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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-88-124]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Dairy Promotion and Research Order to modify the composition of the National Dairy Promotion and Research Board by adding one Board seat to Region 2 (California) and removing one Board seat from Region 5 (Minnesota, North Dakota, and South Dakota). The amendment, as proposed by the National Dairy Promotion and Research Board that administers the order, is necessary to reflect changes in milk production patterns that have occurred since the initial Board was established in 1984. The modification of the number of Board seats for the two regions is necessary so that the Board will best reflect the 1987 geographic distribution of milk production volume in the United States.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia Gibney, Chief, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2934, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6961.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Invitation to Submit Comments on Proposed Amendments to the Order: Issued on November 23, 1988; published on November 29, 1988 (53 FR 47958).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This change in the composition of the National Dairy Promotion and Research Board will result in no economic effect on any entity engaged in the dairy industry. Also, this rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Preliminary Statement

The Dairy Promotion and Research Order specifies that the National Dairy Promotion and Research Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or a modification of members from regions to best reflect the geographic distribution of milk production. The order also specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board established in 1984 was based on 1983 milk production. Each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States during 1983. During 1987, total milk production increased to 142,271 million pounds, which indicates that each of the 36 Board members would represent 3,952 million pounds of milk.

Based on a review of the 1987 geographic distribution of milk production, the Board has concluded that the number of Board members for two of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 17,934 million pounds in 1987 from 14,743 million pounds in 1983, indicating 4.54 Board members based on 1987 production (17,934 divided by 3,952 = 4.54) compared to 3.8 Board membes based on 1983 production (14,743 divided by 3,875 = 3.80). Also, milk production in Region 5 (Minnesota, North Dakota and South Dakota) decreased to 13,298 million pounds in 1987 from 13,832 million pounds in 1983, indicating 3.36 Board members based on 1987 production (13,298 divided by 3,952 = 3.36) compared to 3.57 Board members based on 1983 production (13,832 divided by 3,874 = 3.57). Thus, the Board proposed that the number of Board members for Region 2 be increased from four to five and that the number of Board members for Region 5 be decreased from four to three so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

A notice of the proposed amendment to the order to modify the composition of the Board was published in the **Federal Register** on November 29, 1988. Interested parties were invited to submit written comments on the proposal by December 29, 1988.

Findings

Four comments were received in response to the invitation to submit written comments on the proposal to add one Board seat to Region 2 and remove one Board seat from Region 5. The California Farm Bureau Federation supported the change on the basis that such a modification would result in a National Dairy Promotion and Research Board that best reflects the geographic distribution of milk production volume throughout the United States. Three comments opposed the proposed modification. However, for reasons hereinafter set forth, such comments do not provide a basis for either revising or denying the proposed amendments to the order. Consequently, the proposed amendments to the order as contained in the notice of proposed rulemaking are hereby adopted as a final rule.

A comment filed on behalf of the Farmers Union Milk Marketing Cooperative, the Minnesota Farmers Union and the South Dakota Farmers Union indicated that dairy farmers in the Upper Midwest would be unfairly penalized by the removal of one Board seat from Region 5. They contend that the proposal would contradict goals of other dairy programs to reduce surplus milk production since producers in Region 5 states would be penalized for reducing production while dairy farmers in California would be rewarded for

increasing production. In addition, the North Dakota Farmers Union indicated that it would be inappropriate to continue a Board structure that rewards regional production increases. This organization also suggested that Board representation be based on the number of producers in each region rather than on the volume of milk production.

While overall surplus milk production is a matter of concern, the regional distribution of production is a factor that cannot be ignored in the composition of the National Dairy Promotion and Research Board. A failure to recognize changes in regional production patterns would result in maintaining a Board composition that contradicts the order requirement to establish a Board composition that best reflects the geographic distribution of milk production volume in the United States. Both the order and the enabling legislation specify that milk production volume is the controlling factor in establishing Board representation.

Land O'Lakes, Inc. (LOL) also opposed the reduction of the number of Board seats for Region 5 and proposed, as an alternative, that Region 5 be reapportioned to include the States of Nebraska and Iowa, which are currently included in Region 7 along with the States of Illinois and Missouri. LOL contends that such an expanded Region 5 would be appropriate since the same marketing organizations operate across the territory and that marketing and production conditions in the States of Nebraska and Iowa are similar to those that exist in Minnesota, North Dakota and South Dakota.

There is no indication of widespread support among dairy farmers for a reapportionment of Regions 5 and 7, or other regions that might, in turn, be affected by such reapportionment. It is likely that any change in the territory in any of the current 13 regions would lead to further reapportionment considerations because of the changes in Board seats that would occur. For example, the reapportionment recommended by LOL would result in the loss of two Board seats for Region 7 as well as in increase of one Board seat for Regions 2 and 5. Consequently, any consideration for a reapportionment of regions requires a broader base of input and consideration by the industry than was generated by this proposed action. Although reapportionment may be a valid option for future consideration, it does not appear to be appropriate at this time in view of the apparent lack of widespread support and the lack of any indication that substantial consideration has been devoted to the issue by the dairy industry or organizations involved in the nominations process.

LOL also suggested that any implementation of any amendment be delayed until after new Board appointments are made. LOL noted that the nomination process to fill expiring terms is already under way and that the invitation to submit nominations includes an expiring Board seat for Region 5 that would not be filled if the proposed amendment is adopted. Thus, LOL contends that organizations that submit nominations for Region 5 have no way of knowing if their nominations will be considered and also that it is not known if there will be sufficient nominations to fill the additional Board seat for Region. 2.

The nomination process to fill expiring terms, as well as the proposed amendment to the composition of the Board, are factors that are known by those organizations that submit nominations to serve on the Board. There is no indication that anything of significance would be lost by inviting nominations to fill a Board seat for Region 5 that would be removed as a result of this amendment, or that there would be insufficient nominations to fill the additional Board seat created for Region 2. A failure to amend the order at this time would result in continuing, for an additional year, a Board composition that does not reflect the most recent geographic distribution of milk production.

