read as follows:

§ 17.87 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care, the expenses of which may be paid or reimbursed under § 17.80 of this part, the payment of such expenses shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made by using the HCFA PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in Subpart D or G of 42 CFR Part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, the VA shall pay an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the hospital will receive a payment for each patient day of care not to exceed that provided in paragraph (i) of this section.

(c) The VA shall pay the providing facility the full DRG-based rate without regard to any copayments or deductible required by any Federal law that is not applicable to the VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, the VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with Subpart F of 42 CFR Part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital costs and education costs, calculated by:

(1) Taking 9 percent of amounts payable under paragraphs (a) and (d) of this section for capital costs and 12 percent of amounts payable under paragraphs (a) and (d) of this section for education costs if the IR ratio is above 0.25; 4 percent if hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(2) In the case of a veteran who was transferred to another facility before completion of care, by taking 9 percent of amounts payable under paragraphs (b) and (d) of this section for capital costs and 12 percent of the amounts payable under paragraphs (b) and (d) of this section for education costs if the IR ratio is above 0.25; 4 percent if the hospital's IR ratio contained in the HCFA PRICER is greater than 0 and less than or equal to 0.25; and 1 percent if the IR ratio is 0 and the hospital has a training program in nursing or an allied health profession.

(f) Payment shall be made only for those services authorized by the VA.

(g) Payment by VA shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR Part 412) shall be paid or reimbursed only to the extent they are reasonable and not in excess of rates or fees the hospital or provider of services charges the general public for similar services in the community.

(i) Hospital or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid 64 percent of the billed charges that are reasonable, usual, customary, and not in excess of the rates or fees the hospital charges the general public for similar services in the community.

(Authority: Sec. 233, Pub. L. 99–576)

[FR Doc. 88–27167 Filed 11–23–88; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3471-2]

Approval and Promulgation of State Implementation Plans; Colorado; Stack Height Demonstration Analysis

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve the stack height demonstration analysis for the State of Colorado. All states were required to review their State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Colorado has satisfied its obligation under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations. The stack height regulations were challenged by the Natural Resource Defense Council and resulted in the remand of three provisions of the regulation to EPA for reconsideration. Because none of the sources in the demonstration analysis receive credit under the provisions remanded to EPA, EPA is going forth with this action. (EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052).)

DATES: Comments must be received on or before December 27, 1988.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the states' submittals are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1764, (FTS) 564-1764.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Since the July 8, 1985, promulgation, however, the EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

State Submittal

A. Demonstration Analysis

The Colorado stack height review was submitted on October 23, 1985, with subsequent submittals dated June 20, 1986, December 4, 1986, February 3, 1987, March 3, 1988, and March 15, 1988. Colorado has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the State's inventories above *de minimis* height and *de minimis* emission level are complete. EPA has carefully reviewed the State's findings that no emission limits have been affected by prohibited dispersion techniques. Summaries of the State's findings are presented in the chart below. EPA is acting on all of the sources identified in the chart below because it has found that none of the sources receive credit under the provisions remanded to EPA in *NRDC* v. *Thomas*. Detailed documentation of the State's findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

COLORADO

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2 [4] (t/yr)
City of Colo. Springs:					
Drake	7	76.3	2.5H [2]	107.5	7022
Nixon	1	140.3	2.5H [2]	154.8	10770
Public Service Co:					
Valmont	3	76.3	Grandfathered [1]	[1] (1964)	9461
	1	113.5	Grandfathered [1]	[1] (1924)	
	2	99	Grandfathered [1]	[1] (1937)	
Zuni	1	87	Grandfathered [1]	[1] (1949–50)	
	3	76.3	Grandfathered [1]	[1] (1948)	
Arapahoe	[5] 1	76.3	Grandfathered [1]	[1] (1950)	5886
	[6] 3	76.3	Grandfathered [1]	[1] (1951)	9513
Pawnee	1	167.8	2.5H [2]	196.8	28540
Commanche	1	152.5	2.5H [2]	160	18396
	2	152.5	2.5H [2]	180	18396
Cherokee	[5] 1	91.5	Grandfathered [1]	[1] (1957)	11984
	3	91.5	Grandfathered [1]	[1] (1962)	7674
	4	122.5	Grandfathered [1]	[1] (1968)	17870
Colorado State Hospital		71.7	Grandfathered [1]	[1] (1939)	
So. Colo. Power, Pueblo	1	77.8	Grandfathered [1]	[1] (1922)	
Platte River Power, Rawhide		152.5	H+1.5L [2]	161	
Ideal Basic (LaSalle Kilns)		75.6	H+1.5L [2]	98.8	
Colorado Ute:					
Craig	1	183	2.5H [2]	194.4	22043
	2	183	2.5H [2]	194.4	22043
	3	183	H+1.5L [2]	194.4	7534
Nucla	[5] 1	65.6	H+1.5L [2]	130.4	
Hayden	1	76.3	Grandfathered [1]	[1] (1965)	8898
	2	120.5	2.5H [2]	156.3	13644

Notes:
1. Documentation provided. Grandfathered means stack in existence in year indicated.
2. Documentation to show reliance provided.
3. Under construction.
4. Stacks with allowable emissions greater than 5000 t/yr.
5. Stack for boiler units 1 and 2.
6. Stack for boiler units 3 and 4.

B. Stack Height Regulation

EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052).

EPA Action

The stack height demonstration analysis submitted by Colorado has been determined to be acceptable. Therefore, EPA proposes to approve the stack height demonstration.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

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

Authority: 42 U.S.C. 7401–7642.

James J. Scherer,

Regional Administrator.

Date: March 31, 1988.

Editorial Note.— This document was received at the Office of the Federal Register November 21, 1988.

[FR Doc. 88–27202 Filed 11–23–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3481-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion and Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Brush Wellman, Incorporated, Elmore, Ohio, to exclude certain solid wastes contained in an on-site surface impoundment from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. In addition, this notice proposes to deny exclusion for wastes contained in two other on-site surface impoundments which are also subjects of the petition. These actions respond to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decisions are based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes, once they are disposed.

DATES: EPA is requesting public comments on today's proposed decisions and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 9, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed decisions and/or the model used in the petition evaluation by filing a request with Joseph S. Carra, whose address appears below, by December 12, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–BWPP–FFFFF".

Requests for a hearing should be addressed to Joseph S. Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Scott Maid, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4783.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the wastes, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned wastes and to determine the potential impact of the unregulated disposal of Brush Wellman's petitioned wastes on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste management scenario for the petitioned wastes, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking-water well, permeability of the aquifer, dispersivities, *etc.* If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very

different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Brush Wellman manages its petitioned wastes on site, ground-water monitoring data can be used to assess the effects (if any) of this waste on the underlying aquifer. Therefore, the Agency requested that Brush Wellman submit ground-water monitoring information in support of its petition.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

A. Brush Wellman, Incorporated, Elmore, Ohio

1. Petition for Exclusion

Brush Wellman, Incorporated (BW) produces beryllium, beryllium alloys, and beryllium products at its Elmore, Ohio facility for use in the defense and electronics industries. BW petitioned the Agency to exclude its wastewater treatment sludges, presently contained in three on-site surface impoundments. These sludges are listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalant chromium, nickel, and cyanide (complexed).

BW petitioned to exclude its wastes because it does not believe that these wastes meet the criteria for which they were listed. BW believes that listed metals of concern are not present at significant levels in the impounded sludges because its wastewater treatment plant and metal recovery system effectively remove most of the metals from its wastewater prior to the formation of sludges in the lagoon system. BW further believes that the wastes are not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 USC 6921(f), and 40 CFR 260.22(d) (2) through (4). Today's proposal to grant a portion of this petition and to deny a portion is the result of the Agency's evaluation of BW's petition.

2. Background

BW petitioned the Agency to exclude wastewater treatment sludges in three serial, on-site surface impoundments, referred to as the Triangular Lagoon, Lagoon #3, and Lagoon #6. In support of its petition, BW submitted (1) descriptions of the manufacturing and treatment processes in use at the facility, including schematic diagrams; (2) results of EP toxicity test analyses of the impoundment sludges for the EP toxic metals, beryllium, nickel, and cyanide; (3) total oil and grease test results; (4) lists of raw materials used in the processes at the facility that are influent to the waste stream; (5) results from total constituent analyses of wastewaters influent to the impoundments for the EP toxic metals, nickel, and cyanide; (6) results of BW's evaluation of the wastes for the hazardous waste characteristics; and (7) ground-water monitoring data collected from the monitoring wells established at this facility.

BW produces beryllium metal, beryllium oxide, and beryllium alloys (primarily beryllium copper). One product from this beryllium copper strip manufacturing operation is nickel-plated beryllium copper strip, which is used in the electrical and electronics industries. The beryllium copper strip is electrocleaned and rinsed, pickled in a sulfuric acid solution, rinsed, plated with nickel, rinsed again, dried with compressed air, and then oven baked to complete the process.

Cleaning rinse waters drain to a sump where they are neutralized with sodium hydroxide and discharged to the Triangular Lagoon. Plating rinse waters go to another sump and are pumped to a tank, where they are treated with sodium nitrite and sulfuric acid. Sodium hydroxide is then added to generate metal hydroxides, which are removed by pressure filtration and drummed for off-site landfill disposal as hazardous wastes. The filtered wastewater continues to a copper recovery system before discharge into the Triangular Lagoon. (The plating process wastewaters discharged to the impoundment system are considered to be themselves listed wastes because they are residues derived from the treatment of listed wastes, *i.e.*, the filtered F006 sludges, and contain the same hazardous constituents found in the F006 sludges. These wastewaters undergo additional treatment in the on-site lagoon system, and the treatment of these wastewaters leads to the deposition of additional F006 sludges in the lagoons. See 40 CFR § 261.3(c)(2)(i).) Spent caustic solutions at times are also discharged directly into the Triangular Lagoon. The nickel plating baths never enter the treatment system and are handled separately. Numerous other non-listed waste streams are routed to the Triangular Lagoon for treatment, including: Neutralized acid rinses from beryllium sheet and foil pickling, processing area floor rinses, scrubber discharges, water softener sludges, stormwater drainage, and beryllium alloy process rinse waters.

The Triangular Lagoon has a capacity of 450,000 gallons and is used for pH adjustment of influent wastewaters. Effluent moves from this impoundment to Lagoon #3, an impoundment of 3.4 million gallon capacity, where additional treatment promotes precipitation of metal hydroxides. Finally, wastewaters move to Lagoon #6, which has a capacity of 27 million gallons, for final polishing before the treated effluent is discharged to the Portage River via a National Pollution Discharge Elimination System (NPDES) permitted outfall. The sludges remaining in the three surface impoundments are the subject of this delisting petition.

For surface impoundments like BW's, petitioners are normally requested to divide the unit into four quadrants and randomly collect at least four full-depth core samples from each quadrant. The full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples (per impoundment). See "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

BW collected samples of sludge from each impoundment in 1984 in accordance with SW–846 guidance which provide for stratified random sampling. A grid was established using 30 ft. x 30 ft. sections. Complete depth core samples were taken of the sludges on July 18–19, 1984 at randomly selected

locations within each grid and kept refrigerated. The Triangular Lagoon samples were composited from four samples in each quadrant. The 1984 core samples from Lagoons #3 and #6 were not composited, however, and were evaluated as grab samples. Additional samples were collected from Lagoon #6 in November 1987. The 1987 samples from Lagoon #6 were composited from dredge samples randomly drawn from the sampling gird. These 1987 samples were taken with an Ekman dredge so that the sludge samples would not be diluted with excessive amounts of clay from the underlying soils.

The samples were analyzed for EP leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, nickel, cyanide, and beryllium. BW also provided analyses on additional drinking water parameters such as chloride, iron, and aluminum, which were not solicited as part of the delisting evaluation. The samples for Lagoon #6 only were evaluated for total oil and grease content and total cyanide content. BW claims that the samples collected from these impoundments are representative of any variation in these sludges because the samples were collected according to previously published guidance, and that the samples reflected all of the manufacturing and treatment processes on-going at BW's facility over time.

Samples were also taken of the electroplating process waste-waters influent to the impoundment system. Four 24-hour composites were collected of both the electroclean/bright dip rinse waters and the nickel plating rinse waters in July 1984. These wastewaters were evaluated for total constituent content (*i.e.*, mass of a particular constituent per unit mass of waste) of the EP toxic metals, nickel, and cyanide, and total oil and grease. BW claims that these samples represent the full range of variation observed for these wastewaters because they were collected in such a way as to ensure detection of any process variability in BW's processes. The Agency accepts BW's claims that the samples collected in support of its petition accurately reflect process variability at BW's facility.

3. Agency Analysis

BW used SW–846 Method 1310 to determine the leachable concentrations of the EP toxic metals, nickel, beryllium, and cyanide in the impoundment sludges. Maximum EP leachate analyses for the inorganic constituents in the impoundment sludges (in either grade or composite samples) are reported in Table 1. Detection limits identified below represent the lowest concentrations quantifiable by BW when using the appropriate analytical methods to analyze the petitioned sludges. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

TABLE 1.—MAXIMUM EP LEACHATE CONCENTRATIONS (mg/l) IMPOUNDMENT SLUDGES

Constituents	Triangular lagoon	Lagoon No. #3	Lagoon No. #6
Arsenic	ND (0.01)	ND (0.01)	ND (0.2)
Barium	0.99	0.77	0.53
Cadmium	0.046	ND (0.01)	ND (0.05)
Chromium	0.05	ND (0.04)	ND (0.05)
Lead	4.73	3.43	ND (0.2)
Mercury	0.0044	0.0047	ND (0.0003)
Selenium	ND (0.01)	ND (0.01)	ND (0.2)
Silver	ND (0.01)	ND (0.03)	ND (0.05)
Beryllium	11.2	11.2	0.72
Nickel	0.59	1.38	0.12
Cyanide	4.86	4.55	ND (1.02)

ND: Not detected. Denotes concentrations below the detection limits shown in parentheses.

Using SW–846 Method 3540, BW determined that the maximum oil and grease content of the Lagoon #6 samples was generally low (<0.1 percent); therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which would not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of the metals from the sample). See SW–846 Method 1330.

Samples from the Triangular Lagoon and Lagoon #3 were not evaluated for total oil and grease content. However, the Agency did not request BW to analyze the Triangular Lagoon and Lagoon #3 sludges for oil and grease content because evaluation of these sludges indicated that the sludges would not be excluded based on existing data.

BW used SW–846 Methods 7060 through 7760, and 9010 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in its electroplating process wastewaters. Maximum total constituent concentrations of the inorganic constituents in the wastewater are reported in Table 2. As in Table 1, the detection limits in Table 2 represent the lowest concentrations quantifiable by BW when using the appropriate analytical methods to analyze the waste.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/l) PROCESS WASTEWATERS

Constituents	Total constituent analyses
Arsenic	ND (0.01)
Barium	0.13
Cadmium	ND (0.05)
Chromium	0.045
Lead	ND (0.05)
Mercury	ND (0.0002)
Selenium	0.02
Silver	ND (0.015)
Nickel	1.96
Cyanide	0.04

ND: Not Detected. Denotes concentrations below the detection limits shown in parentheses.

Total constituent analyses for the EP toxic metals were not requested for any of the impounded sludges since the Agency's preliminary determination was that the petition failed to support an overall exclusion due to other factors. The Agency subsequently decided to consider and evaluate the sludges in each of BW'w lagoons on an individual basis.

The maximum concentration of total cyanide in the Lagoon #6 sludges, as reported in the initial petition submittal, was 1.02 mg/kg. Consequently, the Agency believes that the level of reactive cyanide in Lagoon #6 will not exceed the 250 ppm delisting level. Test results for total cyanide or sulfide content of Triangular Lagoon and Lagoon #3 sludges were not submitted to the Agency in the initial petition, so a determination of potential reactivity of cyanides or sulfides in these sludges could not be made. The Agency did not subsequently request this data because the Agency's evaluation indicated that the petition for these sludges failed to support an exclusion due to other factors.

BW certified that none of the sludge samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

BW submitted a signed certification statement stating that the maximum amount of sludge in the Triangular Lagoon is 14 tons, and that Lagoon #3 and Lagoon #6 are estimated to contain 120 and 160 tons of sludges, respectively. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate

estimated waste volume. EPA accepts BW's certified estimates for the sludge volumes of its three impoundments.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which today's proposed decisions are based. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency has evaluated the petitioned wastes using its vertical and horizontal spread (VHS) landfill model.[1] See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48896 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. The Agency requests comments on the use of the VHS model as applied to the evaluation of BW's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is expected to be the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance point concentrations.[2] Sorption and retardation and clogging, on the other hand, are expected to result in lower concentrations of the contaminants.[3] To some extent, the mechanisms of sorption, retardation, and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance point concentrations. EPA feels that delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in the curtailment of delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion. Furthermore, EPA belives that the VHS model is currently adequate to assess the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS model is conservative in all its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

Specifically, the Agency used the VHS model to evaluate the mobility of most of the hazardous inorganic constituents from BW's impounded sludges. The Agency's evaluation, using the estimated sludge volumes of 14, 120, and 160 tons in the Triangular Lagoon, Lagoon #3, Lagoon #6, respectively, and the maximum reported EP leachate concentrations of the inorganic constituents of each impounded sludge in the VHS model (from Table 1), generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, selenium, and silver) from BW's waste because they were not detected in the EP extract using the appropriate analytical methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (mg/l) IMPOUNDMENT SLUDGES

Constituents	Triangular lagoon	Lagoon No. 3	Lagoon No. 6	Regulatory Levels [1]
Barium	0.031	0.024	0.016	1.0
Cadmium	0.0014	ND	ND	0.01
Chromium	0.0015	ND	ND	0.05
Lead	0.15	0.11	ND	0.05
Mercury	0.00014	0.00015	ND	0.002
Beryllium	0.35	0.35	0.022	0.2
Nickel	0.018	0.043	0.0037	0.5
Cyanide	0.15	0.14	ND	0.7

ND: Not detected in the EP extract using appropriate analytical methods (see Table 1).

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The sludges from all three lagoons exhibited barium, cadmium, chromium, mercury, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. These constituents are, therefore, not of regulatory concern.

The evaluation of the Lagoon #6 sludge indicates that lead and beryllium concentrations at the compliance point are below their respective health-based levels. Because the maximum concentration of total cyanide in Lagoon #6 sludge does not exceed 1.02 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, International Agency Memorandum in the RCRA public docket. In the Triangular Lagoon and Lagoon #3 sludges, however, lead and beryllium levels at the compliance point exceed their respective health-based levels.

Ground-water monitoring data presented for this facility do not indicate the presence of any hazardous constituents in the ground water at levels exceeding their respective health-based levels. Data has been collected since 1981 from a ground-water monitoring system that is consistent with the applicable ground-water monitoring requirements of 40 CFR Part 265, Subpart F, as determined by EPA Region V.

[1] When the Agency believes that the surface impoundment model is sufficiently developed for delisting petition decision making, it intends to describe its parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the Federal Register. Also, the appropriateness of its use for each specific petition will be considered.

[2] Hydraulic head tends to force leachate into the aquifer, displacing ground water and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[3] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentrations of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

The Agency concluded, after reviewing BW's processes and raw materials list, that no other hazardous constituents are being used by BW, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of BW's waste. In addition, the Agency does not believe that BW's sludges exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that BW has failed to demonstrate that the sludges contained in the Triangular Lagoon and Lagoon #3 are not hazardous, since these sludges have been shown to have the potential to leach amounts of lead and beryllium sufficient to cause contamination at levels of concern. The Agency, therefore, proposes to deny Brush Wellman's petition for its wastewater treatment sludges contained in the Triangular Lagoon and Lagoon #3 at its Elmore, Ohio facility. Because these wastes are hazardous, they should continue to be subject to regulation under 40 CFR Parts 260 through 268, and to the permitting standards of 40 CFR Part 270.

The Agency believes that BW has successfully demonstrated that the sludges in Lagoon #6 are non-hazardous. The Agency believes that both the core and dredge samples from Lagoon #6 were collected in a manner consistent with Agency guidance. These samples represent the full range of variability (spatial and temporal) inherent in the wastes, produced by the manufacturing and treatment processes at this facility. Furthermore, ground-water monitoring data indicate that constituents from the petitioned waste in Lagoon #6 have not contaminated the ground water. The Agency, therefore, proposes to grant an exclusion to Brush Wellman, Incorporated, located in Elmore, Ohio, for wastewater treatment sludges contained in Lagoon #6, described in the petition as EPA Hazardous Waste No. F006.

If made final, the exclusion will apply only to the processes and volume of waste covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition (*i.e.*, sludges contained in Lagoon #6) would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant a partial exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat that waste as non-hazardous.

This proposal to deny an exclusion to the other wastes will not increase overall costs and economic impact of EPA's hazardous waste regulations since the facility has been obligated to manage these wastes as hazardous before and during the Agency's evaluation. This rule will not change this. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: November 15, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 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), 6921, and 6922).

2. In Table 1 of Appendix IX, and the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Brush Wellman, Incorporated.	Elmore, Ohio....	Wastewater treatment sludges generated from electroplating operations (EPA Hazardous Waste No. F006) and contained in Lagoon #6. This exclusion does not cover electroplating sludges contained in Brush Wellman's Triangular Lagoon and Lagoon #3.
•	•	•

[FR Doc. 88-27204 Filed 11-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 271 and 272

[FRL-3480-8]

Utah; Final Authorization of State Hazardous Waste Mangement Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking on application of Utah for program revisions and public comment period.

SUMMARY: Utah has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Utah's application and has made a decision, subject to public review and comment, that Utah's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Utah's hazardous waste program revisions. Utah's application for program revision is available for public review and comment.

DATES: Comments on Utah's program revision application must be received by the close of business on December 27, 1988.

ADDRESSES: Copies of Utah's program revision application are available during 8:30 a.m.–5:00 p.m. at the following addresses for inspection and copying: Utah Bureau of Solid and Hazardous Waste, P.O. Box 16690, 288 North 1460 West, Salt Lake City, UT 84116–0690; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382–5926; U.S. EPA Region VIII, Library, 999 18th Street, Denver, CO 80202–2405, Phone: 303/293–1444. Written comments should be sent to Charles Mooar at the address below.

FOR FURTHER INFORMATION CONTACT: Charles Mooar, Chief, RCRA Management Branch, 999 18th Street, Denver, CO 80202–2405, Phone 303/293–7540.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260 through 266 and 270.

B. Utah

Utah initially received final authorization on October 24, 1984. On October 29, 1986, Utah submitted a program revision application for additional program approvals. Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed Utah's application, and has made a decision, subject to public review and comment, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Utah final authorization for the additional program modifications. The public may submit written comments on EPA's decision up until (submit date at least 30 calendar days after publication in FR). Copies of Utah's application for program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Utah's program revisions shall become effective when the Administrator's final approval is published in the **Federal Register**. If adverse comment pertaining to Utah's program revisions discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final rulemaking approving the modifications, which would include appropriate comment response.

Utah is today seeking authority to administer all provisions, both HSWA and non-HSWA, through the August 20, 1985, **Federal Register**. These provisions are listed below:

Non-HSWA Provisions—Federal and State:		
1. Listing of Warfarin and Zinc Phosphide	49 FR 19922	09/24/86
2. State Availability of Information	HSWA 3006(f)	07/01/88
3. Exclusion of household waste	49 FR 44980	09/24/88
4. Applicability-Interim Status Stds	49 FR 46095	09/24/88
5. Corrections to Test Methods Manual	49 FR 47391	09/24/88
6. Satellite Accumulation	49 FR 49571	09/24/88
7. Redefinition of Solid Waste	50 FR 614	09/24/88
8. Int. status stds. for landfills and surface impoundments	50 FR 16044	09/24/88
HSWA Provisions—Federal and State:		
1. Dioxin Listing and Management Stds	50 FR 1978	09/24/88
2. Paint Filter Test	50 FR 18370	09/24/88
3. Small Quantity Generators	50 FR 28702	09/24/88
4. Delisting	50 FR 28702	09/24/88
5. Household Waste	50 FR 28702	09/24/88
6. Waste Minimization	50 FR 28702	09/24/88
7. Location Standards	50 FR 28702	09/24/88

8. Liquids in landfills	50 FR 28702	09/24/88
9. Dust supression	50 FR 28702	09/24/88
10. Double liners; landfills, surface impoundments, waste piles	50 FR 28702	09/24/88
11. Groundwater monitoring, landfills, surface impds., waste piles	50 FR 28702	09/24/88
12. Cement kilns; hazardous waste burning prohibition	50 FR 28702	09/24/88
13. Fuel Labeling	50 FR 28702	09/24/88
14. Corrective Action	50 FR 28702	09/24/88
15. Pre-construction ban	50 FR 28702	09/24/88
16. Permit Life	50 FR 28702	09/24/88
17. Omnibus Permit Provision	50 FR 28072	09/24/88
18. Interim Status: Termination	50 FR 28072	09/24/88
19. Research and Development Permits	50 FR 28072	09/24/88
20. Hazardous waste exports	50 FR 28072	09/24/88
21. Exposure Information	50 FR 28072	09/24/88

Utah is also applying for authority to regulate the hazardous components of radioactive mixed waste.