In this regard, the order should be amended effective May 1, 1989. Such date is appropriate since Board members serve until April 30 of the year in which his/her term expires and a new Board, with up to one-third of the Board members being replaced, is seated on May 1 of each year. Thus, such effective date for the modification of the number of Board members for Regions 2 and 5 will be the least disruptive to the functioning of the Board.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

It is hereby determined that 7 CFR Part 1150—Dairy Promotion Program, be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128.

2. In § 1150.131, paragraphs (a) (2) and (5) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(2) Five members from region number 2 comprised of the following State: California.

* * * * *

(5) Three members from region number five comprised of the followng States: Minnesota, North Dakota and South Dakota.

* * * * *

Effective date: May 1, 1989.

Signed at Washington, DC, on January 19, 1989.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–3108 Filed 2–8–89; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 615, October 13, 1988 (53 FR 40033). The final regulations to Part 615 relate to the capitalization of Farm Credit System banks and associations and set forth the statutory requirements for capitalization bylaws, requirements for the issuance and retirement of equities in order to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance of equities, requirements for retirement of equities, and, for banks for cooperatives, a minimum requirement for additions to unallocated surplus. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 9, 1989.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT:
William G. Dunn, Chief, Financial Analysis, and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4402, or
Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: February 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89–3104 Filed 2–8–89; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 624

Regulatory Accounting Practices; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 624, October 13, 1988 (53 FR 40049). The final regulations to Part 624 relate to the use of regulatory accounting practices (RAP) by Farm Credit institutions and authorize them to use RAP for certain interest rate evaluations and extend the use of RAP unitl 1992. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 9, 1989.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT:
Thomas L. Dalton, Staff Accountant, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4475, or
Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444

(12 U.S.C. 2252(a) (9) and (10))

Dated: February 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89–3105 Filed 2–8–89; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4, Amdt. 19]

Loans to State and Local Development Companies

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule is limited to carrying out the mandate of Pub. L. 100–590, approved November 3, 1988, requiring amendments to the development company regulations in part 108 of Title 13, Ch. 1 of the Code of Federal Regulations (CFR). The new provisions relate to a number of issues affecting SBA's development company program: (1) SBA's policy on rural economic development; (2) an exception to SBA's *alter ego* rule; (3) easing restrictions on leasing development company financed new construction; (4) SBA's authority to preempt state usury laws; (5) SBA's sale of guaranteed development company debentures to investors made permanent; and (6) a prohibition on government agencies restricting SBA development company operations by requiring that they assist only certain types of businesses.

DATES: This rule is effective February 9, 1989. The provision relating to SBA's preemption of State usury laws (§ 108.503–8(b)(4)) expires October 1, 1990.

ADDRESS: Written comments may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:
LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653–6986.

SUPPLEMENTARY INFORMATION: Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988 (Act), requires several amendments to SBA's regulations of the development company programs, 13 CFR Part 108.

(1) Section 115 of the Act emphasizes the Congressional purpose of fostering economic development in rural as well as urban areas. It directs SBA to promote the economic development program in rural areas and to develop a plan for greater outreach of procurement and export trade in such areas. This Congressional emphasis is implemented by new paragraph (b) of § 108.1 Policy.

(2) Section 114 of the Act requires an amendment to § 108.8(d). Section 108.8(d)(4) required, among other things, that the ownership interests in the small concern, for the benefit of which a property was acquired by a borrower with the proceeds of an SBA-guaranteed debenture, and the ownership interests in such borrower, be completely identical, and remain so until repayment of the loan. The new rule provides that such identity shall not be required of a family group (consisting of father, mother, son, daughter, wife, husband, brother or sister) if SBA determines on a case-by-case basis that the SBA guarantee, the family group ownership and the loan will benefit the small concern substantially. The second rule promulgated here amends § 108.8(d)(4) in accordance with this statutory mandate.

(3) Section 108.503–4(a) of 13 CFR provided that the proceeds of an SBA-guaranteed development company debenture or loan could be used to finance construction of a new facility for an eligible small concern, if the following conditions were met: (1) Not more than fifteen percent of the space in such project would be leased out to third parties, (2) reasonable projections indicated that the small concern would need the additional space within three years, and it is not feasible to build an addition in the future. That paragraph also provided that the small concern may lease out up to 49% of the space in an existing facility acquired with the proceeds of an SBA-guaranteed debenture or loan. The new law provides that a small concern may lease out up to 33% of such a newly constructed facility, if reasonable projections of growth demonstrate that the small concern will need additional space within three years and will fully utilize the entire facility within ten years. The provision governing the lease of space in an existing facility was left unchanged. The third rule promulgated here carries out the mandate of Section 116(a) of the Act.

(4) The fourth rule carries out the mandate of section 112(c) of the Act, which authorizes SBA to establish a maximum legal interest rate on the bank or commercial lender portion of the development company loan package. This maximum interest rate will override state law and control all legal disputes. This provision is intended to encourage more section 504 loan making authority in states whose usury laws have discouraged banks from agreeing to the long term commitment which is a prerequisite to the section 504 program. This pilot program will be repealed on October 1, 1990, unless Congress and the President decide to extend the authority.

An appropriate insertion is made to § 108.503–8(b)(4).

(5) Section 112(a) of the Act, among other things, amends section 504 of the Small Business Investment Act, 15 U.S.C. 697a, to omit any reference to a pilot program to sell guaranteed development company debentures to investors, and makes this program permanent. Accordingly, the fifth rule revises § 108.504 (b) and (c) by omitting references to the temporary nature of the debenture sales program as a mechanism for financing the acquisition of fixed assets for small concerns.

(6) Finally, section 117(b) of the Act prohibits any United States department or agency from linking financial support of a development company with a restriction on the type of small business which such development company may assist, unless such department or agency provides the entire project assistance to such small concern, and its restriction is limited to such small concern. The sixth and last rule adds a new § 108.506 which states this prohibition.

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

For purposes of Executive Order 12291, SBA has determined that the rule is not a major rule. SBA estimates that it will make 140 additional loans for a total of $25 million in rural areas under the first rule. Under the second rule we estimate that SBA will make an additional 125 *alter ego* loans to family groups for a total of $50 million. Under the third rule, we estimate that SBA will make an additional 50 loans for a total of $15 million to construct new business space for small concerns who may initially lease out up to one third to others. Under the fourth rule, we expect to make no more than 20 loans for an aggregate of $8 million. The fifth rule is editorial, and without impact on the national economy. The sixth rule also can have no impact on the economy, since it merely forbids other Government agencies to interfere with SBA's management of the development company program before May 1, 1991, and after such date forbids development companies to accept funding from any source if such funding involves any conditions relating to the types of small concerns to be assisted, or imposes any requirement on the small concerns being assisted under this program. The total impact of these rules may thus reach at most an aggregate of $98 million per year.

SBA is also certain that these rules will not cause an increase in the costs for consumers, individual industries, Federal, State and local government agencies or geographic regions, and will have no adverse effects on competition, employment, investment, productivity or innovation.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612; the only rule with federalism implications is the fourth rule, amending § 108.503–8(b)(4). That rule tracks section 112(c)(2) of Pub. L. 100–590, and authorizes SBA to preempt the usury laws of any State as they impact on the non-Federal financing of a project under this part. As the implementation of the Statute, the provision does not require a federalism assessment under the Executive Order.

Inasmuch as the amendments here set forth do no more than implement statutorily mandated changes to the regulations and because prompt notification to the public of the changes is essential, notice of proposed rulemaking and public comment thereon are unnecessary, and therefore not required pursuant to 5 U.S.C. 553(d). SBA is publishing this rule as a final rule, effective immediately. Since no notice of proposed rulemaking is required by § 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603.

There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules which would come under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no federal rules which duplicate, overlap or conflict with these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

List of Subjects in 13 CFR Part 108

Loan programs/business, Small Business Administration, Small businesses.

Accordingly, Part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 is amended to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100–590.

2. The table of contents of Part 108 is amended by striking the words "pilot program" after "108.504" and substituting "Private Debenture Sales" therefor.

3. The table of contents of Part 108 is further amended by inserting at the end thereof a new center heading "Assistance by other Government agencies" and a new section entitled "108.506 Restrictions on development company assistance".

4. Section 108.1 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding the following new paragraph (b) to read as follows:

§ 108.1 Policy.

* * * * *

(b) The purpose of the development company program is to foster economic development in both urban and rural areas by providing long term financing for small business concerns through the development company loan programs. In order to carry out this objective, greater emphasis shall be placed on the needs of rural areas and the promotion of the development company program in such areas.

* * * * *

5. Section 108.8(d)(4) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) * * *

(4) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small concern, and this identity of interests shall remain unchanged until the section 502 loan or 503 loan is repaid in full or if SBA sooner gives approval to a change: *Provided, however,* That SBA shall not decline a loan or a guarantee to an applicant when the ownership interests in the operating small concern and in such applicant are not identical and in the same proportion solely because one or more of the following members of the same family have such interest or interests in one and/or the other: father, mother, son, daughter, wife, husband, brother, or sister. In each such case, SBA shall make a determination that such ownership, such guarantee and the proceeds of such loan will substantially benefit the operating small concern.

* * * * *

6. Section 108.503–4(a) introductory text is amended by striking the words "Up to fifteen (15) percent" at the beginning of the fifth sentence thereof, and inserting instead "Up to thirty-three percent (33%)" and by revising paragraph (a)(2) thereof to read as follows:

§ 108.503-4 Project eligibility.

(a) * * *

(2) Reasonable projections of growth demonstrate that the applicant concern will need additional space within three years and will fully utilize such additional space within ten years, and

* * * * *

7. Section 108.503-8 Third-party financing is amended by revising paragraph (b)(4) to read as follows:

§ 108.503-8 Third-party-financing.

* * * * *

(b) * * *

(4) SBA shall not participate in a project partially financed under this part, unless the interest rate on the other financing is legal and reasonable: *Provided, however,* where the constitution or laws of any State limit the rate or amount of interest which may be charged, taken, received or reserved, SBA shall establish for any commercial loan which funds any portion of the cost of such project (other than the portion financed pursuant to this part), a maximum legal rate which shall supersede such rate prescribed by such State. SBA shall publish such rate quarterly by a Notice in the **Federal Register.** The authority to establish such rate shall terminate on October 1, 1990, unless reenacted by Congress and approved by the President.

* * * * *

§ 108.504 [Amended]

8. Section 108.504 is amended by striking the caption "*Pilot program*" and substituting "*Private debenture sales*" therefor.

9. Section 108.504 is further amended by revising paragraphs (b) and (c) to read as follows:

(b) *504 Program.* SBA shall conduct a program involving the sale to investors of 504 debentures or 505 certificates, as defined in § 108.2, either publicly or by private placement.

(c) *Purpose.* The terms and conditions upon which assistance may be rendered under this section shall be for the same purposes and shall be the same as set forth in §§ 108.503 to 108.503-15 of this part, except as superseded by this section.

10. A new section is added at the end of Part 108 to read as follows:

§ 108.506 Restriction on development company assistance.

Prior to May 1, 1991 no department or agency of the United States government which provides funding to any State or local development company (including a 503 company) shall impose any condition, priority or restriction upon the type of small business which receives financing under this part nor shall it include any condition or impose any requirement, directly or indirectly, upon any recipient of assistance under this part: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided on or after May 1, 1991, no development company may accept funding from any source, including but not limited to any department or agency of the United States Government, if such funding includes any conditions, priorities or restrictions upon the types of small businesses to which they may provide financial assistance under this part or if it includes any conditions or imposes any requirements, directly or indirectly, upon any recipient of assistance under this part: *Provided,* That the foregoing shall not affect any such conditions, priorities or restrictions if the department or agency also provides all of the financial assistance to be delivered by the development company to the small business and such conditions, priorities or restrictions are limited solely to the financial assistance so provided..

[Catalog of Federal Domestic Assistance 59.013 State and Local Development Company Loans; 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 loans).

Dated: December 29, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-3007 Filed 2-8-89; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 121

Small Business Size Standard for Real Estate Agents and Managers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a permanent size standard of $1 million in average annual receipts for the Real Estate Agents and Managers industry, Standard Industrial Classification (SIC) code 6531. This rule is necessary to finalize an interim emergency final rule size standard issued July 3, 1985 and to clarify how receipts will be computed for this size standard. Its purpose is to identify that segment of the industry defined as small business.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Harvey D. Bronstein, (202) 653-6373.