Major Utah Statutory Citation Broader in Scope Than the Federal Program

The State statute defines "high level" nuclear waste to include spent reactor fuel assemblies, nuclear reactor components and both solid and liquid wastes from fuel reprocessing and defense-related wastes. High level nuclear waste does not include medical or institutional wastes or naturally occurring radioactive materials or mill tailings. It is prohibited to place these wastes anywhere in the State unless the County Commission and State Legislature approve such placement. "High level" nuclear waste is not specifically addressed under Subtitle C of RCRA.

According to the State statute, the State's Hazardous Waste Committee is required to develop a siting plan for hazardous waste treatment, storage, and disposal facilities, as well as to certify such sites as suitable for construction and operation. This action is not specifically required under the Federal program.

The State statute for the creation of the Hazardous Waste Facilities Authority, made up of ten members appointed by the Governor, with the task of managing the State's interests in the transport, storage and disposal of hazardous waste when private industry is not adequately doing the job. This Authority is not specifically required under the Federal program.

Pursuant to section 3006(g)(1), and in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA has the authority to issue or deny permits or those portions of permits to facilities in Utah for the requirements and prohibitions in or stemming from HSWA. The State will have this authority after it is authorized.

EPA and the State of Utah utilize a joint permitting process for isssuing RCRA permits in the State of Utah. This joint permitting process is established in accordance with section 3006(c) of RCRA.

The State will administer all permits issued either by EPA or by the State, except that EPA will administer RCRA permits or portions of permits it has issued to facilities in the State to the extent that those permits or portions of permits contain prohibitions and requirements pursuant to HSWA that the State program is not authorized to administer. EPA will rely on the State to enforce those terms and conditions in jointly issued permits subject to the terms of the Utah/EPA Hazardous Waste Program Enforcement Agreement.

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require compliance with the amended State Program, the Utah Solid and Hazardous Waste Act, 26–14–1 through 26–14–23 of the Utah Code Annotated, the Utah Hazardous Waste Management Regulations and the Utah Rulemaking Act, 63–46a–15 of the Utah Code Annotated. The State agrees to modify or revoke and reissue these State permits as RCRA permits, if necessary, within 1 year of the date of this Agreement.

Utah is not authorized by the Federal Government to operate the RCRA program on Indian lands and this authority will remain with EPA.

C. Codification in Part 272

EPA uses Part 272 for codification of the decision to authorize Utah's program and for incorporation by reference of those provisions of Utah's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is today proposing to amend Part 272, TT.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Purusant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entitites. This rule, therefore, doe not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Parts 271 and 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1988.

James J. Scherer,

Regional Administrator.

[FR Doc. 88–27203 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[Docket No. 88–527; FCC 88–354; RM–6274 and RM–6275]

Amateur Radio Service; Proposed Amendment of the Amateur Service Rules To Expand the 6 Meter Repeater Subband

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to expand the present 6 meter repeater subband from 52–54 MHz to 51–54 MHz. The rule proposal would determine the extent of the demand for such expansion. Further, the proposal seeks to elicit responses concerning the effect the expansion would have on the other users of the segment 51.0–52.0 MHz.

DATES: Interested persons may file comments on or before January 27, 1989, and reply comments on or before February 28, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted October 31, 1988, and released November 14, 1988. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, 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 Notice of Proposed Rule Making, including the proposed rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The proposal to expand the 6 meter repeater subband to 51–54 MHz responds to petitions for rule making RM–6274 and RM–6275 filed by The Southern California Six Meter Club (SCSMC) and The Southern California Repeater and Remote Base Association (SCRRBA), respectively. Both organizations request the expansion of the 6 meter repeater subband in order to accommodate a growing number of amateur stations in repeater operation in the 6 meter band.

2. The requested expansion would provide additional flexibility in the use of the 6 meter band. It is noted, however, that the meter band utilization plan of The American Radio League, Inc. (ARRL) recommends that the segment 51.1–52.0 MHz be utilized for emission F3E simplex transmissions. In addition, the segment 51.0–51.1 MHz is designated as a "Pacific DX Window" for the 6 meter band where operators in I.T.U. Regions 2 and 3 can intercommunicate, depending upon radio frequency propagation conditions.

3. Existing users of the 51.0–52.0 MHz segment, in particular, are invited to comment on the need for expansion of the 6 meter repeater subband and to state the effect, if any, it would have on their current operations.

4. The proposed rule is set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. *See* 47 CFR 97.3(b). Furher, it is not expected that a new use of one megahertz of spectrum in a band already assigned to the amateur service would result in any significant increase in production of amateur equipment of manufacturers.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. This Notice of Proposed Rule Making and the proposed rule amendment are issued under the authority of sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r).

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 27, 1989, and reply comments on or before February 28, 1989. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

10. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies, Repeaters.

Donna R. Searcy,

Secretary.

Proposed Rule

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 would continue to read, as follows:

Authority: 48 Stat. 1066, 1982, as amended; 47 U.S.C. 154, 303, Interpret or apply 48 Stat. 1064–1068, 1031–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.85(h) would be revised to read as follows:

§ 97.85 Repeater operation.

* * * * *

(h) All amateur frequency bands above 29.5 MHz are available for repeater operation, except 50.0–51.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 220.0–220.5 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz. Both the input (receiving) and output (transmitting) frequency of a station in repeater operation shall be frequencies available for repeater operation.

[FR Doc. 88–27112 Filed 11–23–88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: Revision of list of performance review board positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525, (202) 634–9263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members on the ACTION Performance Review Board:

1. Assistant Director for VISTA/Student Community Service Program, Chairman.
2. Associate Director for Domestic and Anti-Poverty Operations.
3. Associate Director, Office of Management and Budget.
4. Executive Officer, Office of the Director.
5. Deputy General Counsel.
6. Assistant Director for Policy and Research.
7. Director, Special Program Operations.

Issued in Washington, DC, on November 21, 1988.

Sincerely,
Donna M. Alvarado,
Director, ACTION.

[FR Doc. 88–27192 Filed 11–23–88; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989—Crop Peanuts; National Poundage Quota

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determination.

SUMMARY: This notice sets forth a proposed determination of the national poundage quota for the 1989 crop of quota peanuts. This determination is necessary to satisfy statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the 1938 Act").

DATE: To be assured of consideration, written comments with respect to the proposed determination must be received by December 7, 1988.

ADDRESS: Send comments to Mr. Bruce R. Weber, Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741–South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3734–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The preliminary regulatory impact analysis describing the impact of implementing this determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions; or, (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

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

The determination of the national poundage quota for the 1989 crop of peanuts is required to be made by the Secretary of Agriculture no later than December 15, 1988. In order to permit consideration of comments received and announcement of the final determination by that date, the comment period on the proposed determination will close on December 5, 1988.

Section 358(q)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1986 through 1990 marketing years be established by the Secretary at a level that is equal to the quantity of peanuts in tons that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses. Section 358(q)(1) further provides that the national poundage quota for any such marketing year shall not be less than 1,100,000 short tons. The marketing year for the 1989 crop of peanuts runs from August 1, 1989 through July 31, 1990.

Poundage quotas for the 1986–1990 crops of peanuts were approved by producers in a mail ballot held January 27–31, 1986.

It is proposed that the national poundage quota for the marketing year for the 1989 crop shall be 1,440,000 tons based on the following data:

U.S. PEANUTS: ESTIMATED DOMESTIC EDIBLE USE FOR THE 1989–90 MARKETING YEAR

[Assumes "most likely" U.S. weather]

Item	Short tons
Domestic edible:	
Domestic food	1,078,500
On farm and local sales	20,000
Subtotal	1,098,500
Seed	102,500
Related use:	
Crushing residual	168,000
Shrinkage	49,500
Seg. 2 and 3 transfers	20,000
Product exports	1,500
Subtotal	239,000
Total	1,440,000

The domestic food use estimate is based on the data series published in the *Oil Crops Situation and Outlook*, Economic Research Service (ERS). Peanuts used to produce exported peanut butter are included in the domestic food use data series published by ERS. However, the domestic food use estimate set forth in the preceding table excludes the peanut equivalent of estimated U.S. exports of peanut butter because such products are not consumed in the U.S. Because the domestic food data does not include farm use, local sales, or seed and related uses, estimates of these have been separately set out. The estimates for farm use and local sales were derived by comparing historical data showing the difference between total production and quantities of peanuts that were inspected. Those estimates were further reduced by estimating, based on historical data, actual on-farm seed use (since such seed use is included in the overall seed estimate which covers both off-farm and on-farm seed use). Seed use measures the quantity of peanuts expected to be needed to plant the succeeding (1990) crop.

The overall seed-use estimate (102,500 tons) was derived from survey data. The crushing residual is the inedible portion of farmer stock peanuts separated from the edible kernels during milling. Shrinkage is the weight loss occurring between harvest and production of the product. Both the shrinkage and crushing residual estimates were derived from inspection data. Net exports of peanut products to Canada and Mexico were included in the calculation as such products cannot, under 7 CFR Part 1446, be produced from additional peanuts. Accordingly, such products presumably are made from quota peanuts. Also, an estimate was added for the quantity of peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. These peanuts are Segregation 2 and 3 peanuts.

Proposed Determination

Accordingly, it is proposed that the national poundage quota for 1989-crop peanuts shall be 1,440,000 short tons.

Authority: Sec. 358, 55 Stat. 88, as amended (7 U.S.C. 1358).

Signed at Washington, DC on November 18, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–27175 Filed 11–21–88; 11:35 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–86]

Foreign-Trade Zone 66, Wilmington, NC; Withdrawal of Application for Proposed Subzone for the American Hoist and Derrick Co;

Notice is hereby given of the withdrawal of the application submitted by the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone 66, for a subzone at the crane manufacturing plant of American Hoist and Derrick Company (Amhoist) in Wilmington, North Carolina. The application was filed on July 14, 1986 (51 FR 26729, 7/25/86). It was opposed by the domestic steel industry.

The case has been withdrawn without prejudice and FTZ Board Docket 24–86 is closed.

Dated: November 18, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–27244 Filed 11–23–1988; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–570–801]

Postponement of Final Antidumping Duty Determination; Headwear From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 9, 1988, we received a request from counsel for the respondents China National Light Industrial Products Import and Export Corporation and China Arts & Crafts Import and Export Corporation and their former branches in the antidumping duty investigation of headwear from the People's Republic of China that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of headwear from the People's Republic of China have been made at less than fair value until not later than March 17, 1989.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1130 or 377–2923.

SUPPLEMENTARY INFORMATION: On June 21, 1988, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673 a(b)), an antidumping duty investigation to determine whether imports of headwear from the People's Republic of China are being, or are likely to be sold at less than fair value (50 FR 39743). We published our preliminary affirmative determination on November 8, 1988 (53 FR 45138). this notice stated that we would issue a final determination on or before January 16, 1989. On November 9, 1988, counsel for the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. These respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than March 17, 1989.

In the preliminary determination we stated that a public hearing would be held December 30, 1988. The public hearing has now been moved to January 13, 1989 at 9:30 a.m. at the United States

Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary by January 6, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27243 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 23, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 32090) the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (51 FR 30686, August 28, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of petroleum wax candles. Petroleum wax candles are currently classifiable under item 755.25 of the Tariff Schedules of the United States Annotated and under Harmonized Tariff System item number 3406.00.00.

The review covers one third-country reseller, P&C Enterprises (Hong Kong), of petroleum wax candles from the People's Republic of China and the period February 19, 1986 through July 31, 1987.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary results and we determine that a margin of 54.21 percent exists for P&C Enterprises (Hong Kong) for the period February 19, 1986 through July 31, 1987.

The Department will issue appraisement instructions directly to the Customs Service. The Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for P&C Enterprises (Hong Kong) based on the above margin, as provided in section 751(a)(1) of the Tariff Act. For any shipments from the remaining known producers and/or exporters not covered by this review the cash deposit will continue to be at the rate published in the antidumping duty order (51 FR 30687, August 28, 1986). For any shipments from a new producer and/or exporter not covered by this administrative review, whose first shipments of petroleum wax candles occurred after July 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 54.21 percent shall be required.

This deposit requirement is effective for all shipments of Chinese petroleum wax candles entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This adminstrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 352.53a of the Commerce Regulations (19 CFR 353.53a).

Date: November 16, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-27242 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Finding of Conformance.

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

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Panama has submitted information which demonstrates that Panama and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Panama may be imported into the United States.

DATES: This finding is effective November 23, 1988, and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213-514-6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are comparable to that of the United States.

The Government of Panama has submitted its laws for the protection of

marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpoise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Panama has met all of the current requirements for importing yellowfin tuna into the United States.

Dated: November 21, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-27220 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Finding of Conformance

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

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for fisheries, NMFS, announces that the Government of Venezuela has submitted information which demonstrates that Venezuela and the tuna purse seine fishing vessels under its control are in conformance with U.S. marine mammal regulations. As a result of this finding, yellowfin tuna from Venezuela may be imported into the United States.

DATES: This finding is effective November 23, 1988, and remains in effect until December 31, 1989.

ADDRESS: A copy of the administrative record for this determination may be obtained, at cost, by contacting the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS at 213-514-6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are capable to that of the United States.

The Government of Venezuela has submitted its laws for the protection of marine mammals involved in the tuna purse seine fishery and the required information relating to the tuna vessels fishing under its laws and marine mammal mortality performance of those vessels. The Assistant Administrator finds, after consultation with the Department of State, that the laws and program for the protection of porpoise are comparable to those of the United States (50 CFR 216.24). Data relating to fleet performance during 1986, 1987 and part of 1988, were prepared by the Inter-American Tropical Tuna Commission (IATTC) based on reports from observers placed aboard fishing vessels by the IATTC. The Assistant Administrator accepts these data as accurate and meet the requirements of the interim rule.

The interim rule does not require that a nation's fleet porpoise mortality performance meet either the negative trend test or the comparability test for 1988. Therefore, the Government of Venezuela has met all of the current requirements for importing yellowfin tuna into the United States.

Date: November 21, 1988.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 88-27221 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic and Gulf of Mexico Fishery Management Councils; Meeting Notice Clarification

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

This notice clarifies the dates for the public meetings of the South Atlantic and Gulf of Mexico Fishery Management Councils as published previously in the **Federal Register** (53 FR 44512, November 3, 1988). The South Atlantic Fishery Management Council and its Committees will convene a joint public meeting with the Gulf of Mexico Fishery Management Council and its Committees on November 28, 1988, and will adjourn December 2, 1988, at the Omni Hotel at Charleston Place, 130 Market Street, Charleston, SC, to discuss king and Spanish mackerel, spiny lobster, and other issues of interest to the Councils.

All other information remains unchanged. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: November 21, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-27270 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the quota Status Reports posed on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current aggregate limit, and certain limits within the aggregate are being increased, variously, for swing, carryforward and recrediting of carryforward applied but not used.

A description of the textiles and apparel categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49466, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on November 21, 1988, the directive of December 28, 1987 is being amended to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted 12-month limit [1]
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	90,172,602 square yards equivalent.
Group I: 200–239, 300–369, 600–670 and 800–899 as a group.	87,075,756 square yards equivalent.
Sublevels in Group I:	
333/334/335/833/834/835.	165,685 dozen of which not more than 90,047 dozen shall be in Cagegories 333/335/833/835
338	205,649 dozen.
339	887,637 dozen.
340	187,061 dozen.
341	120,572 dozen.
345	35,982 dozen.
347/348/847	496,270 dozen.
633/634/635	318,824 dozen.
640	73,557 dozen.
641/840	126,425 dozen.
642/842	60,255 dozen.
645/646	172,425 dozen.
647/748	347,836 dozen.
845/846	215,070 dozen.
Group II: 400–469, as a group.	1,751,170 square yards equivalent.
Sublevel in Group II: 445/446.	81,630 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–27210 Filed 11–23–88;845am]

BILLING CODE 3510–DR–M

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands (CNMI) From Imported Parts

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notification of establishment of a limit for the new agreement year.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 4, 1988, a directive was issued to the Commissioner of Customs establishing a limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645, and 646 for the period November 1, 1988 through October 31, 1989. A copy of the directive and accompanying Federal Register notice are published below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Mariana Islands (CNMI) From Imported Parts

November 4, 1988.

Agency: Committee for the Implementation of Textile Agreements (CITA).

Action: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

Effective Date: November 14, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

For Further Information Contact: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

Supplementary Information: On November 2, 1987, a notice was published in the Federal Register (52 FR 42032) announcing that cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645, and 646, determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 100,000 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period November 1, 1987 through October 31, 1988. A subsequent notice dated April 8, 1988 announced a reduction to this limit (53 FR 11692).

The purpose of this notice is to advise the public that this exception is being continued for goods exported during the period November 1, 1988 through October 31, 1989 at a level of 87,540 dozen, with a wool sublimit of 13,131 dozen, in accordance with the terms of the administrative arrangement between the Governments of the United States and the Commonwealth of the Northern Mariana Islands. This arrangement requires that at least 40 percent of the sweater assembly employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, in accordance with the Title I, Article IV of the Compact of Free Association (48 U.S.C. section 1681 note).

If subsequent investigations determine that at least 40 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be increased to 100,000 dozen, with a wool sublimit of 15,000 dozen. However, if subsequent investigations determine that at least 50 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be increased to 120,000 dozen, with a wool sublimit of 18,000 dozen.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the Federal Register on August 12, 1988 (53 FR 30456).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645, and 646, which are not accompanied by a

certification and those in excess of 87,540 dozen (13,131 dozen for the wool sublimit), will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 42032, published on November 2, 1987 and 52 FR 11692, published on April 8, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 14, 1988, you are directed to permit entry or withdrawal from warehouse for consumption in the United States in an amount not to exceed 87,540 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, with a wook sublimit for Categories 445 and 446 not to exceed 13,131 dozen, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130 and which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1988 and extending through October 31, 1989. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

You are directed to require the appropriate visa or export license from the country of origin and charge any shipments of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 to the country of origin if (a) the 87,540 dozen limit or the 13,131 dozen wool sublimit have been filled, or (b) the products are not accompanied by certification, or (c) the products are not assembled in the Commonwealth of the Northern Mariana Islands.

Imports charged to the category limit for the period November 1, 1987 through October 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27208 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DR-M

New Officials of the Government of the Socialist Republic of Romania Authorized to Issue Export Visas Using the New Visa Stamp

November 18, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The Government of the Socialist Republic of Romania has notified the United States Government that only the officials listed below are authorized to issue export visas for textile and apparel products which are exported from Romania on and after November 1, 1988 under the terms of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, and the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, as amended.

Ion Chioveanu
Petre Sin
Vladimir Ciobanasu
Petre Andrei
Dan Simion

A facsimile of the new visa stamp is available from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., Room 3110, Washington, DC 20230.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27209 Filed 11-23-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as contract markets in futures in the Thirty Day Federal Funds Index and in Two Year U.S. Treasury notes. The Director of the Division of Economic Analysis ("Division") of the Commission acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE Thirty Day Federal Funds Index futures contract or to the two Year U.S. Treasury Note futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9 Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to

other materials submitted by the NYCE in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on November 21, 1988.

Paula A. Tosin,

Director, Division of Economic Analysis.

[FR Doc. 88-27174 Filed 11-23-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-60-000, et al.]

Union Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Union Electric Company

[Docket No. ER89-60-000]

Take notice that on November 9, 1988, Union Electric Company (Union) tendered for filing Second Amendment to the Interconnection Agreement dated February 18, 1972, between Central Illinois Public Service Company, Illinois Power Company and Union.

Said Amendment revises certain Service Schedules to provide for minor word changes allowing for capacity transactions of 12 months or longer.

Union requests that the filing be permitted to become effective December 1, 1988.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Company

[Docket No. ER89-59-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on November 8, 1988, an executed Power Supply Agreement dated as of September 29, 1988, between PP&L and Allegheny Electric Cooperative, Inc. (Allegheny), which supersedes the Power Supply Agreement dated February 4, 1986, between PP&L and Allegheny. Under the February 4, 1986, Agreement, PP&L provided wholesale electric service to Allegheny for the benefit of Sullivan County Rural Electric Cooperative, Inc. (Sullivan County) at 12 kV. Under the September 29, 1988, Agreement, PP&L agrees to provide wholesale electric service to Allegheny for the benefit of Sullivan County at 69 kV in order to meet Sullivan County's current and future energy needs.

PP&L requests that the Agreement become effective on the date it is accepted for filing by the Commission, and therefore, requests waiver of the Commission's notice requirements of section 205 of the Federal Power Act, 16 U.S.C. 824d, and 35.3 of the Commission's regulations, 18 CFR 35.3.

Copies of this filing have been served upon Allegheny and the Pennsylvania Public Utility Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power & Light Company

[Docket No. ER88-313-001]

Take notice that on November 7, 1988, Arkansas Power & Light Company (AP&L) tendered for filing, pursuant to the Commission's order dated October 21, 1988, its Compliance Report.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. The Empire District Electric Company

[Docket No. ER89-57-000]

Take notice that The Empire District Electric Company, (EDE) on November 7, 1988, tendered for filing proposed changes in its FERC Electric Tariff, 1st Revised Volume No. 1, Section 6, 10th Revised Sheet No. 22, INDEX OF PURCHASERS, and a service agreement with Kansas Electric Power Cooperative, Inc. (KEPCO) of Topeka, Kansas.

The service agreement filed between EDE and KEPCO will replace the service agreement between EDE and *The Twin Valley Electric Cooperative, Inc.* of Altamont, Kansas, filed with FERC August 23, 1978, in Docket No. ER78-591-000. No change is requested in rate schedules, terms of agreement or facilities.

Copies of the filing were served upon the Kansas State Corporation Commission and Kansas Electric Power Cooperative, Inc.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER88-531-002]

Take notice that on October 31, 1988, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) tendered for filing, pursuant to the Commission's letter order dated September 30, 1988, its Compliance Refund Report.

Edison Indiana states that copies of its Report were served on Commonwealth Edison Company, Illinois Commerce Commission and Indiana Utility Regulatory Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER88-83-003]

Take notice that on November 9, 1988, Southern California Edison Company (SCE) tendered for filing its refund Report in accordance with Settlement Agreement between SCE and the City of Vernon accepted by the Commission's Order of September 30, 1988.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER89-63-000]

Take notice that on November 14, 1988, Utah Power & Light Company (Utah) tendered for filing new Service Agreements providing for sales under Service Schedules UTAH-1B and UTAH-1C of Volume 2 of its FERC Electric Tariff under which Utah sells and delivers nonfirm energy to electric utilities. The new Service Agreements are with Utah Municipal Power Agency.

Utah requests that the Agreements under Service Schedule UTAH-1B and Service Schedule UTAH-1C with Utah Municipal Power Agency be made effective either on January 13, 1989 or the date service commences, whichever occurs first. Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided by 18 CFR 35.11 in order to provide the service, if requested, prior to January 13, 1989.

Copies of this filing were served on Utah Municipal Power Agency and upon the Utah Pubalic Service Commission.

Comment date: December 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket No. ER89-58-000]

Take notice that on November 7, 1988, Utah Power & Light Company (Utah) tendered for filing new Service Agreements providing for sales under Service Schedules UTAH-1B and UTAH-1C of Volume 2 of its FERC Electric Tariff under which Utah sells and delivers nonfirm energy to electric utilities. The new Service Agreements are with Pacific Gas & Electric Company.

Utah requests that the Agreements under Service Schedule UTAH-1B and

Service Schedule UTAH–1C with Pacific Gas & Electric Company be jade effective either on January 6, 1989 or the date service commences, whichever occurs first. No sales have been made under either of these Agreements to date, but in the event a transaction becomes possible prior to January 6, 1989, Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided by 18 CFR 35.11 in order to provide the service.

Copies of this filing were served on Pacific Gas & Electric Company and upon the Utah Public Service Commission.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Arkansas Power & Light Company

[Docket No. EL87–32–002]

Take notice that on November 7, 1988, Arkansas Power & Light Company (AP&L) tendered for filing its compliance report pursuant to the Commission's September 23, 1988 order in the above referenced docket.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Co.

[Docket Nos. EL87–58–002 and ER87–556–000]

Take notice that on October 28, 1988, Delmarva Power & Light Company filed a Refund Compliance Report pursuant to the Commission's letter order of September 20, 1988 approving the Settlement Agreement in these dockets.

Delmarva states that on September 28, 1988 it refunded to the affected wholesale customers $750,000 in settlement of Docket No. EL87–58–000. Delmarva further states that the refunds was distributed to the affected Customers as prescribed in Attachment C of the Settlement Agreement which is attached to the Report. Delmarva states that a compliance report regarding the settlement in Docket No. ER87–556–000 will be filed by November 17, 1988.

Copies of the Report were served upon each affected wholesale Customers, the parties of record and the state regulatory agencies in Delaware, Maryland and Virginia.

Comment date: December 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–27178 Filed 11–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–196–000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89–196–000]

November 17, 1988.

Take notice that on November 14, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89–196–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Colony Natural Gas Corporation (Colony), a marketer, under the blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated August 31, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas on an interruptible basis for Colony from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service involves interconnections between Southern and various transporters. Southern states that it would receive the gas at various existing points on its system offshore Louisiana, and in Louisiana, Mississippi, Texas and Alabama, and that it would transport and redeliver the gas to various delivery points in Georgia.

Southern advises that service under § 284.223(a) commenced September 27, 1988, as reported in Docket No. ST89–027. Southern further advises that it would transport 9,725 MMBtu on an average day and 3,549,744 MMBtu annually.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89–152–000]

November 17, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–152–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of OXY Gas Marketing, Inc. (OXY), under its blanket authorization issued in Docket No. CP86–631–000 pursuant to section 7 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.

Williams would perform the proposed interruptible transportation service for OXY, a marketer of natural gas, pursuant to an ITS transportation service agreement dated August 19, 1988 (Reference No. TR–C0040). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until September 1, 1988, and will continue for subsequent one month periods unless either party gives the other party at least 30 days written notice of expiration. Williams proposes to transport on a peak day up to 10,000 MMBtu per day; on an average day up to 10,000 MMBtu; and on an annual basis 3,650,000 MMBtu of natural gas for OXY. It is stated that OXY would pay Williams for all service rendered under the transportation agreement in accordance with William's Rate Schedule ITS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from various receipt points in Kansas for transportation to various delivery points on Williams' pipeline system located in Kansas and Oklahoma.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on September 1, 1988, as reported in Docket No. ST89–40–000.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP89-177-000]

November 18, 1988.

Take notice that on November 14, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-177-000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to revise conditions of delivery to permit an increase in sales volumes to Southwest Gas Corporation (Southwest) at an existing sales meter station in Pinal County, Arizona, under the blanket certificate issued in Docket No. CP82-435-000 (20 FERC ¶ 62,454 (1982)), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it has received a written request from Southwest for an increase in deliveries at an existing delivery point on El Paso's six-inch Superior Line in Pinal County, Arizona. It is estimated that the proposed quantities of natural gas during the third full year of operation would amount to 1,480 Mcf on a maximum peak day and 228,000 Mcf annually. It is stated that the additional volumes delivered would be utilized to serve additional natural gas requirements for residential space heating, small commercial space heating, irrigation and a prison complex in the Town of Florence, and environs, all located in Pinal County, Arizona. El Paso advises that the additional deliveries of natural gas are requested to begin by the end of the fourth quarter of 1988. It is stated that in accordance wtih the certificate authorization received by El Paso by Federal Power Commission order issued January 11, 1944, at Docket No. G-288, El Paso is presently providing natural gas service to Southwest in accordance with the terms and conditions of the currently effective service agreement between El Paso and Southwest, dated October 15, 1970. According to El Paso, said service agreement provides, *inter alia,* for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for resale and distribution to consumers thereof situated in the Town of Florence, and environs, in Pinal County, Arizona.

El Paso states that in order to accommodate Southwest's request, El Paso would continue to utilize the existing 2⅜ inch tap and value assembly and exiting two-inch O.D. orifice meter station hereafter referred to as the "Florence City Gate No. 1 Meter Station" presently providing the gas service to Southwest.[1] El Paso states that the additional volumes proposed to be sold to Southwest would require El Paso to adjust the regulator control valve associated with said meter station and increase the delivery pressure from 175 psig to 350 psig. It is stated that the minor regulator adjustments by El Paso to the Florence City Gate No. 1 Meter Station would not result in any extra costs to El Paso associated with providing the increased delivery pressure. It is further stated that El Paso is advised that no other facilities would be installed by Southwest as a part of the adjustments made by El Paso at the Florence City Gate No. 1 Meter Station.

It is stated that the additional quantities of natural gas to be delivered would be sold by El Paso to Southwest for resale in the Town of Florence, and environs, in order to accommodate Priority 1 and 2(a) requirements. El Paso states that the Priority 1 and 2(a) load growth that has precipitated Southwest's request for natural gas service herein would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan, approved and certificated at Docket No. RP72-6, *et al.*, which was placed into operation on May 1, 1981. In addition, El Paso states that the sale of natural gas proposed herein for Priority 1 and 2(a) requirements is permitted by and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision,* of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP89-178-000]

November 18, 1988.

Take notice that on November 15, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-178-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Dobson Road Meter Station to permit the delivery of additional sales volumes of natural gas to Southwest Gas Corporation (Southwest), which volumes would be within existing entitlements, for resale to consumers in the City of Chandler, and environs, in Maricopa County, Arizona, under the blanket certificate issued in Docket No. CP82-435-000 (20 FERC ¶ 62,454 (1982)), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it has received a written request from Southwest for an increase in deliveries at an existing delivery point on El Paso's six-inch Chandler Line in Maricopa County, Arizona. It is estimated that the proposed quantities of natural gas during the third full year of operation would amount to 3,479 Mcf on a maximum peak day and 485,292 Mcf annually. It is stated that the additional volumes delivered would be utilized to serve additional natural gas requirements for residential, commercial, and interruptible industrial consumers in the City of Chandler, and environs, in Maricopa County, Arizona. El Paso advises that the additional deliveries of natural gas are requested to begin by December 1988. It is stated that in accordance with the certificate authorization received by El Paso by Federal Power Commission order issued January 11, 1944, at Docket No. G-288, El Paso is presently providing natural gas service to Southwest in accordance with the terms and conditions of the currently effective service agreement between El Paso and Southwest, dated August 15, 1970. According to El Paso, said service agreement provides, *inter alia,* for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for resale and distribution to consumers in various communities and areas in the State of Arizona.

El Paso states that in order to accommodate Southwest's request, El Paso would replace the existing two-inch O.D. tap and valve assembly, and appurtenances, and the existing American 500B positive meter presently being utilized to provide service with a four-inch O.D. standard orifice-type meter and appurtenances at the existing meter location on El Paso's 6⅝ inch O.D. Chandler Line in Maricopa County, Arizona. It is estimated that the cost of constructing the proposed facilities would be $88,563. It is further stated that El Paso would deliver the gas at a pressure of not more than 200 psig.

It is stated that the additional quantities of natural gas to be delivered would be sold by El Paso to Southwest for resale in order to accommodate Priority 1, 2(c) and 3 requirements. In addition, El Paso states that the sale of natural gas proposed herein for Priority 1 and 2(c) requirements is permitted by

[1] The original meter station was installed by El Paso in 1941 when El Paso constructed its 6-inch O.D. Superior Line. El Paso's pipeline facility, with associated appurtenances, was authorized at Docket No. G-288.

and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1. It is further stated that the projected Priority 3 load growth which has precipitated Southwest's request for additional natural gas service herein would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan and would be accommodated within the existing Monthly Average Day End Use Profiles that currently limit the quantities available to Southwest from El Paso for service to Priority 3 requirements.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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 therefore, 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,

Secretary.

[FR Doc. 88-27180 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-159-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-159-000]

November 16, 1988.

Take notice that on November 9, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP89-159-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Gulf Energy Marketing Company (Gulf Energy) under Williams' blanket certificate issued May 10, 1988 in Docket No. CP86-631-001, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Williams states that it will receive the gas from various points in Kansas, Missouri, Oklahoma, Texas and Wyoming, and transport the gas to various delivery points on Williams' system in Kansas, Oklahoma, Texas and Wyoming.

Williams proposes to transport up to 200,000 MMBtu of natural gas per average day or approximately 450,000 MMBtu of gas on a peak day and 164,250,000 MMBtu annually. Williams states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a)(1) of the Commission's Regulations on September 1, 1988, pursuant to a transportation agreement dated September 1, 1988. Williams notified the Commission of the commencement of transportation service in Docket No. ST88-5889-000 on September 30, 1988.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-150-000]

November 16, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-150-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, for authorization to provide transportation on behalf of Tiffany Gas Company (Tiffany), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 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.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 800 MMBtu of natural gas per day for Tiffany, a producer, from wells located in the San Juan Basin area of La Plata and Archuleta Counties, Colorado, to the Ignacio Plant delivery point in La Plata County, Colorado and the existing interconnections with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado. Northwest anticipates transporting an annual volume of 292,000 MMBtu.

Northwest states that the transportation of natural gas for Tiffany commenced September 9, 1988, as reported in Docket No. ST89-138-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-148-000]

November 17, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-148-000, a prior notice request pursuant to §§ 157.205 and 204.223 of the Commission's Regulations for authorization to transport natural gas for Meridian Oil Production Inc., Sothland Royalty Company and El Paso Production Company (Shippers), all producers of natural gas, under the blanket certificate issued Northwest in Docket No. CP86-578-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, pursuant to a December 1, 1986 agreement, as amended, up to 150,000 MMBtu of natural gas per day for the Shippers under Northwest's Rate Schedule TI-1. Northwest proposes to receive the gas from existing wells located in the San Juan Basin Area, San Juan and Rio Arriba Counties, New Mexico and La Plata County, Colorado and redeliver the gas to a Ignacio plant delivery point located in La Plata County, Colorado and an existing interconnect with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico.

Northwest also states that no new facilities would be required to be built to provide this transportation service.

Northwest states that service commenced on August 19, 1988, as reported in Docket No. ST88-5773-000, purusuant to § 284.223(a). Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 150,000 MMBtu, 33,000 MMBtu and 12,000,000 MMBtu, respectively.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89-149-0009]

November 17, 1988.

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-149-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act of authorization to provide a transportation service for Columbus Gas Services, Inc. (Columbus), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 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.

Northwest states that pursuant to an agreement dated April 1, 1988, as amended, February 1, 1988, May 13, 1988, June 15, 1988, June 24, 1988 and October 14, 1988, under Rate Schedule TI-1, it proposes to transport up to 8,000 MMBtu per day of natural gas for Columbus from existing wells located in the San Juan Basin area, Rio Arriba County, New Mexico to the Ignacio Plant delivery point located in La Plata County, Colorado and to the existing interconnects with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado.

Northwest also states that no construction of new facilities will be required to provide this service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 8,000 MMBtu, 2,500 MMBtu and 913,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced September 7, 1988, as reported in Docket No. ST89-467-000 (filed October 31, 1988). Northwest requests that the Commission expeditiously publish its notice since the term of the automatic authorization for this service expires January 4, 1989.

Northwest indicates that it is not aware of any agency relationship under which a local distribution company or an affiliate of Columbus is to receive natural gas on behalf of Columbus.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89-141-000]

November 17, 1988.

Take notice that on November 7, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-141-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, for Cornerstone Production Corporation (Cornerstone), all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Cornerstone, a producer. Tennessee explains that service commenced October 2, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-265. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 50,000 dekatherms, and the annual quantity would be 18,250,000 dekatherms. Tennessee explains that it would receive natural gas for Cornerstone's account at various points in the State of Louisiana and offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Cornerstone to: (1) Commonwealth Gas Company at various points in Massachusetts, (2) Algonquin Gas Transmission Company in Bergen County, New Jersey and Worcester County, Massachusetts, (3) National Fuel Gas Supply Company in Mercer County, Pennsylvania, and (4) Columbia Gas Transmission Corporation in Kanawha County, Kentucky. Tennessee states that the ultimate delivery points of the gas are located in Massachusetts and Pennsylvania.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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,

Secretary.

[FR Doc. 88-27179 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-166-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

November 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-166-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-166-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Ag Processing, Inc. (Ag Processing), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Ag Processing, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 29, 1988. Williams explains that service commenced September 13, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-157-000. Williams further explains that the peak day quantity would be 750 MMBtu, the average day quantity would be 400 MMBtu, and that the annual quantity would be 273,750 MMBtu. Williams explains that it would receive natural gas for Ag Processing's account at points located in Kansas, Texas, Missouri, and Oklahoma and would redeliver the gas for Ag Processing's account at points in Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89-168-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-168-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to

transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Chevron, U.S.A. (Chevron), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Chevron, a producer, on an interruptible basis, pursuant to a transportation agreement dated August 26, 1988. Williams explains that service commenced September 22, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–253–000. Williams further explains that the peak day quantity would be 215,000 MMBtu, the average day quantity would be 100,000 MMBtu, and that the annual quantity would be 78,475,000 MMBtu. Williams explains that it would receive natural gas for Chevron's account at points located in Kansas, Texas, Wyoming, and Oklahoma and would redeliver the gas for Chevron's account at points in Kansas, Texas, and Wyoming.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89–162–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–162–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Union Pacific Resources (Union), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Union, a producer, on an interruptible basis, pursuant to a transportation agreement dated August 31, 1988. Williams explains that service commenced September 12, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–198–000. Williams further explains that the peak day quantity would be 50,000 MMBtu, the average day quantity would be 20,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Williams explains that it would receive natural gas for Union's account at points located in Wyoming and Oklahoma and would redeliver the gas for Union's account at points in Kansas, Texas, and Wyoming.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89–198–000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–198–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Carnation Company (Carnation), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Carnation, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 9, 1988. Williams explains that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–464–000. Williams further explains that the peak day quantity would be 650 MMBtu, the average day quantity would be 500 MMTtu, and that the annual quantity would be 237,250 MMBtu. Williams explains that it would receive natural gas for Carnation's account at points located in Kansas and Oklahoma and would redeliver the gas for Carnation's account at points in Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89–212–000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–212–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for Mobil Oil Exploration & Producing Southeast, Inc. (Mobil), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Mobil, a producer, pursuant to a transportation agreement dated March 8, 1988. Trunkline explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–5837. Trunkline further explains that the peak day quantity would be 25,000 dekatherms, the average daily quantity would be 17,000 dekatherms, and that the annual quantity would be 6,205,000 dekatherms. Trunkline explains that it would receive natural gas for Mobil's account at 207 points of receipt in Illinois, Louisiana, Tennessee, Texas, and offshore Louisiana. Trunkline states that it would redeliver natural gas for Mobil's account at existing interconnections with (1) Consumers Power Company in Elkhart County, Illinois and (2) Panhandle Eastern Pipeline Company in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by American National Can Company.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89–213–000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–213–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act for Loutex Energy, Inc. (Loutex), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Loutex, a marketer, pursuant to a transportation agreement dated July 19, 1988. Trunkline explains that service commenced September 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–604. Trunkline further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for Loutex's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Loutex's account at an existing interconnection with Panhandle Eastern Pipeline Company located in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by 10 specified local distribution companies.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP89-209-000]

Take notice that on November 16, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-209-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act for Exxon Corporation (Exxon), all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon, a shipper and marketer, pursuant to a transportation agreement dated September 16, 1988. Trunkline explains that service commenced September 20, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-320. Trunkline further explains that the peak day quantity would be 200,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at 245 points of receipt in Illinois, Tennessee, Louisiana, Texas and offshore Louisiana and Texas. Trunkline states that it would redeliver natural gas for Exxon's account at an existing interconnection with ANR Pipeline Company located at Patterson, St. Mary Parish, Louisiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by Battle Creek Gas Company, Semco Energy Services, and Southeastern Michigan Gas Company.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP 89-169-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-169-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Conoco, Inc. (Conoco), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Conoco, a producer, on an interruptible basis, pursuant to a transportation agreement dated September 16, 1988. Williams explains that service commenced September 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-252-000. Williams further explains that the peak day quantity would be 50,000 MMBtu, the average day quantity would be 25,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Williams explains that it would receive natural gas for Conoco's account at points located in Texas and Oklahoma and would redeliver the gas for Conoco's account at points in Kansas, Texas, Oklahoma, and Missouri.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89-146-000]

Take notice that on November 8, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-146-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service for National Cooperative Refinery Association (National), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 25, 1988, as amended, it proposes to transport up to 1,000 MMBtu of natural gas per day for National. Northwest further states that it would provide the transportation service under Rate Schedule TI-1 and that it expects to transport 85 MMBtu on an average day (32,000 MMBtu annually) from existing wells located in the San Juan Basin, La Plata County, Colorado to the Ignacio Plant delivery point located in La Plata, County, Colorado and to the existing interconnects with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico and at Ignacio in La Plata County, Colorado. It is also stated that no construction of new facilities would be required to provide this transportation service. Finally, Northwest advises that the service commenced September 4, 1988, as reported in Docket No. ST89-468-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89-223-000]

Take notice that on November 16, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-223-000 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 on behalf of Parker Gas Gathering Company, Inc., a gathering company, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 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.

United states that the interruptible gas transportation service agreement #T1-21-1693/Ref. #3020, dated June 21, 1988, proposes to transport a maximum daily quantity of 2,060 MMBtu and an annual quantity of 751,900 MMBtu, using existing facilities to provide transportation service pursuant to that amended agreement. It is stated that the executed amended agreement contains the location for the receipt and delivery points in Exhibits A and B. United further states that service commenced September 6, 1988, as reported in Docket No. ST89-390 pursuant to § 284.223(a) of the Regulations.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket Nos. CP89-138-000,[1] CP89-139-000, and CP89-140-000]

Take notice that on November 7, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, requests 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 interruptible transportation service for various shippers under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of

[1] These dockets are not consolidated.

the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

Panhandle indicates that it would provide the service for each shipper as provided by an executed transportation agreement. In each case Panhandle indicates that no new facilities would be required to implement the service. In addition, Panhandle states that in each case it would charge rates and abide by the terms and conditions provided by its Rate Schedule PT.

Panhandle has provided other information applicable to each transaction, including the identity of the shipper, the proposed term, the peak day, average day, and annual volumes, and the respective docket numbers and termination dates related to the 120-day transactions initiated under § 284.223 of the Commission's Regulations, which is attached as an appendix.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Appendix to Panhandle Eastern Pipe Line Co. Filing

Docket No.	Proposed term	Shipper	Volumes (Dt) peak day average day annual	Related ST Docket No.	Expiration date 120-day transaction
CP89-138-000	Month to Month	National Steel Corporation.	69,000 52,000 18,980,000	88-5850	01-13-89
CP89-139-000	Month to Month	Mountain Iron and Supply Company.	100 30 10,950	88-5859	01-19-89
CP89-140-000	Month to Month	Loutex Energy, Incorporated.	80,000 25,000 9,125,000	88-5877	01-16-89

12. Williams Natural Gas Company

[Docket No. CP89-165-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP-165-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for The Quaker Oats Company (Quaker), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Quaker, and end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-336-000. Williams further explains that the peak day quantity would be 1,000 MMBtu, the average day quantity would be 300 MMBtu, and that the annual quantity would be 365,000 MMBtu. Williams explains that it would receive natural gas for Quaker's account at points located in Wyoming, Colorado, Kansas, Texas and Oklahoma and would redeliver the gas for Quaker's account at points in Kansas.

Comment date: January 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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 Section 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 therefore, 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,

Secretary.

[FR Doc. 88-27261 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-170-000, et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

November 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-170-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-170-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Spectrum Natural Gas Company (Spectrum), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Spectrum, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 30, 1988. Williams explains that service commenced September 9, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-143-000. Williams further explains that the peak day quantity would be 3,333 MMBtu, the average day quantity would be 3,333 MMBtu, and that the annual quantity would be 1,216,545 MMBtu. Williams explains that it would receive natural gas for Spectrum's account at points located in Kansas and Oklahoma and would redeliver the gas for Spectrum's account at points in Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP89-167-000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa,

Oklahoma 74101, filed in Docket No. CP89–167–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Energy Dynamics, Inc. (Energy Dynamics), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Energy Dynamics, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 15, 1988. Williams explains that service commenced September 16, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–463–000. Williams further explains that the peak day quantity would be 45,000 MMBtu, the average day quantity would be 30,000 MMBtu, and that the annual quantity would be 16,425,000 MMBtu. Williams explains that it would receive natural gas for Energy Dynamics' account at points located in Kansas and Oklahoma and would redeliver the gas for Energy Dynamics' account at points in Kansas and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89–161–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–161–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Archer Daniels Midland Company (ADM), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for ADM, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 12, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–156–000. Williams further explains that the peak day quantity would be 25,000 MMBtu, the average day quantity would be 1,500 MMBtu, and that the annual quantity would be 9,125,000 MMBtu. Williams explains that it would receive natural gas for ADM's account at points located in Oklahoma, Kansas, Missouri, Wyoming, and Texas and would redeliver the gas for ADM's account at points in Kansas and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89–163–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–163–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for American Central Gas Marketing Company (American), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for American, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 29, 1988. Williams explains that service commenced September 16, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–158–000. Williams further explains that the peak day quantity would be 73,000 MMBtu, the average day quantity would be 73,000 MMBtu, and that the annual quantity would be 26,645,000 MMBtu. Williams explains that it would receive natural gas for American's account at points located in Wyoming, Colorado, Kansas, Missouri, Texas, and Oklahoma and would redeliver the gas for American's account at points in Kansas, Texas, and Wyoming.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89–164–000]

Take notice that on November 10, 1988, Williams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–164–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Williams Gas Marketing Company (WGM), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for WGM, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 14, 1988. Wiliam s explains that service commenced September 17, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–251–000. Williams further explains that the peak day quantity would be 21,900 MMBtu, the average day quantity would be 21,900 MMBtu, and that the annual quantity would be 7,993,500 MMBtu. Williams explains that it would receive natural gas for WGM's account at points located in Wyoming, Colorado, Kansas, Texas, and Oklahoma and would redeliver the gas for WGM's account at points in Kansas, Missouri, and Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89–201–000]

Take notice that on November 15, 1988; Wiliams Natural Gas Company (Williams), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–201–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Flexel, Inc. (Flexel), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Flexel, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 16, 1988. Williams explains that service commenced September 7, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–144–000. Williams further explains that the peak day quantity would be 4,300 MMBtu, the average day quantity would be 4,000 MMBtu, and that the annual quantity would be 1,569,500 MMBtu. Williams explains that it would receive natural gas for Flexel's account at points located in Kansas and Oklahoma and would redeliver the gas for Flexel's account at points in Kansas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89-202-000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-202-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Entrade Corporation (Entrade), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Entrade, a marketer, on an interruptible basis, pursuant to a transportation agreement dated August 26, 1988. Williams explains that service commenced September 10, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-465-000. Williams further explains that the peak day quantity would be 35,000 MMBtu, the average day quantity would be 4,400 MMBtu, and that the annual quantity would be 12,775,000 MMBtu. Williams explains that it would receive natural gas for Entrade's account at points located in Kansas, Texas, Wyoming, and Oklahoma and would redeliver the gas for Entrade's account at points in Kansas, Texas, and Missouri.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89-203-000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-203-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for The Quaker Oats Company (Quaker), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Entrade, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 25, 1988. Williams explains that service commenced September 15, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-337-000. Williams further explains that the peak day quantity would be 2,000 MMBtu, the average day quantity would be 1,000 MMBtu, and that the annual quantity would be 730,000 MMBtu. Williams explains that it would receive natural gas for Quaker's account at points located in Kansas, Texas, Wyoming, Colorado, and Oklahoma and would redeliver the gas for Quaker's account at points in Kansas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89-204-000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-204-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Enron Gas Marketing, Inc. (Enron), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Enron, a marketer, on an interruptible basis, pursuant to a transportation agreement dated September 1, 1988. Williams explains that service commenced September 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-466-000. Williams further explains that the peak day quantity would be 290,000 MMBtu, the average day quantity would be 105,850,000 MMBtu. Williams explains that it would receive natural gas for Enron's account at points located in Kansas, Missouri Texas, Wyoming, Colorado, and Oklahoma and would redeliver the gas for Enron's account at points in Kansas and Texas.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89-179-000]

Take notice that on November 15, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-179-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for NGL Production Company (NGL), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for NGL, an end user, on an interruptible basis, pursuant to a transportation agreement dated August 30, 1988. Williams explains that service commenced September 30, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-465-000. Williams further explains that the peak day quantity would be 250,000 MMBtu, the average day quantity would be 100,000 MMBtu, and that the annual quantity would be 91,250,000 MMBtu. Williams explains that it would receive natural gas for NGL's account at points located in Kansas, Colorado, Texas, Wyoming, and Oklahoma and would redeliver the gas for NGL's account at points in Kansas, Texas, Wyoming, and Oklahoma.

Comment date: January 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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,

Secretary.