SUPPLEMENTARY INFORMATION: This rule establishes a permanent size standard for the Real Estate Agents and Managers industry. In the 1985 Emergency Interim Final Rule (50 FR 27418), SBA explained the reasons for the selection of the $1 million in fees and commissions size standard. It also requested public comment.

To summarize the 1985 rule, SBA indicated that the primary application of the size standard would be for SBA's Economic Injury Disaster Loans. Due to the limited availability of statistics on the real estate industry, SBA relied to a great extent on trade association sources, in this case, the National Association of Realtors' publications on firm size distribution and average firm size. SBA also analyzed statistics from Dun and Bradstreet.

SBA found that average firm size ranged from 10 to 24 salespersons, depending on the source used. Commissions per employee averaged $33,000 in 1984 dollars. After considering various possible size standards in the 1985 interim rule, SBA selected $1 million in commissions, equivalent to 30 employees. This level was selected because it includes a proportion of firms and industry sales comparable to SBA's overall proportion of firms and sales covered by size standards for all industries, and because it was below the National Association of Realtors' large size category (see 50 FR 27419). SBA received no comments on the 1985 rule.

In computing small business eligibility for this industry, SBA will include receipts from all sources, but exclude monies which are received in trust for an unaffiliated third party. For example, consider a firm has 10 percent commission on $8 million in sales, $100,000 from real estate management fees and $50,000 in real estate appraisal fees. The $8 million in sales that are remitted to third parties, in this case the sellers of properties, would be excluded from the calculation of annual receipts. SBA would regard the firm as small business with $950,000 in receipts, composed of $800,000 in commissions and $150,000 in other noncommissioned sources of income.

The exclusion of funds received in trust for unaffiliated third parties is consistent with SBA's Office of Hearings and Appeals decision in the 1985 Size Appeal of Morris Travel Corporation, No. 2228 (July 29, 1985), concerning the sales of airline tickets by travel agents on behalf of the airlines and is similar to

the approach now used in the size standard for the travel agent industry (see 53 FR 18820). This calculation is described in footnote 10 of the size standard table.

Since the travel agencies industry, like the real estate agent industry, often receives funds in trust for third parties, i.e., a property owner or transportation carrier, SBA believes it appropriate to apply footnote 10 to the travel agencies size standard and has done so in this final rule. The footnote makes explicit Agency policy for the travel agencies size standard that has been followed since the decision in the Size Appeal of Morris Travel Corporation. The size standard for the travel agent industry (SIC code 4724), however, remains unchanged at $500,000 as stated in the SBA's final rule governing that industry, published May 25, 1988 (53 FR 18820).

Compliance With Executive Orders 12291 and 12612, Regulatory Flexibility Act and Paperwork Reduction Act (5 U.S.C. 601, et seq. and 44 U.S.C. Chapter 35)

This final rule defines which firms in the Real Estate Agents and Managers industry are eligible for SBA's assistance. It is not expected to have an annual economic impact exceeding $100 million per year. As explained in the 1985 interim rule, the Economic Injury Disaster Loan program, the primary application of the rule, is too small to account for this magnitude of impact. In addition, SBA believes this rule is not likely to result in a major increase in costs or prices, or have a significant economic effect.

SBA also certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, nor does it contain recordkeeping or reporting requirements subject to the Paperwork Reduction Act. This rule is nonmajor because SBA rarely makes loans to firms in this industry, and the number of contracts set aside in this industry is small. In FY 1987, there was only one loan for $279,000. On Government procurements, real estate agents and managers defined as small businesses received $49 million in Government contracts in FY 1987 of which $5.4 million was awarded on a set aside basis.

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

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, Part 121 of 13 CFR is amended 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, 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) in Table 2 for Major Group 47, SIC code 4724, footnote 10 is added to column 3 to read as follows:

(d) * * *

(2) * * *

SIC	Description	Size standards in number of employees or millions of dollars
(*=New SIC Code in 1987, not used in 1972	(N.E.C.=Not elsewhere classified)	
4724	Travel agencies	[10] $0.5

* * * * *

3. In § 121.2(d)(2) in Table 2 Major Group 65, SIC code 6531 is revised to read as follows:

(d) * * *

(2) * * *

SIC	Description	Size standards in number of employees or millions of dollars
(*=New SIC Code in 1987, not used in 1972	(N.E.C.=Not elsewhere classified)	
6531	Real estate agents and managers	[10] $1.0

* * * * *

4. In § 121.2(d)(2), footnote 10 following Table 2 is revised to read as follows:

[10] As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received would be included as revenue.

Date: November 16, 1988.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 89-3008 Filed 2-8-89; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 123

[Rev. 11; Amdt. 10]

Disaster Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is publishing three final rules relating to its Disaster Loan Program. The first rule promulgated here amends the disaster loan regulation, 13 CFR Ch. I, Part 123, by authorizing SBA to establish a flexible repayment schedule during the first two years of a disaster loan, reflecting the borrower's ability to pay. The second rule promulgated here harmonizes SBA's disaster loan making authority with the Federal Emergency Management Administration's (FEMA) standard flood insurance policy. The third of these rules promulgated here clarifies the procedures which SBA will use to impose the statutory penalty of 150% of the loan amount on disaster loan recipients who misapply disaster loan proceeds.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, (202) 653-6879.

SUPPLEMENTARY INFORMATION: On August 8, 1988, SBA published a Notice of Proposed Rulemaking (NPRM 1; 53 FR 29691) proposing the first two rules promulgated now as final. The comment period ended October 7, 1988. No comments were received.

On August 31, 1988, SBA published another NPRM (NPRM 2, 53 FR 33494) proposing the third of the three rules promulgated now as final. The comment period ended October 31, 1988. No comments were received.

The first amendment to SBA's disaster regulations promulgated here authorizes a departure from the standard repayment schedule, which requires equal monthly payments of principal and interest, beginning five months after the date of the note, and permits a choice of different payment terms only if the borrower can show a seasonal or fluctuating income flow. There are, however, other circumstances in which it is desirable to accommodate a borrower's individual needs. (See NPRM 1 for examples.) Under the final rule, in cases of a definitely foreseeable change in the borrower's circumstances, SBA could authorize a payment plan tailored to the borrower's ability to make payments. This departure from the standard payment schedule would be

authorized during the first two years of the note, and not longer, because events are difficult to predict for longer periods. Accordingly, § 123.9(a) is revised to permit accommodation of a borrower's individual needs during the first two years of repayment, notwithstanding the absence of a showing of seasonal or fluctuating income.