[FR Doc. 88-27262 Filed 11-23-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of September 23 Through September 30, 1988

During the Week of September 23 through September 30, 1988, the apeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 23 through 30, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 20, 1988	ARCO/Desmond R. Jones Oil Co., Hardin, KY.	RR304-1	Request for modification/rescission. If Granted: The September 15, 1988 Decision and Order (Case No. RF304-1) would be modified and the firm's application in the Atlantic Richfield refund proceeding would be granted.
Sept. 26, 1988	FEDCO, Inc., Santa Fe Springs, CA	RR272-23	Request for modification/rescission. If Granted: The August 25, 1988 Decision and Order issued to FEDCO, Inc. would be rescinded and the firm would receive a refund in the crude oil refund proceeding.
Do	Stock Equipment Co., Chagrin Falls, OH.	KFA-0222	Appeal of an information request denial. If Granted: The September 12, 1988 Freedom of Information request denial issued by the DOE Albuquerque Operations Office would be rescinded and Stock Equipment Company would receive access to several documents relating to RI Solicitation No. PK 10199GM.
Sept. 27, 1988	Eastern Aviation Fuels, Inc., New Bern, NC.	RR272-13	Request for modification/rescission. If Granted: The August 12, 1988, Decision and Order issued to Eastern Aviation Fuels, Inc. (Case No. RF272-55990), would be rescinded and the firm's application in the crude oil refund proceeding would be granted.
Sept. 28, 1988	Texaco Inc., Washington, DC	KEF-0119	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the August 29, 1988 consent order which the DOE entered into with Texaco Inc.

REFUND APPLICATIONS RECEIVED

[Week of September 23 through 30, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Sept. 23, 1988, through Oct. 1, 1988.	Crude Oil refund applications received.	RF272-74922 thru RF272-74943
Do	Atlantic Richfield Co., applications received.	RF304-6150 thru RF304-6463
Do	Exxon Corp., applications received.	RF307-5690 thru RF307-5875
Do	Murphy Oil, applications received.	RF309-1 thru RF309-51
Do	Total Petroleum, applications received.	RF310-209 thru RF310-302
Sept. 26, 1988	Eighty-eight Oil Co..	RF312-2
Do	Reed William Smith, Jr..	RF300-10528
Do	....do	RF300-10529
Do	....do	RF300-10530
Do	....do	RF300-10531
Sept. 27, 1988	Floodwood Gas Company, Inc..	RF139-185

REFUND APPLICATIONS RECEIVED—Continued

[Week of September 23 through 30, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Town of Westby Propane System.	RF139-186
Do	The Carpet Store Cleaning, Inc..	RF300-10532
Do	Murphy Oil Co.	RF300-10533
Do	McMillan Spur Station.	RF300-10534
Do	Stewart's Union 76.	RF300-10536
Do	Murphy Oil Co.	RF300-10536

[FR Doc. 88-27264 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of October 14 Through October 21, 1988

During the Week of October 14 through October 21, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of October 14 through 21, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 11, 1988	Amoco/South Dakota, Pierre, SD	RM251-134	Request for modification/rescission. If Granted: The November 24, 1987 Decision and Order issued to South Dakota regarding the State's plan for expenditures of Amoco refund monies would be modified.
Oct. 17, 1988	Boise Cascade Corp., Philadelphia, PA.	RR272-16	Request for modification/rescission. If Granted: The July 14, 1987 Decision and Order issued to the Boise Cascade Corporation (Case No. RF272-300) would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Do	Burlington Industries, Inc., Philadelphia, PA.	RR272-17	Request for modification/rescission. If Granted: The November 2, 1987 Decision and Order issued to Burlington Industries, Inc. (Case No. RF272-2977) would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Do	Tennessee River Pulp & Paper, Philadelphia, PA.	RR272-18	Request for modification/rescission. If Granted: The November 3, 1987 Decision and Order issued to Tennessee River Pulp & Paper would be rescinded and the firm would be granted a refund in the crude oil refund proceeding.
Oct. 20, 1988	Jeff Nesmith, Washington, DC	KFA-0225	Appeal of an information request denial. If Granted: The Jeff Nesmith of the Washington Bureau of Cox Newspapers would receive access to information relating to the Secretary of Energy, John Herrington.
Oct. 21, 1988	Kenneth P. Brooks, Clearwater, FL	KFA-0226	Appeal of an information request denial. If Granted: The September 29, 1988 Freedom of Information Request Denial issued by the Director of Personnel would be rescinded and Kenneth P. Brooks would receive access to all documentation and information that may pertain to Mr. Brooks' non-selection for a specific position.

Refund Applications Received

Date received	Name of refund proceeding/ name of refund application	Case No.
June 5, 1987	Taylor's Propane, Inc.	RF139-193
Oct. 17, 1988	John Rupp Oil Co., Inc.	RF310-310
Do	R.M. Mays Oil Co.	RF310-311
Do	Lawsons APCO	RF310-312
Do	Clare's Total	RF310-313
Do	Quality Oil Co.	RF310-314
Oct. 18, 1988	Don Loftis	RF139-192
Oct. 20, 1988	Vickers/Arizona	RQ1-483
Do	National Helium-Arizona.	RQ3-484
Oct. 14, 1988 thru Oct. 21, 1988.	Gulf oil refund, applications received.	RF300-10558 thru RF300-10566
Do	Crude oil refund, applications received.	RF272-74989 thru RF272-75006
Do	Atlantic Richfield Co., applications received.	RF304-6782 thru RF304-6953
Do	Exxon refund, applications received.	RF307-6131 thru RF307-6305
Do	Murphy refund, applications received.	RF309-348 thru RF309-438

[FR Doc. 88-27265 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of October 17 Through November 4, 1988

During the period of October 17 through November 4, 1988, the notices of objection to the proposed remedial order listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Oasis Petroleum Corporation, Culver City, CA

[KRO-0700 Motor Gasoline]

On October 31, 1988, Lucky Stores, Inc., P.O. Box 11675, Tampa, Florida 33680 filed a Notice of Objection to the Proposed Remedial Order (PRO) which the DOE issued to Oasis Petroleum Corporation (Oasis), a Chapter 11 Debtor, on September 16, 1988. The Trustee for the Estate in Bankruptcy of Oasis Petroleum Corporation, P.O. Box 3216, Culver City, CA 90230, and Research Fuels, Inc., P.O. Box 8229, Horseshoe Bay, Texas, 78654 each filed a Notice of Objection to the PRO on November 1, 1988. In the PRO the DOE found that during the period March 1, 1979 to January 27, 1981, the firm violated six provisions of the DOE regulations. The DOE asserts that Oasis violated 10 CFR 205.202 by engaging in a course of conduct which resulted in the circumvention of the allocation regulations. Specifically, DOE found that Oasis sold motor gasoline to purchasers who did not have an allocation entitlement to that gasoline. These same sales triggered a violation of 10 CFR 211.9(a) according to the DOE. In addition, the DOE claims that Oasis violated 10 CFR 210.62(b) by selling gasoline to purchasers without allocation entitlements to that product while simultaneously depriving others with allocation entitlements to that gasoline of their product. The DOE further asserts that Oasis lost its allocation entitlements for certain of its retail gasoline stations by failing to maintain an ongoing business at these stations. This action, maintains DOE, violated 10 CFR 211.106(f) and 211.11(a). Finally, the DOE contends that Oasis violated 10 CFR 211.13(f) by failing to certify downward its allocation entitlements in certain instances.

To remedy these violations, the DOE directs Oasis to disgorge $10,139,702.17 in profits from its transactions, plus interest until January 22, 1986, the date Oasis filed its Bankruptcy Petition.

[FR Doc. 88-27266 Filed 11-23-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3480-9]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that between May 1, 1988 and September 30, 1988, the United States Environmental Protection Agency (EPA), Region II Office, issued three final determinations, in New York State Department of Environmental Conservation (NYSDEC) issued seven final determinations and the New Jersey Department of Environmental Protection (NJDEP) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. This notice also announces six final determinations that were made between May 27, 1987 and April 13, 1988 that were inadvertently omitted from Region II's previous **Federal Register** notices on PSD final actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTAL INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 505, New York, New York, 10278, (212) 264-4711.

SUPPLEMENTAL INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC and the NJDEP have made final determinations relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Prime Energy Limited Partnership	Elmwood Park, New Jersey	Construction of a cogeneration facility consisting of a 650 MMBTU per hour heat input gas turbine and a 300,000 gallon Number 2 fuel oil storage tank.	NJDEP	PSD Permit Approval	5/26/87
General Mills, Inc.	Buffalo, New York	Construction of a cogeneration facility with a 77 MMBTU heat input.	NYSDEC	PSD Non-Applicability Determination	10/07/87
Dunlop Tire	Tonawanda, New York	Construction of an incinerator to control volatile organic compounds from an existing and a new source.	NYSDEC	PSD Non-Applicability Determination	12/23/87
American National Can	Perinston, New York	Addition of a catalytic afterburner to an existing inside spray drying oven.	NYSDEC	PSD Non-Applicability Determination	12/23/87
Warren Energy Resource Co., L.P.[1]	Oxford, New Jersey	Construction of a resource recovery facility consisting of two 200 tons per day municipal waste incinerators and a package boiler.	NJDEP	PSD Permit Approval	2/1/88
Combustion Engineering (Huntington Resource Recovery Systems, Inc.).	Huntington, New York	Construction of a 750 tons per day municipal solid waste mass buring resource recovery facility.	NYSDEC	PSD Applicability Determination	4/13/88
Commonwealth Oil Refining Co.	Penuelas, Puerto Rico	Reactivation of two petrochemical plants	EPA Region II	PSD Non-Applicability Determination	5/04/88
Kamine Carthage Cogeneration Co., Inc.	Carthage, New York	Construction of a cogeneration facility consisting of a natural gas-fired stationary gas tubrine.	NYSDEC	PSD Applicability Determination	5/04/88
Nassau District Energy Corp.	Uniondale, New York	Construction of a 57 NW cogeneration facility	NYSDEC	PSD Applicability Determination	5/04/88
Martin Marietta Aluminum Properties Inc.	St. Croix, U.S. Virgin Islands	Conversion of an alumina refinery to an industrial park.	EPA Region II	PSD Permit Revision Approval	5/10/88
Kamine South Glens Falls	South Glens Falls, New York	Construction of a 50 MW combine cycle gas turbine	NYSDEC	PSD Applicability Determination	5/25/88
Camden County Energy Recovery Associates.	Camden City, New Jersey	Construction of four 350 tons per day municipal solid waste incinerators, a 20,000 gallon fuel oil storage tank and a package boiler.	NJDEP	PSD Permit Approval	6/06/88
Norlite Corporation	Cohoes, New York	Construction of a new 8.37 MMBTU per hour steam atomization boiler.	NYSDEC	PSD Non-Applicability Determination	6/08/88
Harbert/Triga Company	Ogdensubrg, New York	Construction of a 350 tons per day nonhazardous solid waste mass burning resource recovery facility (known as the St. Lawrence County Resource Recovery Facility).	NYSDEC	PSD Applicability Determination	6/15/88
Eagle Point Cogeneration Partnership	West Deptford, New Jersey	Construction of a cogeneration facility	NJDEP	PSD Non-Applicability Determination	8/24/88
United Development Group-Niagara, Inc.	Niagara Falls, New York	Construction of a coalfired steam generating facility	NYSDEC	PSD Applicability Determination	8/24/88
Puerto Rican Cement Co., Inc.	Ponce, Puerto Rico	Conversion of kiln #6 from a wet cement manufacturing process to a dry process.	EPA Region II	PSD Applicability Determination	8/30/88
Nassau County Department of Public Works.	Cedar Creek, New York	Replacement of 5 multiple fuel reciprocating engines with 5 new larger engines.	NYSDEC	PSD Non-Applicability Determination	9/28/88

[1] On June 13, 1986, Warren Energy Co., L.P. was issued a PSD permit by the New Jersey Department of Environmental Protection for a resource recovery facility to be located at Oxford, New Jersey. This permit contained emissions limits for all PSD-affected pollutants except for sulfur dioxide (SO_2) because review of air quality-related information indicated non-attainment of the National Ambient Air Quality Standards for SO_2 at the proposed site. Therefore, PSD requirements that were applicable to attainment areas were not applicable to this project for SO_2. The PSD permit issued could not become effective until the area was redesignated from attainment to non-attainment for this pollutant. The NJDEP request for non-attainment redesignation was approved by EPA and became effective on February 1, 1988.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Office of Policy and Management, Permits Administration Branch—Room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East State Street, CN 027, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 8, 1988.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88–27205 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3481–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared November 7 Through 11, 1988

Availability of EPA comments prepared November 7, 1988 through November 11, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP. No. D–AFS–K65118–CA, Rating EO2, Grider Fire Recovery Project, 1987 August thru October Grider/Lake Fire Resource Management Plan, Klamath National Forest, Siskiyou County, CA.

Summary: EPA expressed environmental objections because the preferred alternative may result in increased erosion and sediment loading from large scale timber salvage activities. EPA noted that other alternatives were less environmentally damaging to important anadromous fisheries resources.

Note: The above summary should have appeared in the 11–10–88 FR Notice.

Final EISs

ERP No. F–BLM–L70009–AK, Central Arctic Management Area WSAs' Wilderness Recommendations, Designation or Nondesignation, Brook Range, North Slope Borough, AK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

ERP No. FS–FRC–K03018–00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ, CA, WY, NV, UT, TX, CO and NM.

Summary: EPA expressed its continuing environmental objections that the interstate alternatives may have significant impacts to water quality, wetland and riparian habitats, and endangered species. EPA strongly recommended that the Federal Energy Regulatory Commission not certify the interstate alternative(s) due to their significant, adverse environmental impacts and the lack of a demonstration of a change in natural gas service these alternatives will provide.

ERP No. FS–FRC–K03018–00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ, CA, WY, NV, UT, TX, CO and NM.

Summary: EPA expressed its continuing environmental objections that the interstate alternatives may have significant impacts to water quality, wetland and riparian habitats, and endangered species. EPA strongly recommended that the Federal Energy Regulatory Commission not certify the interstate alternative(s) due to their significant, adverse environmental impacts and the lack of a demonstration of a change in natural gas service these alternatives will provide.

ERP No. F–NPS–L61176–AK, Glacier Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: EPA's concern on the draft EIS have been resolved based on additional information presented in this document.

Regulations

ERP No. R–MMS–A02226–00, 30 CFR Parts 256 and 281; Outer Continental Shelf (OCS) Minerals and Right-of-Way Management, General Leasing of Minerals Other Than Oil, Gas, and Sulphur in (OCS) (53 FR 31424).

Summary: EPA's concerns are (1) that MMS be able to require advoidance of biological resources if postlease studies indicate unavoidable conflicts between the resource and the mineral deposit; (2) adequate data should be available for lease sale EISs and postlease NEPA documents and (3) that leasing larger tract when there is little mineral and biological resource information does not appear to be an environmentally conservative approach.

ERP No. R–MMS–A67018–00, 30 CFR Part 282; Operations in the Outer Continental Shelf for Mineral other than Oil, Gas and Sulphur (53 FR 31442).

Summary: EPA's concerns are (1) strengthening the requirements of baseline data where none exist and (2) monitoring by itself does not preclude the possibility of irreparable harm occurring while the authorized activities are conducted.

Dated: November 21, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–27273 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–70–M

[ER–FRL–3481–6]

Environmental Impact Statements: Availability of Environmental Impact Statements Filed November 14, Through November 18, 1988

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

EIS No. 880274, Final, COE, TX, Galveston, Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Funding and Implementation, Galveston and Harris Counties, TX, Due: December 27, 1988, Contact: Charles R. Harbaugh (409) 766–3044

EIS No. 880381, FSuppl, COE, CA, Santa Ana River Mainstem and Santiago

Creek Multipurpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Counties, CA, Due: December 27, 1988, Contact: Dee Gonzales (213) 894–7053

EIS No. 880382, Final, FRC, REG, Regulations Governing Independent Power Producers (RM88–4–000) and Regulations Governing Bidding Programs (RM88–5–000), Implementation, Due: December 27, 1988, Contract: Roland Wentworth (202) 357–5200

EIS No. 880383, DRevised, FAA, CA, Fremont General Aviation Reliever Airport Development Approval, Alameda and Fremont Counties, CA, Due: January 23, 1989, Contact: Howard S. Yoshioka (213) 297–1250

EIS No. 880384, Final, UAF, NC, Seymour Johnson AFB, F–4 to F–15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC, Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV, Due: January 9, 1989, Contact: Alton Chavis (804) 764–7844

EIS No. 880385, Final, COE, AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL, Due: January 9, 1989, Contact: Susan Ivester Rees (205) 690–2724

EIS No. 880386, DSuppl, COE, OR, WA, McNary Lock and Dam Project, Juvenile Fish Loading and Holding Facility Expansion, Implementation, Umatilla County, OR and Benton County, WA, Due: January 9, 1989, Contact: Robert Palmer (509) 522–6927

EIS No. 880387, Final, AFS, CA, NV, Lake Tahoe Basin Management Unit National Forest, Land and Resource Management Plan, Implementation, El Dorado, Placer, and Alpine Counties, CA and Washoe and Douglas Counties, NV, Due: December 27, 1988, Contact: Robert Harris (916) 573–2600

EIS No. 880388, Draft, FHW, TN, Kirby Parkway Construction, Split Oak Drive to Stage Road and Sycamore View Road Extension, Mullins Station Road to Kiry Parkway, Funding City of Memphis, Shelby County, TN, Due: January 9, 1989, Contact: Dennis C. Cook (615) 736–5394

EIS No. 880389, DSuppl, BLM, WY, Whiskey Mountain amd Dubois Badlands WSAs, Wilderness Recommendations, Designation or Nondesignation, Lander Resource Area, Rawlins District, Fremont County, WY, Due: February 22, 1989, Contact: Renee McCray (202) 653–8824

Dated: November 21, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–27272 Filed 11–23–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51719; FRL–3481–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of nineteen such PMNs and provides a summary of each.

DATES: *Close of Review Periods:*

P 89–69, 89–70, 89–71, 89–72, January 25, 1989.

P 89–73, 89–74, 89–75, 89–76, 89–77, 89–78, 89–79, 89–80, January 28, 1989.

P 89–81, 89–82, 89–83, January 29, 1989.

P 89–84, January 29, 1989.

P 89–85, January 30, 1989.

P 89–86, 89–87, January 31, 1989.

Written Comments by:

P 89–69, 89–70, 89–71, 89–72, December 26, 1988.

P 89–73, 89–74, 89–75, 89–76, 89–77, 89–78, 89–79, 89–80, December 29, 1988.

P 89–81, 89–82, 89–83, December 30, 1988.

P 89–84, December 29, 1988.

P 89–85, December 31, 1988.

P 89–86, 89–87, January 1, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51719]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room 201 East Tower, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–69

Manufacturer. Confidential.

Chemical. (G) Acrylourethane.

Use/Production. (G) Coatings for open nondispersive use. Prod. range: Confidential.

P 86–70

Manufacturer. Confidential.

Chemical. (G) Acid neutralized amine modified epoxy resin.

Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 86–71

Manufacturer. Confidential.

Chemical. (G) Acid functionalized amine modified epoxy resin.

Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 86–72

Manufacturer. Confidential.

Chemical. (G) Acid neutralized amine modified epoxy resin.

Use/Production. (G) Open use industrial paint product. Prod. range: 200,000–3,000,000 kg/yr.

P 89–73

Importer. Confidential.

Chemical. (G) Urethane acrylate.

Use/Import. (G) Polymer component industrial coating.

Import range: Confidential.

P 89–74

Importer. Confidential.

Chemical. (G) Polyester acrylate.

Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–75

Importer. Confidential.

Chemical. (G) Urethane acrylate.

Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–76

Importer. Confidential.

Chemical. (G) Polyester acrylate.

Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–77

Importer. Confidential.

Chemical. (G) Polyester acrylate.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

P 89–78

Manufacturer. Confidential.
Chemical. (G) Triphenylmethane, triamino derivative, free base.
Use/Production. (G) Colorant for link. Prod. range: Confidential.

P 89–79

Manufacturer. Confidential.
Chemical. (G) Triphenylmethane, triamino derivative, oleate.
Use/Production. (G) Colorant for ink. Prod. range: Confidential.

P 89–80

Manufacturer. Minnesota Minning and Manufacturing Co. 3M
Chemical. (G) Cycloaliphatic polyether polyurethane.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89–81

Importer. Confidential.

Chemical. (G) Copolymer of acrylonitrile and 3 kinds of acrylates.
Use/Import. (G) Coating solution for lithographic printing plates. Import range: Confidential.

P 89–82

Manufacturer. Hoechst Celanese Corp.
Chemical. (G) Trisubstitute naphthalene.
Use/Production. (S) Chemical intermediate. Prod. range: 1,000–5,000 kg/yr.

P 89–83

Manufacturer. Hoechst Celanese Corp.
Chemical. (G) Trisubstituted naphthalene.
Use/Production. (G) Chemical intermediate. Prod. range: 1,000–5,000 kg/yr.

P 89–84

Manufacturer. Confidential.
Chemical. (G) Aluminumoxide sulfate bland with aluminum sulfate.
Use/Production. (G) Coagulant for industrial waste water treatment. Prod. range: 250,000–2,500,000 kg/yr.

P 89–85

Importer. Basf Corporation Chemical Division.

Chemical. (S) Phosphine oxide, diphenyl (2,4,6-trimethylbenzoyl).
Use/Import. (S) Catalyst for ultra-violet curable lacquers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rata). Eye irritation: None species (Rabbit). Skin irritation: Slight species (Rabbit).

P 89–86

Manufacturer. The Chitin Company, Inc.
Chemical. (S) Chitosan (pre-polymer); (75–80% deacetylated); glycoxylic acid.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data: Acute oral toxicity: LD 50 g/kg species (RATS).

P 89–87

Manufacturer. The Chitin Company, Inc.
Chemical. (S) Chitochel (pre-polymer; epichlorohydrin.
Use/Production. (S) Metal chelation for use in water. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rats).

Date: November 17, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–27206 Filed 11–23–88; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59857; FRL–3481–8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 89–19, November 23, 1988.

Y 89–20, 89–21, 89–22, November 24, 1988.

Y 89–23, November 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–19

Manufacturer. Confidential.
Chemical. (G) Polyether/polycarbonate.
Use/Production. (G) Urethane coating. Prod. range: Confidential.

Y 89–20

Importer. MTC America Inc.
Chemical. (G) Polyimide.
Use/Import. (G) Resins. Import range: Confidential.

Y 89 21

Importer. Mitsui Toatsy Chemicals America.
Chemical. (S) (2,2-bis(4-hydropropoxyl)propane, isophthalic acid neopentyl glycol trimethylol dimethyl terephthalenate isophorone diisocyanate.
Use/Import. (S) Toner binder. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species(Rats).

Y 89–22

Importer. Mitsui Toatsu Chemicals America.
Chemical. (S) 2,2-Bis(4-(2-hydroxypropoxyl)phenyl)propane polymer with isophtalic acid neopentylglycol teimethyrol propane and isophorone diisocyanate.
Use/Import. (S) Toner binder. Import range: 500–5,000 kg/yr.

Y 89-23

Manufacturer. Minnesota Mining and Manufacturing Co.

Chemical. (S) 2-propenoic acid; isooctyl-2-propenoate; octadecyl-2-methyl-2-propenoate; hexadecyl-2-methyl-2-propenoate; eisosyl methacrylate; benzoyl peroxide.

Use-Production. (G) Polymeric additive. Prod. range: Confidential.

Date: November 17, 1988.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-27207 Filed 11-23-88; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Order Amending Order Appointing Receiver of the Federal Land Bank of Jackson, and Federal Land Bank Association; Jackson, MI

ACTION: Notice.

SUMMARY: On November 16, 1988, the Order Appointing Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi, dated May 20, 1988 (53 FR 18812, May 24, 1988), as amended August 4, 1988 (53 FR 30343, August 11, 1988) is hereby further amended, ratified, confirmed and adopted to include certain named officials of REW Enterprises, Inc., in addition to Larry G. Koch, as signatory agent for REW Enterprises, Inc., Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi. The amended Order authorizes Larry G. Koch, acting in his capacity as Chief Executive Officer of REW Enterprises, Inc., and W.E. Harvey, Billy R. Pendleton, Danny R. Love, George M. Ozan, Norman D. Hornbaker, Herbert W. Hawkins, Joseph F. Lollman and Earl Hall, acting in their capacities as officers and directors of REW Enterprises, Inc. to sign, individually, any and all documents on behalf of the Receiver, and only Larry G. Koch acting in such capacity may delegate his signatory authority, with appropriate administrative controls, to any employee of the institutions-in-Receivership, as he deems appropriate.

Dated: November 18, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-27211 Filed 11-23-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 4365; No. AC-752]

Capital Services Bank, F.S.B.; Final Action Approval of Conversion Application

Date: November 16, 1988.

Notice is hereby given that on November 10, 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 Capital Savings Bank, F.S.B., Baltimore, Maryland, for permission to convert to the stock form or 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 Agency at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-27240 Filed 11-23-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Bluestar Line, Limited, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000050-056

Title: Pacific Coast/Australia-New Zealand Tariff Bureau.

Parties:

Blue Star Line, Ltd.
Columbus Line
Associated Container Transportation (Australia) Ltd.
Australia-New Zealand Direct Line
Hyundai Australia Direct Line
Pacific Australia Direct Line

Synopsis: The proposed modification would delete ports and points of Papua, New Guinea and Tonga from the geographic scope of the Agreement. It would also delete Pacific Australia Direct Line as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 207-009973-013

Title: Johnson Scanstar Service Agreement.

Parties:

Blue Star Line Limited
The East Asiatic Company Ltd. A/S
Johnson Line Aktiebolag

Synopsis: The proposed modification would designate one of the parties to provide the central management for the agreement, and changes the shares in the joint service to reflect EAC's financial interest that Johnson Line formerly had.

Agreement No: 207-010137-013

Title: Barber Blue Sea Agreement.

Parties:

Ocean Transport and Trading Plc.
Rederiaktiebolaget Transatlantic
Wilh. Wilhelmsen Limited A/S
Scanbarber A/S

Synopsis: The proposed modification eliminates the restriction that the parties provide the FMC written notice of termination at least 30 days prior to the effective date of such termination. It also deletes the provision that the effectiveness be contingent upon the simultaneous resignation from every other agreement of which the joint service is a member or party.

Agreement No: 203-010459-004

Title: Feeder Vessel Cooperative Working Arrangement.

Parties:

American President Lines, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed modification would extend the term of the Agreement for 15 days, from December 31, 1988, through and including January 15, 1989. The parties have requested a shortened review period.

Agreement No: 207-010943-001

Title: ScanCarriers Agreement.

Parties:

East Asiatic Company Limited A/S
Rederiaktiebolaget Transocean
Wilh. Wilhelmsen Limited A/S
ScanBarber A/S

Synopsis: The proposed modification eliminates the provision that the effectiveness of termination be contingent upon the simultaneous resignation from every other agreement of which the joint service is a member or party.

Agreement No: 203–011193–001

Title: Conbulk Carriers Discussion Agreement.

Parties:

Gearbulk Ltd. d/b/a Gear Bulk Container Services
Star Shipping A/S
Westwood Shipping Lines, Inc.

Synopsis: The proposed modification would delete the Agreement's authority over Canada from the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 21, 1988.

[FR Doc. 88–27185 Filed 11–23–88; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Ocean Quest International/Ocean Spirit Shipping Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Ocean Quest International/Ocean Spirit Shipping, Ltd., 512 South Peters Street, Suite 202, New Orleans, Louisiana 70130–1629.

Vessel: Ocean Spirit.

Date: November 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–27172 Filed 11–23–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Chesapeake Bank Corp.; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)() to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Chesapeake Bank Corporation,* Chesapeake, Virginia; to acquire South Norfolk Loan Corporation, Chesapeake, Virginia, and thereby engage in making and servicing loans by a consumer finance company pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27163 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

Citicorp, New York, NY; Proposal to Underwrite and Deal in Equity Securities to a Limited Extent

Citicorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Citicorp Securities Markets, Inc., New York, New York ("CSMI"), to underwrite and deal in, to a limited degree, all types of equity securities, including, but not limited to, (1) common stock, preferred stock and other ownership interests, issued by a domestic or foreign corporation or other entity, (2) American Depositary Receipts, and (3) options, warrants and other rights issued in connection with (a) any of the foregoing and (b) ineligible securities and bank-eligible securities as defined below, but not including ownership interests in open-end investment companies.

CSMI is currently authorized to underwrite and deal in, to a limited extent, 1–4 family mortgage-related securities, municipal revenue bonds, commercial paper and consumer-receivable-related securities ("ineligible securities"). *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) ("*Citicorp/Morgan/Bankers Trust*"); *Citicorp,* 73 Federal Reserve Bulletin 619 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987). CSMI is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y ("bank-eligible securities"). 12 CFR 225.25(b)(16).

Citicorp has applied to underwrite and deal in equity securities within the framework of limitations established in the *Citicorp/Morgan/Bankers Trust* Order, including the 5 percent gross revenue limitation. Accordingly, under this application the amount of gross revenue CSMI would receive from the proposed new ineligible underwriting activity and the previously approved ineligible activity would not exceed in the aggregate 5 percent of the total gross revenues of CSMI

The Board has not previously determined that the proposed underwriting and dealing activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board

approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto."

Citicorp contends that the proposed activities are closely related to banking because banks have generally engaged in activities that are functionally and operationally similar to underwriting and dealing in equity securities. These services include arranging private placements of securities, overseas underwriting and dealing, underwriting and dealing in bank-eligible and ineligible securities, providing financial advice, investing in equity securities, commercial lending and purchasing and reselling longer term certificates of deposit.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Citicorp contends that approval of the proposal would result in greater convenience for customers, increased competition, lower costs of issuers of equity securities, increased liquidity of equity securities for investors, and would also produce a new source of income for bank holding companies as well as increase the liquidity of their balance sheets, thereby increasing their safety and soundness. Citicorp contends that the proposed activities would not result in adverse effects because Citicorp would conduct the proposed activities within the framework of limitations previously established by the Board in its *Citicorp/Morgan/Bankers Trust* Order. Moreover, Citicorp states that section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), which was enacted after the *Citicorp/Morgan/Bankers Trust* Order was issued, will serve to provide additional protection in this area.

Citicorp contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Citibank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Citicorp states that it would not be "engaged principally" in underwriting and dealing in securities in light of the 5 percent limitation on these activities. *See, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); and *Securities Industry Association* v. *Board of Governors/Chase*, 847 F.2d 890 (D.C. Cir. 1988).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedures (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 18, 1988.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–26166 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Faye Cargile

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fay Cargile*, Glenwood, Arkansas; to acquire an additional 45.79 percent of the voting shares of Caddo Holding Company, Inc., Glenwood, Arkansas, and thereby indirectly acquire Caddo First National Bank, Glenwood, Arkansas.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27162 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

FSB of Victor, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 14, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB of Victor, Inc.*, Victor, Iowa; to become a bank holding company by acquiring 87.9 percent of the voting shares of Farmers Savings Bank, Victor, Iowa.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–27164 Filed 11–23–88; 8:45 am]

BILLING CODE 6210–01–M

SunTrust Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Insurance Company, Atlanta, Georgia, in underwriting and reinsurance of home mortgage redemption insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27165 Filed 11-23-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0027, General Services Administration Acquisition Regulation; Part 546—*Quality Assurance*, GSA Form 1678 and DD Form 250. Information contained on these forms is used by various contract administration and other support offices for quality assurance, acceptance of supplies and services, shipments, and to justify payments.

AGENCY: GSA Acquisition Policy and Regulations (VP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, Genreal Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden

Firms responding, 9,142; responses, 127 per year; average hours per response, .083–.5; burden hours, 267,570.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, 202–566–1224.

Copy of Proposal

A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Building, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-27228 Filed 11-23-88; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0229, *General Services Administration Acquisition Regulation Progress Payment Provision*, Part 552.232-74. The progress payment provision is currently being used to determine whether a prospective contractor is eligible to receive a contract award.

AGENCY: GSA Acquisition Policy and Regulations (VP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden

Firms responding, 30; responses, 1 per year; average hours per response, 1; burden hours, 30.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, 202–523–4765.

Copy of Proposal

A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Builder, Washington, DC 20405, or by telephoning 202–535–7691.

Dated: November 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-27229 Filed 11-23-88; 8:45 am]

BILLING CODE 6820-61-M

[Wildlife Order 169; 7-D-KS-481-E]

Federal Property Resources Service, Melvern Lake, KS; Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b), notice is hereby given that

1. By deed from the General Services Administration dated June 20, 1988, the property, consisting of 98.44 acres unimproved, known as Melvern Lake, Kansas, was transferred to the State of Kansas.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: November 16, 1988.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 88-27227 Filed 11-23-88; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 4, 1988.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. National Survey of Family Growth, Cycle, IV, Telephone Reinterview Pretest—New—The National Survey of Family Growth (NSFG), Cycle IV provides longitudinal data on childbearing and reproductive health. This study will recontact respondents of the NSFG in an effort to update key program-relevant statistics, create a longitudinal record for evaluation and analytic studies and collect new data for collaborating agencies. The data will be disseminated through written reports and public use computer tapes. Respondents: Individuals or households; Number of Respondents: 150; Number of Responses Per Respondent 1; Average Burden Per Response: .33; Estimated Annual Burden: 50 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238)

1. Coverage of Oxygen for Use in a Patient's Home—BERC–024–FNC and the Manual Instructions—0938–0422—This information collection provides uniform criteria for determining the use of oxygen for home use as a covered Medicare benefit. The provisions in the regulations and the manual instructions require that the physician provide written documentation to the carrier through the Durable Medical Equipment (DME) supplier. Respondents: Small businesses or organizations; Number of Respondents: 600,000; Frequency of Response: 1; Average Burden Per Response: 15 min.; Estimated Annual Burden: 150,000 hours.

OMB Desk Officer: Allison Herron.

2. Medicaid Quality Control Review Worksheet—0938–0094—State agencies are required to perform quality control reviews for each of the three Federal assistance programs: Aid to Families with Dependent Children (AFDC), Food Stamp (FS), and Medicaid. The Integrated QC Review Worksheet is jointly designed and used by FSA, FNS, and HCFA. The form was designed to collect both case characteristics and quality control data for all quality control reviews in the AFDC, FS, and Medicaid programs.

1st Information Collection Reporting

Number of Respondents—55
Annual Frequency—737
Average Burden Per Response—6.96

2nd Information Collection Recordkeeping

Number of Respondents—55
Annual Frequency—
Average Burden Per Response—3,418.11
Total Burden Hours: 470,161

3. Provider Cost Report Reimbursement Questionnaire—0938–0301—The HCFA–339 must be completed by all providers to ensure proper medicare reimbursement to providers and to minimize subsequent contact between the provider and its intermediary. It is used to gather information necessary to support financial and statistical entries on the cost report. Respondents: Business or other for-profit, Small Businesses or organizations; Number of Respondents: 19,677; Frequency of Response: 1; Average Burden per Response: 20; Estimated Annual Burden: 393,540 hours.

OMB Desk Officer: Allison Herron.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

1. Teenage Parent Demonstration: Child Care User and Provider Questionnaire—0990–0176—These surveys are part of the impact evaluation of the demonstration and will be administered to a sample of experimental and control group members and their named child care providers. These surveys will provide critical information regarding child care utilization and its relationship to other demonstration outcomes.

Child Care User Interview

Number of Respondents–600
Annual Frequency—1
Average Burden Per Response—.5667

Family Care Provider Interview

Number of Respondents—250
Annual Frequency—1
Average Burden Per Response—.3833
Total Annual Burden: 436.

OMB Desk Officer: Shannon Koss-McCallum.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Certification of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019—The information is needed to determine if the "In Care" entitlement factor is met. Respondents: Individuals or households; Number of Respondents: 14,000; Frequency of Response: 1; Average Burden Per Response: 10 min.; Estimated Annual Burden; 2,333 hours.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
SSA: (301) 965–4149
OS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: November 18, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–27235 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

Family Support Administration

Aid to Families With Dependent Children; State Plan Hearings; Massachusetts

AGENCY: Family Support Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Department Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by the Commonwealth of Massachusetts.

DATE: 9:00 a.m., January 10, 1989.

Place: Room 1211, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.

Request to Participate: Requests to participate as a party or as amicus curiae must be submitted to the

Departmental Appeals Board in the form specified at 45 CFR 213.15 by December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Neil H. Kaufman, Executive Secretary, Departmental Appeals Board, Department of Health and Human Services, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 475–0006.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to Massachusetts Department of Public Welfare.

Washington, DC, November 18, 1988.

Eugene B. Benson, Deputy General Counsel, Department of Public Welfare, 180 Tremont Street, 14th Floor, Boston, Massachusetts 02111.

and

Nancy Nieman, Assistant Regional Counsel, Office of the General Counsel, Region I, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.

Counsel

This letter is in response to the July 22, 1988 petition for hearing filed by the Massachusetts Department of Public Welfare (Commonwealth) requesting reconsideration of the Family Support Administration's (FSA) disapproval of the Massachusetts' state plan amendment (Transmittal No. 87–5B). In the proposed amendment the Commonwealth sought to allow grantee-relatives age 18 and younger to receive a $150 special clothing allowance payment under Title IV–A of the Social Security Act (AFDC).

Pursuant to 45 CFR 213.21, I have designated Norval D. (John) Settle, Chair of the Departmental Appeals Board, to preside a the hearing, which will be conducted under the procedures in 45 CFR Part 213. A hearing has been scheduled to be held on January 10, 1989, in Boston, Massachusetts. The hearing will began at 9:00 a.m. and will take place in Room 1211, John F. Kennedy Federal Building. A verbatim transcript will be taken.

This proceeding under 45 CFR Part 213 is not intended to preclude or limit negotiations between FSA and the Commonwealth; they may negotiate at any time in an effort to resolve the issues to be considered at the hearing.

The issues to be considered at the hearing include:

Whether it is reasonable and equitable to treat grantee-relatives age 18 and younger differently from other grantee relatives in determining need for the special clothing allowance, and whether this age distinction comports with applicable Federal requirements.

A copy of this letter will appear as a Notice in the **Federal Register**.

Wayne A. Stanton, Administrator, Family Support Administration.

Wayne A. Stanton,

Administrator, Family Support Administration.

November 18, 1988.

[FR Doc. 88–27238 Filed 11–23–88; 8:45 am]

BILLING CODE 4150–04–M

Aid to Families With Dependent Children; State Plan; Tennessee

AGENCY: Family Support Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Departmental Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by Tennessee.

DATE: 2:00 p.m., Wednesday, January 11, 1989.

Place: Room 905, 101 Marietta Tower, Marietta and Spring Streets, Atlanta, Georgia 30323.

Requests to Participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 by December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas D. Horvath, Senior Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone Number (202) 475–0013.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to the Tennessee Department of Human Services.

Washington, DC, November 17, 1988,

Susan S. Garner, Assistant General Counsel, Tennessee Department of Human Services, Citizens Plaza, 400 Deaderick Street, Nashville, Tennesee 37219;

and

Edgar M. Swindell, Assistant Regional Counsel, Region IV, Department of Health and Human Services, Room 521, 101 Marietta Tower, Atlanta, Georgia 30323.

Counsel

This letter is in response to the August 8, 1988 request for reconsideration filed by the Tennessee Department of Human Services (State) in which it seeks reconsideration of the Family Support Administration's (FSA) disapproval of the State's proposed state plan amendment submitted as Transmittal No. ES–AP–88–2 (the proposed plan amendment). In the proposed amendment to the State's plan for implementing Title IV–A of the Social Security Act (Aid to Families with Dependent Children, or AFDC) the State adopted a new condition permitting the State to shorten the period of ineligibility caused by receipt of non-recurring lump sum income.

Pursuant to 45 CFR 213.21, I have designated Alexander G. Teitz, a Departmental Appeals Board Member, to preside at the hearing, which will be conducted under the procedures in 45 CFR Part 213. Pursuant to 45 CFR 201.4, a hearing has been scheduled to be held on Wednesday, January 11, 1989, at 2:00 p.m., Room 905, 101 Marietta Tower, corner of Marietta and Spring Streets, Atlanta, Georgia 30323. A verbatim transcript will be taken.

The provisions of section 402(a)(17) of the Social Security Act and 45 CFR 233.20(a)(3)(ii)(F) permit a state to shorten the period of ineligibility for receipt of assistance caused by receipt of non-recurring lump sum income for a reason beyond the control of the family. The issues to be considered at the hearing include:

1. Whether the State has complete and unfettered discretion to define what circumstances it will consider in its State plan as beyond the control of the family.

2. If the State does not have complete discretion to define what is a reason beyond the control of the family, must the circumstances be limited to those needs created by dire or natural disaster, loss or theft of income, or life threatening circumstances?

3. If the State is not limited to the reasons given in 2. above, must its discretion in defining what are reasons beyond the control of the family be reasonable?

4. If the State's discretion must be reasonable, and this discretion is subject to review by FSA, did FSA properly find that the State's definition of reasons beyond the control of the family to include using the lump sum to meet essential needs was not reasonable?

A copy of this letter will appear as a Notice in the **Federal Register** and any

person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered at the hearing have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses. 45 CFR 213.15(b)(2). Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(b)(2). This petition should be filed no later than December 31, 1988, to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Teitz at the Departmental Appeals Board, Room 451-F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent.

For convenience please refer to Board Docket No. 88-184: Wayne A. Stanton, Administrator, Family Support Administration.

Wayne A. Stanton,

Administrator, Family Support Administration.

November 17, 1988.

[FR Doc. 88-27177 Filed 11-23-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Pierrel America, Inc.; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Pierrel America, Inc. The NADA provides for use of chlortetracycline hydrochloride soluble powder in the drinking water of chickens and turkeys.

EFFECTIVE DATE: December 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036, is the sponsor of NADA 65-253 which provides for use of chlortetracycline hydrochloride soluble powder (Prochlor S) in the drinking water of chickens and turkeys. The NADA was originally filed by Houston Biochemical Industries, Inc., for its subsidiary Caribe Chemical Co., Inc., as an antibiotic form 6 application. Sponsorship of the application was transferred to Caribe Chemical Co., Inc., prior to the original approval (December 30, 1970), and subsequently to Pierrel America, Inc. (40 FR 37036; August 25, 1975). In the June 8, 1987, report filed pursuant to 21 CFR 510.300, FDA was informed that the product was never manufactured or marketed commercially.

The application is one of several which are the subject of a notice and proposed rule published in the **Federal Register** of April 27, 1979 (44 FR 24931 and 24866). That notice presented the effective indications for which chlortetracycline soluble powder for animal use may be marketed and proposed to withdraw approval of new animal drug applications (NADA's) for products labeled for conditions lacking substantial evidence of effectiveness. The notice also provided an opportunity for hearing on the indications that lack such evidence. Written response to the **Federal Register** notice was required by May 29, 1979, supporting data by June 26, 1979. Several products were specifically cited as subject to the notice and previously subject to the National Academy of Sciences/National Research Council (NAS/NRC) evaluation under the Drug Efficacy Study Implementation (DESI) program (35 FR 10162; June 20, 1970, DESI 2-0038NV) including Pierrel America's NADA 65-253 for Prochlor S. The sponsor failed to respond to that April 27, 1979, notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 65-253 and all supplements thereto is hereby withdrawn, effective December 5, 1988.

Dated: November 17, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-27168 Filed 11-23-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Restoration of the Tidal Prism and Enhancement of Wetlands in the Tijuana Estuary, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the enhancement of the tidal prism to Tijuana Estuary, San Diego County, California. A public meeting regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 27, 1988. A public meeting will be conducted on December 1, 1988, by the City of Imperial Beach. See **ADDRESSES** below for location and time.

ADDRESSES: Comments should be addressed to:

Regional Director, U.S. Fish and Wildife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232, (ATTN: Bob Fields);

and

Assistant Refuge Manager, Tijuana Slough National Wildlife Refuge, P.O. Box 335, Imperial Beach, California 92032.

The public meeting on December 1, 1988, will be held from 3 p.m. to 7:30 p.m. at the City Hall Community Center, 825 Imperial Beach Boulevard, Imperial Beach, California 92032.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Weitzel, Assistant Refuge Manager, Tijuana Slough National Wildlife Refuge, P.O. Box 335, Imperial Beach, California 92032, (619) 575–1290 or Ms. Sharon Lockhart, Project Coordinator, Tijuana Estuary Tidal Restoration and Wetland Enhancement Project, Department of Biology, San Diego State University, San Diego, California 92818–0057, (619) 594–7433.

Persons attending the meeting should notify the individuals identified above.

SUPPLEMENTARY INFORMATION: Mr. Weitzel and Ms. Lockhart are the primary authors of this document.

The Tijuana River National Estuarine Research Reserve (Reserve) is located in San Diego County, California. Within this Reserve is the Tijuana Slough National Wildlife Refuge. The Fish and Wildlife Service is a member of the Management Authority for Reserve. A management plan approved by this Management Authority proposes to restore the wetlands of the Tijuana Estuary. The Fish and Wildlife Service, the State of California Department of Parks and Recreation, and the State of California Coastal Conservancy are to assume the responsibility to provide technical advice and funding assistance as available for restoration activities within the Reserve.

The Fish and Wildlife Service with the other interested Federal, State, and local agencies proposes to restore the tidal prism and circulation for the southern arm of the Tijuana Estuary. Without extensive restoration of the tidal prism and tidal circulation in the near future, the very saline habitats which led to the establishment of the Tijuana Slough National Wildlife Refuge and the Tijuana River National Estuarine Research Reserve could be lost.

In 1986, the State of California Coastal Conservancy prepared a detailed hydrologic analysis of the Tijuana Estuary and proposed a means to improve tidal flushing. The analysis will serve as one of the project alternatives. Under this alternative, the proposed project would be done in three (3) phases and include dredging the mouth and approximately 400 acres of mixed high saltmarsh and uplands to create tidal channels and low, middle and upper saltmarsh.

As currently planned, Phase I would involve the dredging of the Old River Slough channel and excavating a 20-acre experimental marsh at its inland terminus and improving tidal flushing in Oneonta Slough. Phase 2 would enlarge the restoration area by dredging approximately 270 acres of slough channel, salt marsh and uplands in Borderfield State Park; dredging a connecting channel to the estuary mouth and using the dredge spoils to create a river training berm to prevent floods from refilling the new channels with sediment. Phase 3 would include dredging 70 acres of slough channels and saltmarsh in the old sewage ponds and dredging approximately 290 acres of slough channels and saltmarsh adjacent to the experimental channel constructed during Phase I. The hydrologic plan considered only circulation, other alternatives will be proposed and evaluated during the scoping process and the preparation of the document.

The major short-term impacts associated with this project are the loss of high saltmarsh and transition zone habitats. The major long-term impact will be the permanent loss of uplands in the estuary. The document will address the impacts to water and wetland dependent species during construction, and during the short-term loss of habitat values. Long-term impacts to terrestrial species will also be discussed. Of particular concern will be any possible adverse impacts to listed, proposed, or candidate endangered species that may be found in the project area. Therefore, the document will contain discussions of these possible impacts as well as means to mitigate the loss of habitat values.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500 through 1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

We estimate that the DEIS will be made available to the public by April 1989.

Date: November 18, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88–27159 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–943–09–4214–10; GP9–038; OR–41565 and OR–1566 (WASH)]

Transfer of Jurisdiction of Lands; Oregon and Washington; Correction

The land description in FR Doc. 88–6992, published on page 10443 in the issue of Thursday, March 31, 1988, is hereby corrected as follows:

In the second column on page 10443 under Surface Entry Only, in the ninth line under T. 1 N., R. 5 E., the "SE¼ NE¼" is corrected to read "SE¼SE¼".

Dated: November 16, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–27230 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–84–M

[OR–090–6310–02–GP–039]

Eugene, OR; District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Thursday, December 15, 1988, beginning at 9 a.m., in the Wilder Room of the Eugene Hilton, 66 E. 6th Avenue, Eugene, Oregon.

The agenda of the meeting will include: (1) A review of the District's 1989 timber management program and its funding levels; (2) the lawsuit filed by environmental groups seeking to list the northern spotted owl as an endangered species; (3) and other issues that will be determined later.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, OR 97401 by the end of business on Tuesday, December 13, 1988. A time limit per person may be imposed by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–27160 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–33–M

[NV-930-09-4214-10; N-43672, N-48331]

Termination of Withdrawal Applications; Nevada

November 10, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service and the Bureau of Land Management have cancelled their applications to withdraw lands pending a legislative exchange for privately owned lands in Florida. The exchange has been consummated pursuant to Pub. L. 100–275 of March 31, 1988.

EFFECTIVE DATE: November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: Notice of an application for withdrawal and reservation of 45,298 acres of public land in Clark County by the Fish and Wildlife Service was published as FR Doc. 86–8157 on page 12574 of the issue of April 11, 1986, and a correction notice was published on page 16595 of the issue of May 5, 1986. A subsequent amendment and a new application for an additional 8,910 acres in Mineral County by the Fish and Wildlife Service were published as FR Docs. 86–1880 and 86–18801 on page 29705 of the issue of August 20, 1986, and a correction notice was published on page 41894 of the issue of November 19, 1986. The Bureau of Land Management's application for 52,840 acres in Clark County was published as FR Doc. 88–7788 on page 11713 of the issue of April 8, 1988, and a correction notice was published on page 12641 of the issue of April 15, 1988. The purpose of the proposed withdrawals was to protect the lands pending a legislative exchange for privately oiwned lands in Florida. The lands were temporarily segregated from all forms of appropriation under the public land laws, including the United States mining laws.