The second amendment promulgated here is geared to FEMA's Standard Flood Insurance Policy, 44 CFR Part 61, Appendix A(2) (1987). That policy excepts from its coverage

> B. A building, and its contents, located entirely in, on, or over water, or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

"Substantial improvement" is defined in FEMA's regulations. Briefly summarized, that definition considers as substantial improvement any repair or improvement of a structure if the work costs at least 50% of the market value of the structure either before the improvement, or—if damaged—before such damage, not including any improvement to bring the structure "up to Code" or any alteration of a historic structure. For the complete definition, see 44 CFR Ch. 1, 59.1 (1987). SBA regulations implementing the National Flood Insurance Act Program, 13 CFR Ch. I, Part 116, Subpart B (1988), require flood insurance before financial assistance for acquisition or construction purposes in FEMA-designated special flood hazard areas, if such insurance has been made available under the National Flood Insurance Act of 1968, 42 U.S.C. 4011, 4012(a). In line with the Congressional policy that "any Federal assistance * * * will be related closely to all flood-related programs * * * of the Federal Government" and "to guide the development of proposed future construction * * * away from locations which are threatened by flood hazards," 42 U.S.C. 4001(c) (2) and (4), SBA now excludes from disaster loan eligibility those same structures excluded from FEMA's insurance coverage. Accordingly, a new paragraph is added to § 123.14 which tracks closely FEMA's exclusionary language, but makes allowance for business needs. For example, a boat house needs to be on the water, and SBA will not exclude a boat rental business from eligibility, because a business need for such location can be shown.

The third of the three rules promulgated now clarifies the procedures which SBA will use to impose the statutory penalty on disaster loan recipients who misapply disaster loan funds.

The statute, reprinted below, imposes a liability equal to one-and-one-half times the original principal amount of a disaster loan, on a borrower who wrongfully misapplies the proceeds of such loan. Prior to this rule, the statute was reflected in 13 CFR 123.24(d) with respect to physical disaster loans, and in § 123.41(g)(3) with respect to economic injury disaster loans. These references are deleted, and a new section inserted. The new section makes clear that use of disaster loan proceeds contrary to the use schedule in the Loan Authorization and Agreement (hereafter "Agreement") will be deemed a misapplication of funds. Non-use of loan proceeds for authorized purposes after a specified maximum period of time will also be deemed a misapplication; the rule sets a maximum term of 60 days from the date of the disbursement check, unless otherwise approved by SBA in writing (see NPRM 2 for the reasoning underlying this rule).

The rule defines "wrongful misapplication" as the willful use of proceeds contrary to the Agreement. These words are intended to exclude from the statutory term minor shifts permitted by SBA within the use schedule of the Agreement. For examples, see NPRM 2.

The rule also defines the statutory terms "one-and-one-half times the original amount of the loan" as one hundred and fifty percent of the total amounts disbursed up to the time that SBA notifies the borrower of the allegation of misapplication. For justification, see NPRM 2.

The description of the procedure has been slightly revised, to eliminate an apparent presumption by SBA of a misapplication. This implication was not intended. The regulation now speaks of "indications" instead of "evidence." It offers the borrower the opportunity, upon notice from SBA by certified mail, to refute the allegations of misapplication, or in the alternative to show that such misapplication has been cured, within a stated period of at least 30 days, or more if SBA permits. Failure to submit such rebuttal or evidence within the allotted time will be deemed an admission of misapplication.

If such rebuttal or evidence is submitted, the director or manager (or deputy director or manager) of the SBA office named in the notice will determine, within 30 days of receipt, whether the answer dispels or confirms the allegations of misapplication. If misapplication is determined, the authorized loan amount will be reduced to the aggregate amounts already disbursed, and the case transferred to liquidation with a recommendation that the statutory penalty be imposed. If, on the contrary, the determination is that no misapplication has occurred or that it has been cured, the borrower would be promptly notified accordingly by certified mail.

Executive Orders 12291 and 12612, Regulatory Flexibility and Paperwork Management

SBA has determined that the rules promulgated here do not constitute a major rule for the purposes of Executive Order 12291, since the annual effect of this rule on the national economy cannot attain $100 million. In this regard, SBA estimates (based on Fiscal Year 1988) that the flexible repayment rule may affect an aggregate loan volume of $13.2 million, and the flood insurance rule $1.35 million. The misapplication rule adds no regulatory requirement to the prior rule, but merely sets forth the procedures used to implement an existing requirement. Accordingly, it has no impact on the national economy. Also, these rules will not result in a major increase in costs or prices to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will have no significant effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these rules may have a significant economic impact on a substantial number of small entities. It is estimated that approximately 800 out of approximately 15,000 disaster loan borrowers (roughly 5.3%) will benefit economically from the flexible repayment plan, and that about 100 disaster loan applicants will be affected by the flood insurance rule. The misapplication rule is procedural only, and has no substantive effect on small entities.

The following analysis of these provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

The reasons for these rules, and their purposes are as follows:

The rule authorizing fluctuating payments during the first two years of a disaster loan is designed to give greater flexibility to SBA's loan officers and disaster loan borrowers where rigid adherence to a requirement of equal monthly payments of principal plus interest may adversely affect the borrower's financial situation, require a denial of the loan, or require a longer payout period. Since the purpose of SBA's disaster assistance is remedial, close attention to a disaster victim's

individual circumstances is preferable to adherence to standardized requirements.

The rule removing structures surrounded by water from disaster loan eligibility is prompted by the statutory requirement that all Federal flood assistance programs follow integrated policies (42 U.S.C. 4002(a)(2)).

The misapplication rule fills a prior omission in the disaster regulations, which left unstated the procedures governing a possible imposition of the statutory penalty for the misapplication of disaster loan funds.

SBA hereby certifies that these new rules have no federalism implications warranting a Federal Assessment in accordance with Executive Order 12612.