The Fish and Wildlife Service and the Bureau of Land Management have cancelled the applications in their entireties. All the lands in the applications have been conveyed out of Federal ownership or have been leased and remain withdrawn from the operation of the public land laws and the mining laws pursuant to Pub. L. 100–275 of March 31, 1988.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–27271 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1860, Block 66, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 14, 1988. Comments must be received by December 12, 1988, or 15 days after the Coastal Management Sections receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal management Section, Attention OCS PLans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–27231 Filed 11–23–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Frederick Douglass National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the boundary of the Frederick Douglass National Historic Site in Washington, DC is revised to include an additional parcel of land for preservation as a part of the historic site.

FOR FURTHER INFORMATION CONTACT: John Parson, Associate Regional Director, Land Use Coordination, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242. Telephone number (202) 426–6629.

SUPPLEMENTARY INFORMATION: The Act of September 5, 1962 (76 Stat. 435) authorized the Secretary of the Interior to designate the former home of Frederick Douglass for preservation as a part of the park system in the National Capital. Not to exceed 14 acres of land, specifically excluding land used as a housing development, could be designated the "Frederick Douglass Home" (now the "Frederick Douglass National Historic Site" pursuant to Secretarial Order dated February 12, 1988). Upon donation of the properties and publication of the metes and bounds descriptions of those properties in the **Federal Register**, the parcels would

become part of the park system of the National Capital. On February 23, 1972, metes and bounds descriptions for two parcels of land totaling 8.08 acres, more or less, were published in the Federal Register (37 FR 3832, February 23, 1972).

This notice is to revise the metes and bounds descriptions of the Frederick Douglass National Historic Site to include an additional parcel of land that is being donated to the United States, through the National Park Service, by the Frederick Douglass Memorial and Historical Association. Therefore, the boundary of the Frederick Douglass National Historic Site is revised to include the following described land:

All that certain tract of land lying and being situated in the District of Columbia being part of a tract of land called Chichester, a part of Parcel 226/40 described as follows:

Beginning for the same on the Southeasterly line of 14th Street, at a point distant South 13° 13' West, 414.62 feet from the intersection of the line of 14th Street with the Southwesterly line of W Street; thence South 50° 14' 00" East, 268 feet to a point; thence South 10° 14' 40" East, 40.34 feet to the Northeasterly corner of Lot numbered Thirty (30) in Square Fifty-eight Hundred Thirteen (5813); thence with the Northerly line of Lot Thirty (30), North 76° 57' West, 128.88 feet to the line of Cedar Street: thence, with line of Cedar Street in a Northwesterly direction 143.73 feet to the line of 14th Street, thence, with line of 14th Street 89.36 feet to the place of beginning. Now Taxed as Lot Eight Hundred Six (806) in Square Fifty-eight Thirteen (5813).

Said Lot 806 containing 0.45 of an acre, more or less.

The Frederick Douglass National Historic Site now comprises 8.53 acres, more or less.

Date: November 16, 1988.

Ronald Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 88-27249 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, California; Boundary Revision

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision, Golden Gate NRA.

This notice indicates a change in the boundary of Golden Gate National Recreation Area, as the result of the establishment of San Francisco Maritime National Historical Park on June 27, 1988, by Pub. L. 100-348. San Francisco Maritime National Historical Park was depicted by the map referenced in Pub. L. 100-348 and entitled "Boundary Map, San Francisco Maritime National Historical Park," numbered 641/80,053 and dated April 7, 1987.

San Francisco Maritime National Historical Park is entirely composed of land and water which was within the boundary of Golden Gate National Recreation Area. Therefore, the boundary of the recreation area is altered solely to the extent that the Historical Park has been removed. Among specific areas which were within the boundary of Golden Gate National Recreation Area which are now included in San Francisco Maritime National Historical Park are Aquatic Park, Hyde Street Pier, Sala Burton Maritime Museum, Sand Beach and Victoria Park.

A map showing the revised boundary of Golden Gate National Recreation Area with respect to the new San Francisco Maritime National Historical Park, entitled "Revised Boundary Map, Golden Gate National Recreation Area", numbered 641/80,003 Suffix L, and dated October 1988, is available for inspection at the Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-27250 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment Continued Operations, Existing Wells; Colorado Interstate Gas (CIG); Lake Meredith Recreation Area, Texas

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Colorado Interstate Gas (CIG) a Plan of Operations. The proposal involves the continued operations of already existing wells, Lake Meredith Recreation Area, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, P.O. Box 1438, Fritch, Texas; and one copy will be available at the Southwest Regional Office, National Park Service, 1220 South Saint Francis Drive, Room 347, P.O. Box 728, Santa Fe, New Mexico 87504-0728.

Date: November 17, 1988.

R.B. Smith,

Acting Regional Director, Southwest Region.

[FR Doc. 88-27252 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., CST, on January 17, 1989, at the Jean Lafitte National Historical Park and Preserve, Barataria Unit Visitor Center, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Pub. L. 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Update Environmental Education Center.
—Overnight accommodations for Environmental Education Center.
—Tunica Biloxi Indians—potential cooperative agreement.
—Update De la Ronde ruins.
—Old Business.
—New Business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: November 18, 1988.

R.B. Smith,

Acting Regional Director, Southwest Region.

[FR Doc. 88-27251 Filed 11-23-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations; Airpax Corp.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation, Koenig and Bauer/Egenolf Machines, Inc., 2916 Bluff Road, Indianapolis, IN 46225.

B. 2. Wholly owned subsidiaries which will participate in the operation: Egenolf Contracting and Rigging Inc., 2916 Bluff Road, Indianapolis, IN 46225.

a. Both Corporations incorporated under laws of state of Indiana.

1. The parent corporation is North American Philips Corporation ("NAPC"), a Delaware corporation, with its principal executive office located at 100 East 42nd Street, New York, New York 10017.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

(i) Airpax Corporation, a Delaware Corporation, Cheshire Industrial Park, W. Johnson Avenue, P.O. Box 868, Cheshire, Connecticut 06410
(ii) American Color and Chemical Corporation, a Delaware Corporation, P.O. Box 32516, Charlotte, North Carolina 28232
(iii) Anchor Brush Company, Inc., a Delaware Corporation, 209 E. DeSoto Avenue, P.O. Box 36, Morristown, Tennessee 37814
(iv) Chicago Magnet Wire Corporation, an Illinois Corporation, 901 Chase Avenue, Elk Grove Village, Illinois 60007
(v) Conelectron, Inc., a Delaware Corporation, One Landmark Square, Stamford, Connecticut 06901
(vi) Consolidated Electronics Industries Corp., a Delaware Corporation, One Landmark Square, Stamford, Connecticut 06901
(vii) General Atronics Corporation, a Pennsylvania Corporation, 1313 Production Road, Ft. Wayne, Indiana 46808
(viii) Genie Manufacturing Inc., a Delaware Corporation, 3515 Massillon Road, Akron, Ohio 44312
(ix) Magnavox Advanced Products and Systems Company, a Delaware Corporation, 2829 Maricopa Street, Torrence, California 90503
(x) Magnavox CATV Systems Company, a Delaware Corporation, 133 West Seneca, Manlius, NY 13104
(xi) Magnavox Electronic Systems Company, a Delaware Corporation, 1313 Production Road, Fort Wayne, Indiana 46808
(xii) Magnavox Government and Industrial Electronics Company, a Delaware Corporation, 1313 Production Road, Fort Wayne, IN 46808
(xiii) New England Research Center, Inc., a Massachusets Corporation, 1313 Production Road, Ft. Wayne, Indiana 46808
(xiv) Philips Data Storage Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017
(xv) Philips Industries of Puerto Rico, Inc., a Delaware Corporation, P.O. Box 636, Cayey, Puerto Rico
(xvi) Philips Interactive Media Corp., a Delaware Corporation, 100 East 42nd Street, New York, New York 10017
(xvii) Philips Marketing Services, Inc., a Florida Corporation, Straw Plains Pike & Interstate 40, Knoxville, Tennessee 37914
(xviii) Philips Optical Communications Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017
(xix) Radiant Lamp Company, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017
(xx) Signetics Asia Limited, a Delaware Corporation, 811 East Arques Avenue, Sunnyvale, California 94086
(xxi) The Selmer Company, a Delaware Corporation, 600 Industrial Parkway, P.O. Box 310, Elkhart, Indiana 46514
(xxii) Transview Corporation, a Delaware Corporation, 100 East 42nd Street, New York, New York 10017
(xxiii) U.S. Philips Corporation, a Delaware Corporation, 580 White Plains Road, Tarrytown, New York 10591
(xxiv) VL Service Lighting Corp., a Delaware Corporation, 100 East 42nd Street, New York, New York 10017.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27186 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 431 (Sub-No. 1)]

Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes

November 18, 1988.

Notice to the Parties

The Commission is considering the adoption of the Uniform Railroad Costing System (URCS) as the preferred general purpose costing system for all regulatory costing purposes. The computation of URCS unit costs requires the separation of total expenses by activity into their variable and fixed components. The methodology for computing the proportion of railroad expenses which are variable was studied by an independent consultant—Professor M. Daniel Westbrook. A preliminary report on the methodology was issued in July 1988. Comments on that preliminary report have been reviewed by Dr. Westbrook and have been incorporated in a revised report which was completed in October 1988. Copies of the contractor's report *Research Report on URCS Regression Equations* are available from Dynamic Concepts, Inc., Room 2229 ICC Building, Washington, DC 20423 (202) 289-4357 for a fee of $30.00.

A Notice of Proposed Rulemaking should be served within 45 days. For further information contact William T. Bono on (202) 275-7354 or Thomas A. Schmitz (202) 275-7549.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27187 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31346 (Sub-1)]

Paducah and Louisville Railway Partnership; Acquisition and Operation Exemption, Rail Holdings, Inc.

Rail Holdings, Inc. (Rail), a noncarrier and a wholly-owned subsidiary of First Capital Corporation of Chicago (FCCC), which is a wholly-owned subsidiary of First Chicago Corporation, has filed a notice of exemption to acquire and operate Paducah Louisville Railway, Inc. (P&L) through a purchase of all outstanding stock of CG&T Corporation, the parent of P&L. Immediately after the purchase, Rail will transfer the assets of P&L to the Paducah & Louisville Partnership (P&L Partnership) (or another entity controlled by FCCC). During the time between Rail's purchase and subsequent transfer to P&L Partnership, Rail will operate P&L.

P&L consists of approximately 309 miles of rail line extending between Louisville and Paducah, KY, including a parallel line between Dawson Springs and Central City, KY, and branch lines to Kevil, Clayburn and Elizabethtown, KY. The transaction is expected to be consummated in November 1988. Any comments must be filed with the Commission and served on: Alfred Winchell Whittaker, Kirkland and Ellis, Suite 1200, 655 15th Street NW., Washington, DC 20005.

Rail must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. &*

Oper. of R. Lines under 49 U.S.C. 10901, 4 I.C.C.2d 305 (1988).[1]

Because Rail and P&L Partnership will be Class II carriers, the notice was filed pursuant to our amended regulations at 49 CFR 1150.35. *See Class Exemption-Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 309 (1988). Accordingly, the exemption will become effective November 16, 1988, 21 days after the notice of exemption was filed. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-27074 Filed 11-23-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission on October 20, 1988, disclosing (1) the execution of written agreements between COS and the Standards Promotion and Application Group Services, SA (SPAG) and (2) changes in the membership of COS. The additional written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988 and May 2, 1988, COS filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 4711), and June 30, 1988 (FR 24811), respectively.

On September 15, 1988, COS and SPAG entered into written agreements for the cross-distribution and licensing of each other's test products throughout Europe (by SPAG) and North and South America (by COS) and the cross-provision of third party testing with each other's respective tool sets. On October 7, 1988, the Air Force Communications-Computer Systems Integration Office became a member of COS. On October 11, 1988, Ungermann-Bass became a member of COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27225 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 4, 1988, disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594.

The identity of a new, voting member of OSF is: Hitachi Ltd., Hitachi Omori 2nd Bldg., 27-18, Minami Oi 6 Chome, Shinagawa-Ku, Tokyo 140, Japan.

In addition, the identities of the new, non-voting members of OSF are as follows:

Cornell University, 223 Day Hall, Ithaca, NY 14853
Norsk Data A.S., P.O. Box 25 Bogerud, Olaf Helsetsvei 5, Oslo 6, N-0621, Norway
RIAC NASA Ames Reseach Center, Moffett Field, CA 94035
Booz, Allen & Hamilton Inc., 4330 East West Highway, Bethesda, MD 20814-4455
Software AG, Darmstadt D-6100, Uhlandstrabe 12, Germany
Phoenix Technologies Ltd., 320 Norwood Park South, Norwood, MA 02062
Swedish Telecom Group, Farneboqatan 81-87, S-123 86 Farsta, Sweden
Intel Corporation, 2801 Northwestern Parkway, Santa Clara, CA 95051
Mentor Graphics Corporation, 85 SW Creekside Place, Beaverton, OR 970005
Silicon Graphics, 2011 N. Shoreline Blvd., Mountain View, CA 94043
Landmark Graphics, 333 Cypress Run, Suite 100, Houston, TX 77094
Computer Consoles, 950 Winter Street, Waltham, MA 02154
Interfirm Graphics Systems, 3940 Freedom Circle, Suite 101 Santa Clara, CA 95054
Wang, One Industrial Drive, Lowell, MA 01851
University of Texas, Taylor Hall, 2.124, Austin, TX 78712-1188
Stanford University, Sweet Hall 3090, Stanford, CA 94305-3090
Advanced Micro Devices, 901 Thompson Place MS-19, Sunnyvale, CA 94088
S.I.A., V.le Certosa, 218, 20156 Milano, Italy
Kendall Square Research Corp., One Kendall Square, Building 300/4th Floor, Cambridge, MA 02139
Tecsiel, S.p.A., a wholly owned subsidiary of Softsiel Corp., 4660 LaJolla Village Drive, #710, San Diego, CA 92122
Informix Software, Inc., 4100 Bohannon Drive, Menlo Park, CA 94025
Data General Corp., 4400 Computer Drive, Westborough, MA 01580

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-27226 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-75]

Daniel H. Stein, d/b/a Holme Drug Store; Revocation of Registration

On October 28, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Daniel H. Stein (Respondent), d/b/a Holme Drug Store, 8021 Frankford Avenue, Philadelphia, Pennsylvania proposing to revoke his DEA Certificate of Registration,

[1] Rail has provided the appropriate State Historic Preservation Officer with the identification of sites and structures: (a) Listed in the *National Register of Historic Places;* and (b) 50 years old and older that will be transferred as a result of the transactions.

AH2343438. The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of his registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated November 2, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on April 27, 1988. On September 27, 1988, the Administrative Law Judge issued his opinion and recommended ruling. On October 17, 1988, counsel for Respondent filed exceptions to the recommended ruling. On October 28, 1988, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is the principal pharmacist and owner of Holme Drug Store. While conducting a routine review of official DEA order forms, a DEA Investigator noticed that during February and March of 1987, Respondent had purchased 11,300 dosage units of Dilaudid 4 mg. tablets, as well as large quantities of Tuinal 200 mg., both Schedule II controlled substances. Based on these excessive purchases, DEA served an administrative inspection warrant at Respondent pharmacy on May 21, 1987. The Investigation reviewed the Schedule II prescription files and conducted an audit of Dilaudid 4 mg. tablets and Tuinal 200 mg. capsules for the period between May 1, 1985 through May 21, 1987. The audit revealed a shortage of 2,000 Dilaudid 4 mg. tablets and an overage of 7,363 Tuinal capsules. A review of the prescription files revealed that there were 841 prescriptions for Dilaudid 4 mg., written for 100 tablets each, and inscribed "David L. Rosen, M.D." In addition, out of approximately 1400–1500 Tuinal prescriptions during the audit period, there were 1,354 prescriptions for Tuinal 200 mg., written for 100 capsules each, inscribed "David L. Rosen, M.D."

DEA Investigators repeatedly attempted to contact Dr. David L. Rosen without success. There was no "David L. Rosen" licensed to practice medicine in the State of Pennsylvania at the address printed on the subject prescriptions. The DEA number which appeared on the Dr. Rosen prescriptions had never been issued to a "David L. Rosen," and when the Investigators attempted to locate the address printed on the subject prescriptions, they learned that there was no such address.

DEA Investigators informed Respondent that based on their investigation, David L. Rosen was non-existent. Respondent informed Investigators that about three years previously, he received a telephone call from a Dr. David Rosen requesting assistance in filling prescriptions for Dilaudid and Tuinal. Respondent told Dr. Rosen that he could fill them, and that he would be the only pharmacist at Respondent pharmacy who would fill Dr. Rosen's prescriptions. Respondent was the only person at the pharmacy who ordered drugs, signed Schedule II order forms and received Dilaudid and Tuinal.

The investigation also revealed that the Schedule II prescriptions filled at Respondent pharmacy had a computer generated sticker which included the initials of the filling pharmacist. A current employee found that his initials appeared on certain Dr. Rosen prescriptions, even though he had never filled any. A former pharmacist at the pharmacy also found his initials imprinted on some Dr. Rosen prescriptions. Again, this pharmacist had never filled any prescriptions for "Dr. Rosen".

Following the administrative inspection, and even after being told by DEA Investigators that Dr. Rosen did not exist, Investigators were notified that Respondent continued to purchase significant quantities of Dilaudid and Tuinal from wholesale distributors. Pursuant to this information, DEA Investigators served a Notice of Inspection at Respondent pharmacy on October 15, 1987. They reviewed the Schedule II prescription files and order forms. The examination confirmed that Respondent pharmacy had continued to order and fill prescriptions for Dilaudid and Tuinal. There were 47 prescriptions for either Dilaudid or Tuinal in the pharmacy's prescription files which bore the name Dr. Eugene B. Rex. On October 19, 1987, DEA Investigators interviewed Dr. Eugene B. Rex.

Dr. Rex advised that he had retired from medical practice as of July 1, 1986. He examined the prescriptions found at Respondent pharmacy which purportedly bore his name. He denied issuing any of them, and further stated that the names on prescriptions were not those of any of his former patients.

The Administrative Law Judge concluded that the preponderance of the evidence justified an inference that Respondent was falsifying the prescriptions purportedly written by Dr. Rex, and those purportedly written by Dr. Rosen as well, or alternatively, that he was filling them with knowledge that they were phony. The number of prescriptions filled at Respondent pharmacy between May 1985 and May 1987 average out to be about 33 Dilaudid prescriptions per month and about 54 Tuinal prescriptions per month. These are highly abuseable controlled substances. The Administrative Law Judge further stated that prescriptions for these drugs at the frequency found here should have alerted a conscientious pharmacist to make an inquiry of the prescribing physician to verify that they were genuine and were written for a legitimate medical purpose. See 21 CFR 1306.04(a). These prescriptions were all bogus and the slightest effort at verification by Respondent would have revealed this. The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH2343438, previously issued to Daniel H. Stein, d/b/a Holme Drug Store, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Respondent, all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elapsed. Accordingly, these controlled substances shall remain under seal until December 27, 1988, or until any appeal of this order has been concluded. At that

time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective December 25, 1988.

John C. Lawn,

Administrator.

Dated: November 18, 1988.

[FR Doc. 88-27170 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Establishment of 1988 Aggregate Production Quota for Ibogaine

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of an established 1988 aggregate production quota.

SUMMARY: This notice establishes the 1988 aggregate production quota for ibogaine, a Schedule I controlled substance.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S. Code 826), requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On July 28, 1988, a notice proposing to establish a 1988 aggregate production quota for ibogaine was published in the **Federal Register** (53 FR 28459). All interested persons were invited to comment on or object to the proposal on or before August 29, 1988. No comments or objections were received.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1988 aggregate production quota for ibogaine, expressed in grams of anhydrous base, be established as follows:

Basic class	1988 aggregate production Quota (grams)
Schedule I:	
Ibogaine	575

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: September 28, 1988.

[FR Doc. 88-27169 Filed 11-23-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-21,068]

Gulf Oil Corp. (Now Operating as Chevron Corp.); Westbelt Center, Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition which was received on September 26, 1988 and filed on behalf of workers at the Westbelt Center location of Gulf Oil Corporation, now operating as Chevron Corporation, Houston, Texas.

The Retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions. Workers of the Westbelt Centers provided services to affiliated facilities engaged in production operations.

All workers were separated from the Westbelt Center more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any workers whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-27278 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-20-M

[TA-W-21,150]

Willis Drilling Co. Edinburg, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 26, 1988 in response to a worker petition which was filed on September 26, 1988 on behalf of workers at Willis Drilling Company, Edinburg, Texas.

An active certification covering the petitioning group of workers is currently in effect (TA-W-20,969). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-27279 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-20-M

Federal-State Unemployment Compensation Program; Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1988

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsections (c), (f), or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of Sttes subject to the credit

reduction for 1988 and States that qualify for credit reduction relief is published below.

Date: November 21, 1988.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

U.S. Department of Labor

Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The Honorable Nicholas F. Brady,

Secretary of the Treasury, Washington, D.C. 20220.

November 10, 1988.

Dear Secretary Brady: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and to notify you of my determination as to the status of the States with regard to the reduction in credit provisions of Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Pursuant to delegation of authority to me, I have determined that employers in one State are subject to a reduction in FUTA offset credit for taxable year 1988: Michigan.

Under certain conditions, subsection (f) of Section 3302 of the FUTA limits or caps the FUTA tax credit reduction in a year to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year. To qualify for a cap in taxable year 1988, the Secretary of Labor (or her delegate) must determine that a State has taken no action in the 12 months ending on September 30, 1988, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) a reduction in the State's unemployment tax effort, or

(2) a net decrease in the solvency of the State unemployment compensation system and, further, that:

(3) the State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar years in the five-calendar year period ending with calendar year 1987, and

(4) The outstanding balance of advances to the State on September 30 of calendar year 1988 was not greater than the outstanding balance for such State on September 30, 1985.

Pursuant to delegation of authority to me, I have determined that under these criteria Michigan qualifies for the cap, but is not subject to reduced FUTA credits for 1988 because it also qualifies for avoidance of the offset credit reduction under subsection (g) of Section 3302 as noted below.

Subsection (g) of Section 3302 gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet, as determined by the Secretary of Labor (or her delegate), the following criteria in order to avoid the offset credit reduction for 1988:

(1) Make repayments to FUA during the one-year period ending on November 9, 1988, of an amount not less than the sum of all loans made to the State in the one-year period ending on such November 9, plus the potential additional taxes due by reason of the reduced credit applicable to taxable year 1988;

(2) Have or will have sufficient funds remaining after such repayments to pay benefits for at least three months from November 1 of the same year without receiving another Title XII advance; and

(3) Have taken action by amendment of the State law, after the date of the first advance is taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

Pursuant to delegation of authority to me, I have determined that under these criteria Michigan qualifies and is thus not subject to reduced FUTA credits for 1988.

Finally, please note that the State of Minnesota was omitted from the October 31, 1988, certifications required by sections 3304(c) and 3303(b), FUTA, for the "normal" and "additional" tax credits. This is because section 3304(c) of the FUTA requires that the Secretary shall not certify a State if that State's law no longer contains the provisions specified in section 3304(a). An issue under section 3304(a) currently exists with Minnesota. As the Secretary has not yet issued a decision on this matter, the omission of the State of Minnesota does not yet constitute a withholding of the certifications. The Secretary will notify you directly if Minnesota is certified or if the certifications are actually withheld.

Sincerely,

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 88-27280 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-30-M

[Guidance Letter No. 2-88]

Appeal Rights for Federal Assistance Grantees

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of training and employment.

SUMMARY: Appeal rights to the Office of the Administrative Law Judges are now available to entities receiving Federal assistance grants from the Employment and Training Administration (ETA) whose appeal rights and procedures are not established elsewhere in statutes and regulations. The ETA's determination regarding these rights and procedures was provided in Training and Employment Guidance Letter No. 2-88 issued October 21, 1988, which is published below.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda D. Kontnier, Chief, or James MacDonald, Division of Debt Management Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N-4671, Washington, DC. Telephone (202) 535-0704 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The DOL's final administrative requirements for audit set forth procedures at 29 CFR Subpart 96 by which grantees may appeal final determinations by DOL officials, where such appeal rights are not established elsewhere in statutes and regulations. The grantor agency is to determine which of two appeal options the grantee may use to appeal the final determinations of the grant officer. The two options listed at 29 CFR 96.603 are: (a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted; (b) appeal to the DOL's Office of Administrative Law Judges. Accordingly, the ETA has made its determination with respect to the specific appeal procedure to be used by all entities receiving Federal assistance grants from the ETA and whose appeal rights and procedures are not established elsewhere in statutes and regulations. Such entities may appeal final audit determinations of the ETA grant officer to the DOL Office of Administrative Law Judges (OALJ). This includes final audit determinations relating to grants for the administration of Federal-State unemployment compensation programs and related Federal unemployment benefit and allowance programs, the Senior Community Employment Service Program, the Work Incentive Program and the Targeted Jobs Tax Credit Program. This notice summarizes the Training and Employment Guidance Letter No. 2-88 published below which sets forth ETA's determination on the appeal procedure.

Signed at Washington, DC, this 16th day of November 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

Training and Employment Guidance Letter No. 2-88

From: Robert T. Jones, Assistant Secretary of Labor.

Subject: Appeal Rights for Federal Assistance Grantees.

Date: October 21, 1988.

1. *Purpose:* To provide notice of the type of appeal available to entities receiving Federal assistance grants from the Employment and Training Administration (ETA) whose appeal rights and procedures are not established elsewhere in statutes and regulations. This action by ETA is part of a larger effort to establish standard procedures for all Department of Labor (DOL) agencies in areas of audit resolution and appeal.

2. *References:* 29 CFR Subpart 96.6 (53 FR 5966, February 26, 1988).

3. *Background:* On February 26, 1988, the Department of Labor's (DOL's) final administrative requirements for audit were published in the **Federal Register** at 53 FR 5966 (to be codified in 29 CFR Part 96). Section 96.603 of this part sets forth procedures by which grantees may appeal final determinations by DOL officials responsible for audit resolution as a result of audits, where such appeal rights are not established elsewhere in statutes and regulations administered by DOL or its sub-agencies.

The grantor agency is to determine which of two appeal options the grantee may use to appeal the final determinations of the grant officer. The two options listed in 29 CFR 96.603 are: (a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted; (b) appeal to the DOL's Office of Administrative Law Judges. All grants within the same grant program are to follow the same appeal procedure.

4. *Policy on Appeal Procedure:* In accordance with 29 CFR 96.603, the ETA has made its determination with respect to the specific appeal procedure to be used by all entities receiving Federal assistance grants from the ETA and whose appeal rights and procedures are not established elsewhere in statutes and regulations. Such entities may appeal final audit determinations of the ETA grant officer to the DOL Office of Administrative Law Judges (OALJ). This includes final audit determinations relating to grants for the administration of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs, the Senior Community Employment Service Program, the Work Incentive Program and the Targeted Jobs Tax Credit Program.

Procedures for this OALJ-type of appeal are set forth in 29 CFR 96.603(b), subsections (1) through (5), as follows:

(1) *Jurisdiction*—(i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the grantee may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, with a copy of the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR Part 18, shall govern the conduct of hearings under * * * (29 CFR 96.603(b)).

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary of Labor, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

5. *Effective Date:* This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. *Promulgation:* This Guidance Letter will be published in the **Federal Register.**

7. *Inquiries:* Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535-0704.

[FR Doc. 88-27274 Filed 11-23-88; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT88-1 (Jan. 8, 1988) ..... p. 65.
Florida:
FL88-13 (Jan. 8, 1988) ..... pp. 132-133.
FL88-15 (Jan. 8, 1988) ..... pp. 138-140.
New Hampshire:
NH88-4 (Jan. 8, 1988)..... pp. 604-609.
New Jersey:
NJ88-2 (Jan. 8, 1988) ..... pp. 615, 619.
NJ88-3 (Jan. 8, 1988) ..... pp. 635, 639.
NJ88-4 (Jan. 8, 1988) ..... p. 659.
New York:
NY88-18 (Jan. 8, 1988)..... p. 830.

Volume II:

Iowa:
IA88-4 (Jan. 8, 1988) ..... p. 39.
IA88-5 (Jan. 8, 1988) ..... pp. 42, 46-49.
Illinois:
IL88-1 (Jan. 8, 1988) ..... p. 80.
IL88-16 (Jan. 8, 1988) ..... p. 203.
Indiana:
IN88-2 (Jan. 8, 1988) ..... p. 249.
IN88-3 (Jan. 8, 1988) ..... pp. 266, 269-270.
Kansas:
KS88-7 (Jan. 8, 1988)..... p. 352.
KS88-8 (Jan. 8, 1988)..... pp. 354, 356-359.
KS88-9 (Jan. 8, 1988)..... pp. 362-363.
Louisiana:
LA88-4 (Jan. 8, 1988) ..... p. 376.
Missouri:
MO88-1 (Jan. 8, 1988)..... pp. 582, 585.
MO88-2 (Jan. 8, 1988)..... pp. 604-605.
MO88-3 (Jan. 8, 1988)..... pp. 612-613.
MO88-8 (Jan. 8, 1988)..... p. 644.

Volume III:

Arizona:
AZ88-1 (Jan. 8, 1988)..... p. 10.
California:
CA88-1 (Jan. 8, 1988)..... p. 34.
CA88-2 (Jan. 8, 1988)..... pp. 47-48.
CA88-4 (Jan. 8, 1988)..... p. 73.
Utah:
UT88-1 (Jan. 8, 1988) ..... p. 338.
Wyoming:
WY88-1 (Jan. 8, 1988)..... pp. 432-436.
WY88-2 (Jan. 8, 1988)..... pp. 438-442.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of November 1988.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 88-27046 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-204-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, P.O. Box 527, Emery, Utah 84522 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Emery Mine (I.D. No. 42-00079) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24-inches wide should be provided on both sides of all belt conveyors. Where roof supports are installed within 24 inches of a belt conveyor, a clear travelway at least 24-inches wide should be provided on the side of such support farthest from the conveyor.

2. Petitioner states that due to mine conditions, proximity of mine rib to the belt converyor, or the location of existing roof and/or rib support, a clear travelway at least 24-inches wide cannot be provided at a limited number of locations.

3. As an alternate method, in lieu of a 24-inch travelway at these locations, petitioner proposes to:

(a) Provide a visual warning at the approach to all restricted travelways along belt conveyors;

(b) Provide suitable belt-crossing devices to permit access to an alternative travelway; and

(c) Provide a manual stop/start control switch at each location to permit safe servicing of the belt conveyor along such restricted areas.

4. For these reasons, petition requests a modificaiton of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that Office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27275 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-203-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 407 Brown Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground permanent pumps be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations are required to be coursed directly into the return.

2. As an alternate method, petitioner proposes to use a submersible pump to drain water from the sump beneath the

intake air shaft at its Hamilton No. 2 Mine.

3. In support of this request, petitioner states that—

(a) The operating electrical parts of the submersible pump would be submerged in the water in the sump at all times. In the event the water level in the sump should drop more than 1" below the intake point on this pump, the pump would discontinue pumping water from the sump; and

(b) The electrical power supply to the submersible pump would enter the pump at a point which would be below the water level in the sump at all times.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 17, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27276 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-212-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Pyro No. 9 Slope, William Station Mine (I.D. No. 15-13881) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connection units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to use a non-permissible submersible pump in a borehole in Longwall Block Three under water.

3. In support of this request, petitioner states that—

(a) The pump would be an American Submersible Turbine Pump, Model 8L30 with a 150 HP, 3500 RPM, 3 phase, 60 cycle, 460 volt motor; and

(b) The pump would be operated with all of the motor and all of the motor connections at least 5 feet below water level at all times.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1988. Copies of the petition are available for inspection at that address.

Date: November 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-27277 Filed 11-23-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ECONOMIC COMMISSION

Commission Meetings

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission ("the Commission") will hold meetings on December 7 and December 12, 1988. The Commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: December 7, 1988, 10 a.m.-4 p.m., Room 406, Dirksen Senate Office Building, Washington, DC. December 12, 10:30 a.m.-5:30 p.m., 736 Jackson Place NW., Washington, DC.

Agenda: The open portion of the Decmeber 7, 1988 meeting will be devoted to a review of econometric models; the closed portion to a discussion of economic assumptions. The December 12 agenda will be a review of budget options.

Open Meeting: The December 7 meeting will be open to the public from 10:00 a.m. to 11:30 a.m. The December 7 meeting from 11:30 a.m. to 4:00 p.m. and the December 12 meeting will be closed in order to avoid the disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within the section 552b(C)(9) of Title 5, United States Code.

For Additional Information Contact: Jim Hildreth, 703-425-8986, or 202-789-1993, National Economic Commission, 734 Jackson Place NW, Washington, DC. 20503

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-27267 Filed 11-23-88; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before December 27, 1988.

ADDRESSES: Send comments to Ms. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the

following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill our the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: General Programs: Humanities Projects in Libraries and Archives/ Guidelines and Application Instructions.

Frequency of Collection: Six times a year.

Respondents: Colleges and universities, libraries, archives, private, non-profit organizations, civic and professional groups, or branches of state or local government.

Use: Collection of information provides a basis for evaluation of applications in the competitive review process.

Estimated Number of Respondents: 83.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 40 per respondent.

Estimated Total Annual Reporting and Recording Burden: 3,320.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 88-27193 Filed 11-23-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 118 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Palisades Plant, located in Van Buren County, Michigan. The amendment is effective as of the date of issuance.

The amendment revised the provisions in the Technical Specifications to add limitations to plant operation with less than four reactor coolant pumps operating to conform to analyses for certain postulated accidents. It also modified the limiting conditions for operation, reactor protection system setpoints, surveillance requirements, radial peaking factors and the linear heat rate limit. The currently issued Safety Evaluation also approved the reactor protection system modification proposed in the licensee's March 25, 1988 application and used in the accident and transient analyses submitted in support of the revised Technical Specifications. That part of the March 25, 1988 application that proposed a change to the differential pressure limit for the steam generators has been superseded by an application dated October 7, 1988, which will be addressed in a future action.

The applications for the amendment comply 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.

Notices of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing in connection with this action were published in the **Federal Register** on July 6, 1988 (53 FR 25397) and September 27, 1988 (53 FR 37663). No request for hearing or petition to intervene was filed following these notices.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 10, 1988, at 53 FR 45633.

For further details with respect to this action, see (1) the application for amendment dated March 25, 1988, as supplemented June 17 and 27, 1988, and November 9, 1988, and application dated September 1, 1988, as supplemented September 19, 1988, (2) Amendment No. 118 to License No. DPR-20 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wamback,

Project Manager,

Project Directorate III-I, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-27213 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; La Crosse Boiling Water Reactor (LACBWR); Exemption

I

Dairyland Power Cooperative (the licensee) the holder of Provisional License No. DPR-45, which authorizes possession but not operation of the La Crosse Boiling Water Reactor (LACBWR). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Vernon County, Wisconsin.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the

requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $180 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III 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 and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Dairyland Power Cooperative is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27214 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-16]

Detroit Edison Co.; Enrico Fermi Atomic Power Plant Unit 1; Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. DPR-9, which authorizes possession but not operation of the Enrico Fermi Atomic Power Plant, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a sodium cooled reactor at the licensee's site located in Monroe County, Michigan.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensee to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security," Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * *. (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance for the reactor station site. This is substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the

prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III 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 and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Detroit Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 18th day of November 1988.

[FR Doc. 88-27215 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-74 issued to the Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit No. 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendment dated August 15, 1988, the amendment would revise Technical Specification section 3/4.1, "Reactivity Control Systems." The changes are necessary to accommodate the new steam line break analysis performed by Advanced Nuclear Fuels (ANF). This analysis, published as ANF report No. XN-NF-87-31(P), was transmitted to the Commission directly by ANF via their letter No. GNW:047:87, dated May 29, 1987. It was placed on the Cook Nuclear Plant Unit 2 docket via the licensee's letter No. AEP:NRC:09160D, dated June 15, 1987.

The changes fall into four categories, which are:

1. Increase in the required shutdown margin;
2. Additional time response testing requirements;
3. Reduction in the lower limit for the moderator temperature coefficient; and
4. Change to the description of the full steam flow function.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the 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 that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner 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 Theodore Quay: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal

Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

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) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 15, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Pakenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 18th day of November 1988.

For the Nuclear Regulatory Commission.

Theodore Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 88–27216 Filed 11–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–133]

Pacific Gas and Electric Co.; Humboldt Bay Power Plant Unit No. 3; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility License No. DPR–7, which authorizes possession but not operation of the Humboldt Bay Power Plant, Unit N. 3. the license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Humboldt County, California.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $100 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III 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 and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Pacific Gas and Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 18th day of November 1988.

[FR Doc. 88-27217 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Philadelphia Electric Co.; Peach Bottom Atomic Power Station Unit 1; Exemption

I

Philadelphia Electric Company (the licensee) is the holder of Provisional Operating License No. DPR-12, which authorizes possession but not operation of the Peach Bottom Atomic Power Station, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a high-termperature, gas-cooled demonstration power reactor at the licensee's site located in York County, Pennsylvania.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, since this rulemaking action was not completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54 (w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provision of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $180 million insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III 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 and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Philadelphia Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the license shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of November 1988.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27218 Filed 11-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

Section III.D.(a) of Appendix J to 10 CFR Part 50 requires that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) be performed at approximately equal intervals during each 10-year service period. Section III.A.6(a) of Appendix J to 10 CFR Part

50 requires that if any periodic Type A test fails to meet the applicable acceptance criteria, a review of the test schedule be performed and approved by the Commission. Section III.A.6(b) of Appendix J requires that if two consecutive periodic Type A tests fail to meet the applicable acceptance criteria, a Type A test shall be performed at each subsequent refueling outage or approximately every 18 months, whichever comes first, until two consecutive Type A tests meet the acceptance criteria given in Section III.A.5(b).

Section IV.A of Appendix J to 10 CFR Part 50 requires that a Type A, B or C leak test, as applicable, must be performed following any major modification or replacement of a component which is part of the primary containment boundary.

The licensee has determined that the Type A tests performed during the last three refueling outages (1982, 1985, and 1987) for the "as found" condition, failed to meet the acceptance criteria as a result of excessive leakage observed from the pathways of the Type B and C Local Leak Rate Tests (LLRT). The study showed that, historically, certain containment isolation valves (CIVs) have repeatedly failed their LLRT. As a result, the licensee concluded that the most effective approach to eliminate the excessive leakage was to develop a Corrective Action Plan (CAP) using the guidance given in the NRC Information Notice 85–71, dated August 22, 1985, in lieu of the increased test frequency required by Section III.A.6(b) of Appendix J to 10 CFR Part 50. Therefore, an exemption from this requirement is required.

The CAP developed by the licensee recommended replacement of 33 CIVs, 21 during the current outage and 12 during the 1990 outage. The valves are being replaced with valves that have better leakage characteristics, are easier to maintain, are expected to eliminate the previous failures and correct the bulk of the problem, and will be tested per the LLRT program when replaced. The 12 valves scheduled to be replaced during the 1990 outage have acceptable leakage rates based on the tests performed during the present refueling outage. The CAP has shown that they are likely to perform their intended function.

As part of the CAP, the licensee has purchased a main steam isolation valve seat maintenance tool from the valve manufacturer, plant mechanics have received training in conducting leak repairs from the valve vendors, and an apprenticeship program certified by INPO has been implemented.

Also, as part of the CAP, a manual valve in the High Pressure Coolant Injection (HPCI) System turbine exhaust to the suppression chamber was replaced. Because of the piping configuration and since a LLRT boundary cannot be created, the weld attaching the inboard side of the valve to the containment penetration cannot be pressure tested as required by Section IV.A of Appendix J to 10 CFR Part 50. Therefore, an exemption from this regulation is required.

The licensee has submitted an alternate testing program consisting of 100 percent radiography and dye penetrant or magnetic particle tests to ensure the leak tightness of the welds and the structural integrity and leak tightness of the piping.

Our Safety Evaluation supporting these Exemptions is dated November 16, 1988.

III

In this case, the licensee's CAP to eliminate the root cause of the successive Type A PCILRT test failures, and the improved valve maintenance program, will provide the equivalent level of protection as that provided by the Type A test. Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

Also, in this case, the licensee's non-destructive examination of welds for the HPCI turbine exhaust isolation valve will provide the equivalent level of protection as that provided by the Type B or C LLRT. Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

IV

As discussed above, the underlying purpose of the requirements of Section III.A.6(b) of Appendix J to 10 CFR Part 50 is to ensure the integrity of the primary containment and its penetrations. The underlying purpose is achieved and served by the replacement and testing program developed by the licensee. Also, the underlying purpose of the requirements of Section IV.A of Appendix J to 10 CFR Part 50 is to ensure that the primary containment integrity is not compromised when replacing components which form part of the boundary. In the case of the HPCI exhaust valve, this is achieved and served by the non-destructive tests which were performed.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemptions, as described in Section III, are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and special circumstances are present for the exemptions, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Section III.A.6(b) and Section IV.A of Appendix J to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from Section III.A.6(b) and Section IV.A to allow satisfactory implementation of the FitzPatrick Corrective Action Plan associated with containment isolation valves to fulfill the requirement of increased Type A tests and the satisfactory results from the non-destructive tests conducted on the welds for the HPCI turbine exhaust valve to fulfill the requirements of a Type B or C Test.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 46135).

This Exemption is effective upon issuance and is applicable for the operating cycle following startup from the 1988 refuel outage.

Dated at Rockville, Maryland, this 16th day of November, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects, I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–27219 Filed 11–23–88; 8:45 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors; Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, December 7, 1988, at 10:00 a.m.

ADDRESS: The meeting will be held at the Postmaster General's Suite, Third Floor, Post Office Building, 1200 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: November 16, 1988.

M. J. Brodie,

Executive Director.

[FR Doc. 88-27233 Filed 11-23-88; 8:45 am]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16643; (811-3424)]

Bullock Aggressive Growth Shares, Inc.; Application

November 18, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock Aggressive Growth Shares, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 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 December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on March 22, 1982, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement became effective on November 8, 1982, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to Surveyor Fund, Inc. (File No. 811-1415) in exchange for shares of common stock of Surveyor Fund, Inc. to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N-14 registration statement filed with the SEC on December 24, 1986 (File No. 33-11092). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to Surveyor Fund, Inc. in exchange for shares of common stock of Surveyor Fund, Inc. All shares of Surveyor Fund, Inc. received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Article of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27254 Filed 11-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16644; (811-2985)]

Bullock High Income Shares, Inc.; Application

November 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock High Income Shares, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 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 December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on January 11, 1980, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement became effective on May 20, 1980, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to the High-Yield portfolio of Alliance Bond Fund (File No. 811–2383) in exchange for shares of beneficial interest of the High-Yield portfolio of Alliance Bond Fund to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N–14 registration statement filed with the SEC on December 22, 1986 (File No. 33–10826). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to the High-Yield portfolio of Alliance Bond Fund in exchange for shares of beneficial interest of the High-Yield portfolio of Alliance Bond Fund. All shares of the High-Yield portfolio of Alliance Bond Fund received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. On August 28, 1987, Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–27255 Filed 11–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16645; (811–4223)]

Bullock U.S. Government Income Shares Inc., Application

November 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for De-Registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bullock U.S. Government Income Shares Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f–1.

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on October 18, 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 December 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant was organized as a Maryland corporation and on February 7, 1985, filed a registration statement pursuant to section 8(b) of the 1940 Act to register as an open-end, diversified management investment company. Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") with respect to a public offering of Applicant's common stock. Applicant's 1933 Act registration statement because effective on May 24, 1985, and its initial public offering commenced shortly thereafter.

2. On November 17, 1986, Applicant's Board of Directors approved (i) the sale of substantially all the assets of Applicant to the U.S. Government portfolio of Alliance Bond Fund (File No. 811–2383) in exchange for shares of beneficial interest of the U.S. Government portfolio of Alliance Bond Fund to be distributed to Applicant's shareholders on the basis of their relative net asset values per share, and (ii) the subsequent dissolution of Applicant. The Agreement and Plan of Reorganization and Liquidation and the terms of the reorganization are set forth in the Form N–14 registration statement filed with the SEC on December 22, 1986 (File No. 33–10827). On January 29, 1987, a Prospectus/Proxy Statement forming a part of said registration statement was mailed to Applicant's shareholders of record. On February 27, 1987, at a meeting duly called and held, the shareholders of Applicant approved the reorganization and subsequent dissolution of Applicant. Pursuant to the Agreement and Plan of Reorganization and Liquidation, on March 16, 1987, Applicant transferred all its assets to the U.S. Government portfolio of Alliance Bond Fund in exchange for shares of beneficial interest of the U.S. Government portfolio of Alliance Bond Fund. All shares of the U.S. Government portfolio of Alliance Bond Fund received by Applicant were thereafter distributed to Applicant's shareholders in liquidation.

3. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. On August 28, 1987, Applicant filed Articles of Dissolution with the State of Maryland terminating its existence as a Maryland corporation. The Articles of Dissolution became effective upon filing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-27256 Filed 11-23-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 04/04-0247]

Sigma Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company under the provision of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Sigma Capital Corp.; (Applicant), 1515 North Federal Highway, Suite 210, Boca Raton, Florida 33432 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percentage of shares owned
Alvin Schwartz, 1501/03 Boca West Drive, Boca Raton, Florida 33431.	President and Chairman of the Board.	12.75
Henry Margolis, 7539 Sierra Drive East, Boca Raton, Florida 33433.	Vice President and Director.	12.75
M. James Spitzer, Jr., 15 St. Lukes Place, New York, New York 10014.	Secretary and Director.	.5
Leonard Lichter, 3 Spanish Cove Road, Larchmont, New York 10538.	Treasurer and Director.	12.75

No other person intends to own as much as 10 percent of the Applicant.

The Company is to be managed full-time by Mr. Alvin Schwartz.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida and southeastern part of the United States.

Matters involved in SBA's consideration of the application include in general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Boca Raton, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 18, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27171 Filed 11-23-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-839]

Lykes Bros. Steamship Co., Inc.; Application To Provide a TR 13/22 Dual Service

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated November 3, 1988, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451, to provide a Trade Route (TR) 13/22 (U.S. Gulf-South Atlantic/Mediterranean, Black Sea, and Far East) dual service.

In Lykes' current operating-differential subsidy (ODS) contract, there is a dual service privilege on Lines D (TR 22) (U.S. Gulf-Far East) and Line E (U.S. Gulf-South and East Africa) (TR 15-B). Lykes states that this has resulted in a better utilization of Lykes' vessels, which were often returning to the U.S. Gulf on Line E in ballast, for lack of inbound cargo. It has also permitted Lykes to serve the Line D berth with more frequent sailings.

According to Lykes, a similar situation exists in the Mediterranean on Lykes' Line C (TR 13) service. Rather than returning to the U.S. Gulf in ballast, some Line C voyages could continue through the Red Sea to the Far East for cargo discharge and/or loading operations. In this way the Far East berth could be more frequently served.

Because of this situation, Lykes has requested an amendment to its ODS Agreement MA/MSB-451 allowing a dual service privilege on its Line C and Line D services. Just as in its current dual service privilege on Lines D and E, Lykes has requested that such sailings count toward the minimum and maximum sailing requirement specified for both services.

Lykes believes that such a privilege would provide several advantages among them being that it provides Lykes with more operating flexibility and efficiency so that Lykes can compete more effectively with foreign carriers. Also it does not involve an increase in ships or geographical area or an increase in the number of sailings authorized under the ODSA, but rather amounts to a simple realignment of service, and consequently no budgetary increase in subsidy. Finally, Lykes feels that it is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended, in that it helps Lykes maintain regular U.S.-flag berth service in the two service areas and possibly increase U.S.-flag participation.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in tripicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 12, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

Date: November 21, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-27263 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-840]

Intent To Consider a Change in Subsidy Contracts Regarding the Non-Subsidized Carriage of Dry Bulk Preference Cargo by Subsidized Bulk Vessels

The Maritime Subsidy Board (Board) intends to consider a change in its operating-differential subsidy contracts regarding restrictions on the non-subsidized carriage of dry bulk preference cargoes by subsidized bulk vessels.

On February 28, 1986, the Board issued a Final Opinion and Order, Docket S-764, in the matter of requests by subsidized operators for amendments of their operating-differential subsidy agreements (ODSA's) to allow carriage of dry bulk preference cargo on a non-subsidized basis at fair and reasonable rates for U.S.-flag commercial vessels. In Docket S-764, the Board determined that to ensure efficient operation and utilization of the subsidized vessels, the larger vessels of 82,200-91,800 DWT should be required to carry parcels of not less than 55,000 tons and the other applicants' ships of 32,000-39,700 DWT should be required to carry parcels of not less than 25,000 tons. Since the Board issued its decision in Docket S-764, dry bulk vessels of 63,000 DWT have applied to carry preference cargo without subsidy. That application was noticed in the **Federal Register** for comment on May 6, 1988 (53 FR 16334), Docket S-828, and the time for comments on that application has passed.

The Board in considering this matter is concerned that this minimum tonnage requirement, in practice, may have resulted in an unintended increase in the cost to the Government for the carriage of certain preference cargoes and that it may also be an unnecessary and undesirable restraint on competition and vessel utilization by U.S.-flag bulk vessel operators.

As a result of these concerns, the Board intends to consider the elimination of the minimum parcel size requirement in existing operating-differential subsidy contracts for bulk operators when operating without subsidy in the preference trades. The Board invites written comments on this proposal. Specifically, the Board invites comments on four issues: (1) The competitive impact of the current minimum parcel size requirements, (2) the cost implications of those requirements to the Government for the carriage of preference cargoes, (3) the effects of total elimination of the minimum parcel size requirement, (4) the effects of maintenance of a minimum parcel size requirement while permitting the carriage of additional parcels of dry bulk preference cargoes of any size once the minimum requirement is met, and (5) alternatives to the maintenance of a minimum parcel size requirement.