SBA estimates that the rule offering flexible payment terms during the first two years of a disaster loan will benefit 800 disaster victims, out of an average annual disaster loan volume of 15,000 loans. The rule barring structures surrounded by water from disaster assistance is estimated to affect 100 such structures each year. No estimate of the number of cases in which SBA will uncover misapplication of disaster loan funds is possible, since SBA has hitherto undertaken few investigations in this regard.

There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules which would come under the Paperwork Reduction Act. 44 U.S.C. Chapter 35. There are no federal rules which duplicate, overlap or conflict with these rules; SBA views its policy to harmonize its disaster assistance policy with FEMA's as supplementing rather than duplicating FEMA's rule. There are no significant alternate means to accomplish the objectives of these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small Business Administration, Small businesses.

Accordingly, Part 123 of Ch. I, Title 13, Code of Federal Regulations is amended as follows:

PART 123—[AMENDED]

1. The authority citation for Part 123 continues to read as follows:

Authority: Secs. 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636 (b), (c), (f); Pub. L. 100-590.

2. The Table of contents of Part 123 is amended by adding at the end of Subpart A—Conditions Applicable to All Loans Under This Part, a new entry as follows:

§ 123.19 Misapplication of loan proceeds.

§ 123.9 [Amended]

3. Section 123.9(a) is revised as follows:

(a) *Loan terms.* No loans made under this part, including renewals and extensions thereof, may be authorized for a term in excess of thirty years (see also § 123.13(b)), and no physical disaster loan made to a business able to obtain Credit Elsewhere (as defined in § 123.3) may be authorized for a term exceeding three years. Repayment ability shall be determined by SBA. Maturity and installment terms shall be established on each loan on the basis of the borrower's need and ability to pay. In most cases equal monthly installment payments of principal and interest, beginning five months from the date of the note, are required, but other payment terms may be accorded borrowers with seasonal or fluctuating income, and installment payments of varying amounts over the first two years of the loan may be agreed upon if SBA determines that such schedule better reflects the borrower's ability to pay. There is no penalty for prepayment of a direct loan.

* * * * *

§ 123.14 [Amended]

4. Section 123.14 is amended by redesignating paragraphs (c) and (d), respectively, as paragraphs (d) and (e), and adding a new paragraph (c) to read as follows:

(c) *Buildings ineligible for flood insurance.* No loans under this part shall be made to an applicant for losses sustained to a building, and its contents, located seaward of mean high tide, or entirely in, on or over water, without a business need therefor, if such building was newly constructed or substantially improved on or after February 9, 1989. "Substantial improvement" shall have the same meaning as the definition in 44 CFR, Ch. 1, 59.1 (1987).

§123.24 [Amended]

5. (a) Section 123.24(d) is amended by removing the second sentence thereof and adding at the end "(See § 123.19)."

§ 123.41 [Amended]

(b) Section 123.41(g)(3) is amended by removing the second sentence thereof and adding at the end "(See § 123.19)."

6. A new § 123.19 is added to Subpart A of Part 123 to read as follows:

§ 123.19 Misapplication of loan proceeds.

(a) *Statute.* Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection (15 U.S.C. 636(b)) shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan. (Pub. L. 92-385, approved August 16, 1972; 86 Stat. 554.)

(b) *Terms defined.* For purposes of this section:

(1) "Wrongful misapplication" means the willful use, without SBA approval, of any part or all of the loan proceeds contrary to the Loan Authorization and Agreement (hereafter "misapplication"). Non-use for authorized purposes of disbursed loan funds after a reasonable time not to exceed sixty (60) days from the date of the disbursement check, unless otherwise approved by SBA in writing, shall be deemed such misapplication.

(2) "Original principal amount" means the aggregate amount disbursed by SBA under such Agreement.

(3) "One-and-one-half times" means the original principal amount (together with accrued interest) plus one-half of such original principal amount.

(c) *Procedure.* (1) The SBA officer servicing the loan shall notify the borrower at the borrower's last known address by certified mail, return receipt requested, of the indications SBA has (including information supplied by the borrower) that a wrongful misapplication under this section may have occurred.

(2) Such notice shall offer the borrower an opportunity to submit to the SBA office indicated in the notice, within a stated time limit of at least 30 days from the date of such notice, in person or in writing, *pro se* or otherwise, whatever evidence the borrower wishes to offer that the misapplication has been cured, or, in the alternative, to rebut the allegation contained in the notice. Failure or refusal to submit such evidence or rebuttal within the stated time limit (or any extension thereof, for good cause shown, in SBA's discretion) shall be deemed an admission of such misapplication. If such evidence or rebuttal is submitted, the director or manager of the SBA office indicated in the notice, or his or her deputy, shall determine within thirty days of receipt of the borrower's answer, whether or not a misapplication has occurred.

(3) If such determination is that a misapplication has occurred, the approved loan amount shall be reduced to the original principal amount, the borrower notified accordingly by certified mail, return receipt requested, and the case referred for liquidation with the recommendation that the statutory penalty be imposed.

(4) If the determination under paragraph (c)(2) of this section is that no misapplication has occurred, the borrower shall be promptly notified accordingly, by certified mail, return receipt requested.

[Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans; 59.008, Physical Disaster Loans]

Dated: January 4, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-3009 Filed 2-8-89; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

ACTION: Final rule.

SUMMARY: This regulation implements the Program Fraud Civil Remedies Act of 1986 (PFCRA) which established for certain agencies an administrative remedy for fraudulent claims or statements made to such agencies. Since the PFCRA contemplated that the participating agencies promulgate substantially similar regulations, this regulation is, in large part, identical to a model developed for the participating agencies by a Task Force headed by the Department of Health and Human Services (HHS) and amended pursuant to public comment. The rule establishes administrative procedures for imposing the statutorily authorized penalties against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Small Business Administration (SBA).

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, Chief Counsel for Legislation, (202) 653-6573.

SUPPLEMENTARY INFORMATION: The structure of a PFCRA procedure under this regulation may be described as follows: The PFCRA authorizes investigations of false claims and statements by the Small Business Administration's (SBA) Inspector General (investigating official). Cases are initially referred to SBA's General Counsel (reviewing official) for evaluation and approval, then to the Attorney General for Department of Justice approval. The Department of Justice could elect to bring the case itself in court under the False Claims Act or other statutes, which would preclude SBA's further action on the matter. If the Department of Justice approves the use of PFCRA procedures, the case may be referred to an ALJ for a formal hearing on the record. The PFCRA provides for an appeal of the ALJ's decision to SBA's Administrator and then to the U.S. District Court.

On May 21, 1987 (52 FR 19156), SBA published a proposed rule and permitted 30 days for the public to comment. SBA received no public comments; however, other agencies which proposed regulations based on the model did receive comments. Those comments have been reviewed by the Task Force and the model has been amended in certain respects. In addition to adopting these changes, SBA has made certain changes to bring the regulation in line with existing SBA procedure.

The following substantive changes were made to conform to the model rule. (See final rule published on April 8, 1988 by HHS for description of comments and explanation of and basis for changes, 53 FR 11656.)

Section 142.2 Definitions

"Administrator." This definition was added to clarify that "Administrator" means the Administrator of the Small Business Administration.

"Benefit." This definition was amended to delete the phrase "except as the context otherwise requires" and by substituting the phrase "in the context of 'statements'" in response to comments that the definition in the proposed rule was vague and overbroad.

"Person." This definition was amended by adding the word "or" before "private" and by deleting the phrase "State, political subdivision of a State, municipality, county, district, and Indian tribe" in response to comments that the statute does not permit inclusion of states and their political subdivisions in the definition of "person."

"Representative." This definition was amended to specify that, in order to be a representative, an attorney must be a member in good standing of the bar of any State, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Section 142.5 Review by the reviewing official

Paragraph (6) of this section was amended to delete the final sentence. That sentence provided that a statement made by a reviewing official concerning reasonable prospect of collecting penalties may be based on information then known or an absence of any information indicating that the person may be unable to pay such an amount. The result of this change is that the issue of what will constitute sufficient support for the reviewing official's statement will be left to the Department of Justice.

Section 142.7 Complaint

Paragraph (a) of this section was amended by inserting the words "and provide a copy to the Office of Hearings and Appeals" after the word "defendant." This addition was made to ensure that the Office of Hearings and Appeals receives copies of all complaints issued.

Section 142.8 Service of complaint

Paragraph (a) of this section was amended by deleting the final sentence which read "Service is complete upon receipt." Inserted in its place are the words "Service is complete when made in accordance with the preceding sentence." This substitution was made to bring the regulations in line with the Federal Rules of Civil Procedure.

Section 142.9 Answer

Paragraph (a) of this section was amended by inserting the words "and the Office of Hearings and Appeals" after the word "official." This addition was made in order to notify the Office of Hearings and Appeals that the defendant is seeking a hearing.

Section 142.17 Rights of parties

This section was amended by adding "as permitted by the ALJ" to the end of paragraph (h) to clarify that post-hearing briefs may be filed only at the discretion of the ALJ.

Section 142.18 Authority of the ALJ

Paragraph (c) of this section was amended to specify that the ALJ does not have the authority to find Federal statutes or regulations invalid.

Section 142.20 Disclosure of documents

Paragraph (b) of this section was amended by adding a sentence at the end of such paragraph which states "The term 'information' as used in this section means factual data."

Section 142.21 Discovery

Paragraphs (e) (1), (2) and (3) of this section were amended to clarify that subpoenas need be obtained only in cases where a party seeks to depose a non-party. A subpoena is unnecessary with respect to depositions of parties because the ALJ can issue an order compelling discovery if a party refuses to be deposed.

Paragraph (e)(4) of this section was amended by deleting the words "and copying" at the end of the sentence. Copies of a deposition transcript may be

obtained for a fee from the reporting service which prepared such transcript.

Section 142.22 Exchange of witness lists, statements, and exhibits

Paragraph (a) of this section was amended by deleting the words "copies of prior statements of proposed witnesses" because such statements may well be protected under the attorney work product privilege or the attorney-client privilege. SBA does recognize, however, that it must disclose such statements if they are exculpatory. *See* § 142.20.

Section 142.26 Form, filing and service of papers

Paragraph (b) of this section, *Service,* was amended to clarify that service upon any party other than those required to be served as prescribed in § 142.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address.

Section 142.28 Motions

Paragraph (d) of this section was amended by adding "requests for extensions of time" to the list of circumstances under which an ALJ may grant a motion before the time period for reply has elapsed. SBA believes this change is necessary to provide the ALJ discretion to grant extensions of time immediately.

Section 142.31 Determining the amounts of penalties and assessments

Paragraph (b)(7) of this section was amended by adding the words "public finance" after the word "safety." The reason for such an amendment is to ensure that the potential or actual effect of misconduct affecting public finance will be considered when determining penalties.

Section 142.33 Witnesses

Paragraph (f)(2) of this section was amended to add the words "appearing for the entity pro se or" after the words "employee of the party" for clarity.

Section 142.35 The record

Paragraph (a) of this section was amended by deleting the second sentence thereof because transcripts, if desired, should be obtained from the court reporter.

Section 142.36 Post-hearing briefs

This section was amended by deleting the second sentence, which allowed parties to file post-hearing briefs at their will. Such filings will be permitted only at the discretion of the ALJ.

Section 142.37 Initial decision

Paragraph (c) of this section was amended to substitute the word "parties" for the word "defendants" in the second sentence in order to clarify that the ALJ will serve all parties and not just defendants with a statement describing the right of any defendant determined to be liable to file a motion for reconsideration.

Section 142.38 Reconsideration of initial decision

Paragraph (f) of this section has been rewritten to clarify that if the ALJ denies reconsideration, the initial decision shall be final and shall be binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 142.39

Paragraph (g) of this section has been rewritten to clarify that if the ALJ issues a revised initial decision, that decision shall be final and binding on the parties 30 days after it is issued, unless timely appealed to the Administrator in accordance with § 142.39.

Section 142.39 Appeal to the administrator

Paragraph (b)(1) of this section has been rewritten to clarify that a notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 142.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

Paragraph (b)(2) of this section has been amended to clarify that a party is not obligated to file an appeal.