Interested parties are invited to submit comments (original and ten copies) to the Secretary Maritime Subsidy Board, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 by close of business on December 14, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 88-27154 Filed 11-23-88; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 29, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Condidates to Receive Presidential Primary Matching Funds.
Draft AO 1988–46: Terry A. Montagne, on behalf of Collins Foods International, Inc.
Draft AO 1987–31: Terry Claassen on behalf of the Chicago Board Options Exchange.
Revised Notice of Proposed Rulemaking on Debt Settlements (11 CFR Part 116).
Administrative Matters

DATE AND TIME: Thursday, December 1, 1988 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88–27308 Filed 11–22–88; 8:45 am]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 53, No. 227
Friday, November 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

Correction

In the issue of Wednesday, November 2, 1988, on page 44214 in the third column, a correction to FR Doc. 88-25405 appeared. The eighth item was inaccurately printed and should have appeared as follows:

* * * * *

8. On page 5612, in the second column, T1S, R23W, Section 30 should read: Pt. S½SW¼ above 610', Pt. SW¼SE¼ above 610', Pt. NE¼SW¼ above 610',.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-38-000, et al.]

New England Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 88-26198 beginning on page 45813 in the issue of Monday, November 14, 1988, make the following corrections:

1. On page 45813, in the third column, in filing No. 5, the Docket No. should read "ER89-39-000".

2. on page 45816, in the first column, in filing No. 19, the Docket No. should read "EF89-2061-000".

BILLING CODE 1505-01-D

Federal Register

Friday
November 25, 1988

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for August 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53109; FRL-3466-7]

Premanufacture Notices Monthly Status Report for August 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for August 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53109]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substance, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during August; (b) PMNs received previous and still under review at the end of August; (c) PMNs for which the notice review period has ended during August; (d) chemical substances for which EPA has received a notice of commencement to manufacture during August; and (e) PMNs for which the review period has been suspended. Therefore, the August 1988 PMN Status Report is being published.

Date: October 13, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report—August 1988

I. 187 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-1744	P 88-1814
P 88-1745	P 88-1815
P 88-1746	P 88-1816
P 88-1747	P 88-1817
P 88-1748	P 88-1818
P 88-1749	P 88-1819
P 88-1750	P 88-1820
P 88-1751	P 88-1821
P 88-1752	P 88-1822
P 88-1753	P 88-1824
P 88-1754	P 88-1825
P 88-1755	P 88-1826
P 88-1756	P 88-1827
P 88-1757	P 88-1828
P 88-1758	P 88-1829
P 88-1759	P 88-1830
P 88-1760	P 88-1831
P 88-1761	P 88-1832
P 88-1762	P 88-1833
P 88-1763	P 88-1834
P 88-1764	P 88-1835
P 88-1765	P 88-1836
P 88-1766	P 88-1837
P 88-1767	P 88-1838
P 88-1768	P 88-1839
P 88-1769	P 88-1840
P 88-1770	P 88-1841
P 88-1771	P 88-1842
P 88-1772	P 88-1843
P 88-1773	P 88-1844
P 88-1774	P 88-1845
P 88-1775	P 88-1846
P 88-1776	P 88-1847
P 88-1778	P 88-1848
P 88-1779	P 88-1849
P 88-1780	P 88-1850
P 88-1781	P 88-1851
P 88-1782	P 88-1852
P 88-1783	P 88-1853
P 88-1784	P 88-1854
P 88-1785	P 88-1855
P 88-1786	P 88-1856
P 88-1787	P 88-1857
P 88-1788	P 88-1858
P 88-1789	P 88-1859
P 88-1790	P 88-1860
P 88-1791	P 88-1861
P 88-1792	P 88-1862
P 88-1793	P 88-1863
P 88-1794	P 88-1864
P 88-1795	P 88-1865
P 88-1796	P 88-1866
P 88-1797	P 88-1867
P 88-1798	P 88-1868
P 88-1799	P 88-1869
P 88-1800	P 88-1870
P 88-1801	P 88-1871
P 88-1802	P 88-1872
P 88-1803	P 88-1873
P 88-1804	P 88-1874
P 88-1805	P 88-1875
P 88-1806	P 88-1876
P 88-1807	P 88-1877
P 88-1808	P 88-1878
P 88-1809	P 88-1879
P 88-1810	P 88-1880
P 88-1811	P 88-1881
P 88-1812	P 88-1882
P 88-1813	P 88-1883
P 88-1884	P 88-1909
P 88-1885	P 88-1910
P 88-1886	P 88-1911
P 88-1887	P 88-1912
P 88-1888	P 88-1913
P 88-1889	P 88-1914
P 88-1890	Y 88-0235
P 88-1891	Y 88-0236
P 88-1892	Y 88-0237
P 88-1893	Y 88-0238
P 88-1894	Y 88-0239
P 88-1895	Y 88-0240
P 88-1896	Y 88-0241
P 88-1897	Y 88-0242
P 88-1898	Y 88-0243
P 88-1899	Y 88-0244
P 88-1900	Y 88-0245
P 88-1901	Y 88-0246
P 88-1902	Y 88-0247
P 88-1903	Y 88-0248
P 88-1904	Y 88-0249
P 88-1905	Y 88-0250
P 88-1906	Y 88-0251
P 88-1907	Y 88-0252
P 88-1908	

II. 256 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 83-0669	P 87-1547
P 85-0216	P 87-1548
P 85-0535	P 87-1549
P 85-0536	P 87-1555
P 85-0619	P 87-1673
P 85-0718	P 87-1676
P 85-0941	P 87-1677
P 86-0065	P 87-1679
P 86-0066	P 87-1680
P 86-0067	P 87-1694
P 86-0092	P 87-1759
P 86-0294	P 87-1769
P 86-0295	P 87-1770
P 86-0592	P 87-1787
P 86-1078	P 87-1872
P 86-1189	P 87-1879
P 86-1235	P 87-1881
P 86-1602	P 87-1882
P 86-1603	P 88-0049
P 86-1604	P 88-0083
P 86-1607	P 88-0134
P 87-0057	P 88-0138
P 87-0058	P 88-0156
P 87-0059	P 88-0157
P 87-0068	P 88-0182
P 87-0105	P 88-0195
P 87-0197	P 88-0225
P 87-0198	P 88-0275
P 87-0199	P 88-0288
P 87-0200	P 88-0290
P 87-0201	P 88-0319
P 87-0323	P 88-0320
P 87-0326	P 88-0353
P 87-0770	P 88-0387
P 87-0794	P 88-0388
P 87-0930	P 88-0393
P 87-0931	P 88-0436
P 87-0963	P 88-0468
P 87-0973	P 88-0515
P 87-1028	P 88-0522
P 87-1066	P 88-0567
P 87-1104	P 88-0568
P 87-1192	P 88-0576
P 87-1226	P 88-0598
P 87-1227	P 88-0602
P 87-1273	P 88-0606
P 87-1337	P 88-0622
P 87-1379	P 88-0658
P 87-1417	P 88-0671
P 87-1436	P 88-0701
P 87-1437	P 88-0715
P 87-1542	P 88-0726
P 87-1546	P 88-0792

P 88-0631
P 88-0836
P 88-0837
P 88-0854
P 88-0862
P 88-0864
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IV. 124 Chemical Substances for which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identify/generic name	Date of commencement
P 82-0487	G Copolymer of an alkenoic acid derivative, substituted and unsubstituted vinly aromatic compounds and substituted alkane	July 1, 1988.
P 83-1004	Hexamethyleme-1,6-bisthiosulfate, disodium salt, dihydrate	July 5, 1988.
P 84-0154	Lithium aluminium hydroxy stearate	July 11, 1988.
P 86-0005	Polymer of: terephthalic acid; isophthalic acid; adipic acid; trimellitic anhydride; 2,2-dimethyl-1, 3-propanediol; ethylene glycol; and hexanediol.	July 21, 1988.
P 86-0158	G Alkylchlorosilane	July 29, 1988.
P 86-0159	G Alkylchlorosilane	July 16, 1988.
P 86-0562	Perfluoroalkyl epoxide	June 30, 1988.

PMN No.	Identify/generic name	Date of commencement
P 86-0568	Methoxyacetyl chloride	July 7, 1988.
P 86-0648	G Polyurea urethane acrylate	July 28, 1988.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-0727	G Polymer of styrene, acrylonitrile, ethylene, propylene and difunctional monomer	May 16, 1988.
P 86-0967	G Ketoxime blocked aromatic isocyanate	July 25, 1988.
P 86-1696	G Anhydride copolymer-methacrylate half ester	July 21, 1988.
P 87-0034	G Substituted alkyl cyanoacetate	Feb. 4, 1988.
P 87-0075	G Mixed aldehyde novolacs	July 25, 1988.
P 87-0112	G Substituted tartaric acids, sodium salts	Aug. 2, 1987.
P 87-0113	G Substituted tartaric acids, calcium-sodium salts	Aug. 1, 1987.
P 87-0170	Carboxylic acid salt of a tertiary amine	Apr. 6, 1988.
P 87-0299	Nitrophenoxy substituted pentanamide	July 15, 1988.
P 87-0635	G Metal salt of amminated chelating agent	Aug. 2, 1988.
P 87-0636	.....do	Do.
P 87-0637	.....do	Do.
P 87-0638	.....do	Do.
P 87-0686	G Dibasic acid/glycol ester	July 24, 1988.
P 87-0726	G Poly(perfluoroalkylpolyoxythylenemethacrylate & polyoxyethylenemethacrylate	July 27, 1988.
P 87-0826	G Carbamido-methyl-((chloro-((((sulfooxyethylsulfonyl)amino)-s-triazinyl)amino) substituted)azo)-hydroxy-ethyl-pyridinone, sodium salt.	July 27, 1988.
P 87-1086	Isopropoxyethyl salicylate	Dec. 8, 1987.
P 87-1146	G Amine functional epoxy	July 20, 1988.
P 87-1180	G cycloalkanonealkyl alcohol	Aug. 15, 1988.
P 87-1253	G Alicyclic ester	June 29, 1988.
P 87-1355	G Substituted nitrophenoxy substituted naphthoic acid derivative	July 13, 1988.
P 87-1416	G Substituted-terminated siloxanes and silicones	Aug. 10, 1988.
P 87-1568	G (alkyl-substituted bicycloalkenyl) substituted pyridine	July 13, 1988.
P 87-1704	G Saturated hydroxy acrylic resin	Aug. 3, 1988.
P 87-1760	4,4'-methylene-bis oxyethylene diphenol, referred to as mod	July 22, 1988.
P 87-1767	Polymer of: hexanedioic acid, polymer with 1,2-ethanediol (2,000MW); hexanediol acid, polymer with 1,2-ethanediol (3,000 MW); hexanedioic acid, polymer with 1,2-ethanediol (1,000 MW); naphthalene 1,5 dissocyanato-.	Aug 1, 1988.
P 87-1772	Polymer of; hexanedioic acid, polymer with 1,2,-ethanediol (2,000 MW); hexanedioic acid, polymer with 1,2,-ethanediol (3,000MW); hexanedioic acid, polymer with ethanediol (1,000 MW); benzene, 1,1'-methylene bis-(4-isocyanato).	Do.
P 87-1788	G Polyurethane polymer	July 16, 1988.
P 87-1797	Poly(oxy-1,4-butanedyl), a-(((3-isocyanatomethyl phenyl) amino)carboxyl)-omega-((((3-isocyanatomethyl phenyl)amino) carboxyl)oxy); stantan brown HCC-5513 hardwick standard.	Aug. 1, 1988.
P 87-1803	Polymer of hexanediol acid, polymer with 1,4-butanediol and 1,2-ethanediol; hexanedioc acid; naphthalene, 1,5-diisocyanato—; 1,4-butanediol; and 1,3-propanediol; 2-(hydroxymethyl)-2-methyl.	Do.
P 88-0109	G Organosiloxane	July 30, 1988.
P 88-0155	G Saturated polyester	June 30, 1988.
P 88-0172	Trimethy norbornyl-2-methyl cyclohexanol	July 5, 1988.
P 88-0185	G Carbamic acid ester	Mar. 9, 1988.
P 88-0191	G Nylon salt	Mar. 14, 1988.
P 88-0192	G Polyamide resin	Mar. 16, 1988.
P 88-0193	Dicyclopentadiene, dimerized fatty acids, fumeric acids, resin	Apr. 6, 1988.
P 88-0197	G Indophenol derivative	Feb. 19, 1988.
P 88-0200	G Aliphatic aromatic polyester	July 9, 1988.
P 88-0208	G Substituted aryl aliphatic amine	Feb. 24, 1988.
P 88-0209	G Diamine salt of a substituted aromatic diacid	July 12, 1988.
P 88-0224	G Unsaturated Polyester polymer	Feb. 10, 1988.
P 88-0228	G Hydrocarbon, steam-cracked aromatic C5-C12 cycloalkadiene fractions polymer with hetermonocyclic-substituted alkybenzenzene.	Mar. 6, 1988.
P 88-0229	G Alkaline metal carboxylate	Feb. 24, 1988.
P 88-0232	Adipic acid; terephthalic acid; 1,4-butane diol; neopentyl glycol; tetrabutyl titanate	Feb. 11, 1988.
P 88-0233	Adipic acid; polyethylene terephthalate; 1,4-butane diol; neopentyl glycol; tetrabutyl titanate	Do.
P 88-0240	G Modified aromatic isocyanate prepolymer	June 16, 1988.
P 88-0259	G Acrylated polyurethane	Mar. 12, 1988.
P 88-0260	G Metal alkanoates	July 27, 1988.
P 88-0273	Organic ester	May 9, 1988.
P 88-0274	G Polymeric ricinolic acid ester	Mar. 5, 1988.
P 88-0277	G Reaction product of aluminum isopropoxide, ethyl acetoacetate, and isobutyl alcohol	Feb. 22, 1988.
P 88-0291	G Unsaturated acidic polycarboxylic acid ester	May 4, 1988.
P 88-0293	G Polyether Polyol	Feb. 23, 1988.
P 88-0302	G Polyic resin	June 17, 1988.
P 88-0306	Dodecene sulfonic acid, sodium salts hydroxy dodecane sulfonic acid, sodium salts.	Feb 26, 1988.
P 88-0308	G Polyterpene resin	Apr. 29, 1988.
P 88-0310	G Polyurea A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	May 30, 1988
P 88-0324	G Arylarylsulfonate, metal salt	Mar. 21. 1988.
P 88-0325	G Polyamide resin	Apr. 5, 1988.
P 88-0331	G Cyrboxylic acid modified hydrocarbon resin	Mar. 25, 1988.
P 88-0335	1,2-Epoxyhexane	July 30, 1988.
P 88-0336	G Zeromethrine merocyanine dye	June 22, 1988.
P 88-0337	G Disubstituted clyclopentanone	July 19, 1988.
P 88-0341	G Copolymer	May 30, 1988.
P 88-0342	G Polyurea. A polyisocyanate (aliphatic) a d A polyamine (aliphatic) condenate	Do.
P 88-0344	G Terpene-styren resin	May 1, 1988.
P 88-0355	G Aliphatic polyester	May 19, 1988.
P 88-0374	G Metal resinate	May 18, 1988.
P 88-0378	G Ethylene oxide; epichlorohydrin	July 18, 1988.
P 88-0407	G. Silsesquioxane	Do.
P 88-0408	G Modified organosilicone	Do.

PMN No.	Identify/generic name	Date of commencement
P 88-0416	G Saturated polyester resin from dibasic acids and diols	July 22, 1988.
P 88-0417	....do	Do.
P 88-0440	1-(4-Maleimidophenyl)-5(6)-maleimido-1,2,3- trimethylphenylindane	July 30, 1988.
P 88-0465	G Azobenzene	Aug. 4, 1988.
P 88-0466	G Phenyl ketone mixture	July 12, 1988.
P 88-0474	G Perfluoroalkyl disulfide	July 1, 1988.
P 88-0479	G Lactum, polymer, N-Methoxymethylated	July 19, 1988.
P 88-0480	G Benzene, ethenyl-, polymer with siloxane and silicones, dimethyl	Do.
P 88-0621	G Water-dispersible copolymer	June 27, 1988.
P 88-0660	3-Aminopropyltris(trimethylsloxy)silane	July 25, 1988.
P 88-0680	G Organopolysiloxane	July 5, 1988.
P 88-0682	G Organosiloxane	Do.
P 88-0686	....do	July 27, 1988.
P 88-0757	G Vegetable oil polymer with aromatic dicarboxylic acid, aliphatic trictriol, and cycloaliphatic carboxylic acid	May 16, 1988.
P 88-0764	G Trisubstituted dicarbomoncylic methane	June 28, 1988.
P 88-0803	G Saturated polyester resins	July 14, 1988.
P 88-0826	G Polyamic acid polymer e	May 24, 1988.
P 88-0843	G Organosiloxane	July 5, 1988.
P 88-0881	G Organopolysiloxane	July 27, 1988.
P 88-0915	G Acrylic copolymer	Aug. 12, 1988.
P 88-0946	Methyl benzenesulfonic acid, mono- and di-c20-24 alkyl derivatives	Aug. 18, 1988
P 88-0957	G Ethylene polymerized halogenated magnesium oxotitanium alkoxide	July 17, 1988.
P 88-0959	G. Halogenated magnesium oxotitanium alkoxides; halogenated magnesium oxotitanate; halogenated magnesium titanuim alkoxides.	July 13, 1988.
P 88-1034	G Chain-extended polyisocyanate	Aug. 1, 1988.
P 88-1041	G Modified polyisocyanate	July 31, 1988.
P 88-1163	G Aliphatic glycol	July 29, 1988.
P 88-1174	G Oxygen-containing heterocycle	July 29, 1988.
P 88-1245	G Substituted vinyl chloride-acrylic acid polymer	Aug. 11, 1988.
P 88-1254	G Substituted alkylsilylurea	July 26, 1988.
P 88-1256	G Thiocarbamate potassium salt	Aug. 4, 1988.
P 88-1257	G Polyalkylsiloxane resin with alkoxy and hydroxy groups	July 27, 1988.
P 88-1298	G Styrene acrylated terpolymer	Aug. 1, 1988.
P 88-1335	G Blocked diisocyanate adduct	Aug. 11, 1988.
P 88-1380	Horse chestnut extracted by solvents, 60% ethanol-water	Aug. 15, 1988.
P 88-1381	G Chromophore substituted polyoxyalkylene	Do.
P 88-1427	G Styrenated alkyd resin	Aug. 18, 1988.
Y 86-0223	G Styrene-acrylic copolymer	July 6, 1988.
Y 88-0143	G Carboxylated polyamide	Apr. 25, 1988.
Y 88-0156	G Pms copolymer	July 20, 1988.
Y 88-0162	G Aqueous solutions of acrylic polymer salts	Apr. 29, 1988.
Y 88-0186	G Polyglycol, polymer with 1,1-methylenebis(4-isoc yanatocyclohexane)	June 23, 1988.
Y 88-0203	G Water-reducible alkyd resin	June 28, 1988.

V. 44 Premanufacture Notices for Which the Period Has Been Suspended

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 2215/Pub. L. 100-679
Office of Federal Procurement Policy Act Amendments of 1988. (Nov. 17, 1988; 102 Stat. 4055; 18 pages) Price: $1.00

S. 2470/Pub. L. 100-680
Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. (Nov. 17, 1988; 102 Stat. 4073; 5 pages) Price: $1.00

S.J. Res. 327/Pub. L. 100-681
Commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4078; 1 page) Price: $1.00

S.J. Res. 332/Pub. L. 100-682
To designate the period commencing December 11, 1988, and ending December 17, 1988, as "National Drunk and Drugged Driving Awareness Week." (Nov. 17, 1988; 102 Stat. 4079; 2 pages) Price: $1.00

S.J. Res. 352/Pub. L. 100-683
Designating September 24, 1989, as "United States Marshals Bicentennial Day." (Nov. 17, 1988; 102 Stat. 4081; 1 page) Price: $1.00

S.J. Res. 365/Pub. L. 100-684
To designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle Challenger. (Nov. 17, 1988; 102 Stat. 4082; 1 page) Price: $1.00

S. 2209/Pub. L. 100-685
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989. (Nov. 17, 1988; 102 Stat. 4083; 21 pages) Price: $1.00

H.J. Res. 650/Pub. L. 100-686
Designating April 1989 as "Actors' Fund of America Appreciation Month." (Nov. 18, 1988; 102 Stat. 4104; 1 page) Price: $1.00

S. 11/Pub. L. 100-687
To amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to establish a Court of Veterans' Appeals and to provide for judicial review of certain final decisions of the Board of Veterans' Appeals; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; to increase the rates of compensation payable to veterans with service-connected disabilities; and to make various improvements in veterans' health, rehabilitation, and memorial affairs programs; and for other purposes. (Nov. 18, 1988; 102 Stat. 4105; 34 pages) Price: $1.25

S. 2030/Pub. L. 100-688
To amend the Marine Protection, Research, and Sanctuaries Act of 1972 to provide for termination of ocean dumping of sewage sludge and industrial waste, and for other purposes. (Nov. 18, 1988; 102 Stat. 4139; 22 pages) Price: $1.00

S. 2049/Pub. L. 100-689
Veterans' Benefits and Programs Improvement Act of 1988. (Nov. 18, 1988; 102 Stat. 4161; 20 pages) Price: $1.00

H.R. 5210/Pub. L. 100-690
Anti-Drug Abuse Act of 1988. (Nov. 18, 1988; 102 Stat. 4181; 365 pages) Price: $11.00

H.R. 1975/Pub. L. 100-691
Federal Cave Resources Protection Act of 1988. (Nov. 18, 1988; 102 Stat. 4546; 6 pages) Price: $1.00

H.R. 3957/Pub. L. 100-692
Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988. (Nov. 18, 1988; 102 Stat. 4552; 7 pages) Price: $1.00

H.R. 4039/Pub. L. 100-693
To declare that certain lands in the State of California which form a part of the right-of-way granted by the United States to the Central Pacific Railway Company have been abandoned, and for other purposes. (Nov. 18, 1988; 102 Stat. 4559; 4 pages) Price: $1.00

H.R. 4612/Pub. L. 100-694
Federal Employees Liability Reform and Tort Compensation Act of 1988. (Nov. 18, 1988; 102 Stat. 4563; 5 pages) Price: $1.00

H.R. 4847/Pub. L. 100-695
To amend the Federal Hazardous Substances Act to require the labeling of chronically hazardous art materials, and for other purposes. (Nov. 18, 1988; 102 Stat. 4568; 3 pages) Price: $1.00

H.R. 2840/Pub. L. 100-696
Arizona-Idaho Conservation Act of 1988. (Nov. 18, 1988; 102 Stat. 4571; 42 pages) Price: $1.25

H.R. 3048/Pub. L. 100-697
National Superconductivity and Competitiveness Act of 1988. (Nov. 19, 1988; 102 Stat. 4613; 5 pages) Price: $1.00

H.R. 3313/Pub. L. 100-698
To establish in the Department of the Interior the Southwestern Pennsylvania Heritage Preservation Commission, and for other purpsoes. (Nov. 19, 1988; 102 Stat. 4618; 6 pages) Price: $1.00

H.R. 3680/Pub. L. 100-699
Omnibus Public Lands and National Forests Adjustments Act of 1988. (Nov. 19, 1988; 102 Stat. 4624; 7 pages) Price: $1.00

H.R. 3911/Pub. L. 100-700
Major Fraud Act of 1988. (Nov. 19, 1988; 102 Stat. 4631; 9 pages) Price: $1.00

H.R. 4212/Pub. L. 100-701
To amend the Joint resolution of April 27, 1962, to permit the Secretary of the Interior to establish the former home of Alexander Hamilton as a national memorial at its present location in New York, New York. (Nov. 19, 1988; 102 Stat. 4640; 2 pages) Price: $1.00

H.R. 4807/Pub. L. 100-702
Judicial Improvements and Access to Justice Act. (Nov.

19, 1988; 102 Stat. 4642; 32 pages) Price: $1.00

H.R. 4972/Pub. L. 100-703

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes. (Nov. 19, 1988; 102 Stat. 4674; 3 pages) Price: $1.00

H.R. 5133/Pub. L. 100-704

Insider Trading and Securities Fraud Enforcement Act of 1988. (Nov. 19, 1988; 102 Stat. 4677; 8 pages) Price: $1.00

H.R. 5287/Pub. L. 100-705

Panama Canal Commission Compensation Fund Act of 1988. (Nov. 19, 1988; 102 Stat. 4685; 3 pages) Price: $1.00

H.J. Res. 564/Pub. L. 100-706

Designating the first week of April 1989 as "National Earthquake Awareness Week." (Nov. 19, 1988; 102 Stat. 4688; 1 pages) Price: $1.00