Paragraph (b)(3) has been deleted to conform to the changes made in paragraph (b)(1).

Paragraph (c) of this section has been amended to clarify that if a timely appeal is filed, the ALJ will forward the record of the proceeding to the Administrator after the time for filing motions for reconsideration has expired.

Paragraph (k) of this section has been amended to specify that all parties will be served with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review. The former language provided only that the defendant would be served with such a statement.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., Executive Order 12291, and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although the procedures enable certain penalties to be assessed where false or fictitious statements have been made to SBA, SBA does not anticipate that a substantial number of small businesses will be affected by these procedures.

In addition, SBA finds that this regulation is not a major rule under Executive Order 12291, as the procedures it establishes are not expected to result in an annual effect on the economy of $100 million or more. Since the PFCRA does not expand the investigative jurisdiction of the SBA, the economic effect of these procedural regulations is not expected to approach the $100 million level.

These procedural regulations do not require any additional reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

SBA also certifies that this rule does not require a Federal Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure, Investigations, Small businesses.

Accordingly, pursuant to section 3803(g)(2) of the Program Fraud Civil Remedies Act, 31 U.S.C. Ch. 38, the Administrator is amending Chapter I of title 13, Code of Federal Regulations, by adding a new Part 142 to read as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Sec.

Sec.

Authority: 31 U.S.C. 3803(g)(2), 15 U.S.C. 634(b)(6).

§ 142.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 142.2 Definitions.

Administration means the Small Business Administration.

Administrator means the Administrator of the Small Business Administration.

ALJ means an Administrative Law Judge in the Administration appointed pursuant to 5 U.S.C. 3105 or detailed to the Administration pursuant to 5 U.S.C. 3344.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the Administration for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Administration or to a party to a contract with the Administration—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will or is potentially liable to reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the Administration which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 142.7.

Defendant means any person alleged in a complaint under § 142.7 to be liable for a civil penalty or assessment under § 142.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 142.10 or § 142.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Small Business Administration or an officer or employee of the Office of Inspector General as designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, sole proprietorship, partnership, corporation, association, or private organization, and includes the plural of that term.

Presiding officer means an administrative law judge appointed pursuant to section 3105 of title 5, United States Code and serving in the Office of Hearings and Appeals of the Small Business Administration or detailed to such office pursuant to section 3344 of title 5, United States Code.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the General Counsel of the Administration or his designee who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for a grade GS–16 under the general schedule;

(b) Not subject to supervision by, or required to report to, the investigating official; and

(c) Not employed in the organizational unit of the Administration in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Administration, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will be or is potentially liable to reimburse such State, political subdivision, or party for any portion of the money or property under such

contract or for such grant, loan, or benefit.

§ 142.3 Basis for civil penalties and assessments.

(a) *Claims*

(1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Administration, recipient, or party to a contract with the Administration when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Administration, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements*

(1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Administration when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Administration.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 142.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 142.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 142.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 142.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 142.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 142.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 142.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 142.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 142.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services

demanded or requested in violation of § 142.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 142.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant and provide a copy to the Office of Hearings and Appeals, as provided in § 142.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 142.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 142.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete when made in accordance with the preceding sentence.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 142.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 142.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 142.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 142.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 142.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 142.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 142.38.

(h) The defendant may appeal to the Administrator the decision denying a motion to reopen by filing a notice of appeal with the Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(j) The Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Administrator decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Administrator decides that the defendant's failure to file a timely answer is not excused, the Administrator shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Administrator issues such decision.

§ 142.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 142.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed in § 142.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 142.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Administration.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 142.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Administration who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Administration, including in the offices of either the investigating official or the reviewing official.

§ 142.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 142.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Administrator may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 142.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 142.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 142.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 142.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed. The term "information" as used in this section does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official as described in § 142.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such motion may only be filed with the ALJ following the filing of an answer pursuant to § 142.9.

§ 142.21 Discovery

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 142.22 and 142.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 142.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 142.24.

(e) *Depositions.* (1) If a motion for deposition of a non-party is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held. If a motion for deposition of a party is granted, the party seeking such deposition shall promptly notify counsel for the party to be deposed, by first class mail, of the time and place of deposition.

(2) The party seeking to depose a non-party shall serve the subpoena in the manner prescribed in § 142.8.

(3) A non-party deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection.

(f) Each party shall bear its own costs of discovery.

§ 142.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 142.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 142.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to

appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 142.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 142.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, or oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 142.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Administration, a check for witness fees and mileage need not accompany the subpoena.

§ 142.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 142.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 142.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties, following a hearing on the motion, or for a request for extension of time, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 142.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing or relying upon evidence or testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 142.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 142.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Administration shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Administrator, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Administrator in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, public finance, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the Administrator head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 142.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made, presented or submitted; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 142.33 Witnesses.

(a) Except as provided in paragraph (b), testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing . Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 142.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 142.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may

apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.35 The record.

(a) The hearing will be recorded and transcribed.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Administrator.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.36 Post-hearing briefs.

The ALJ may require or permit the parties to file post-hearing briefs. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 142.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 142.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 142.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after close of the hearing or after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty of assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 142.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 142.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Administrator in accordance with § 142.39.

§ 142.39 Appeal to the Administrator.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Administrator by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 142.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Administrator may extend the initial 30 day period for an additiona1 30 days if the defendant files with the Administrator a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator and the time for filing motions for reconsideration under § 142.38 has expired, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Administrator shall promptly serve each party to the appeal with a copy of the decision of the Administrator and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 142.3 is final and is not subject to judicial review.

§ 142.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmit to the Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Administrator shall stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 142.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

(b) No administrative stay is available following a final decision of the Administrator.

§ 142.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Administrator imposing penalties or assessments under this part and specifies the procedures for such review.

§ 142.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 142.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 142.42 or § 142.43, or any amount agreed upon in a compromise or settlement under § 142.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 142.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 142.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 142.42 or during the pendency of any action to collect penalties and assessments under § 142.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 142.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 142.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 142.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 142.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: December 21, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-3010 Filed 2-8-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-90-AD; Amdt. 39-6132]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. Recent service experience indicates that airplanes which have been modified by the incorporation of an external doubler need to be inspected externally as well as internally to detect cracks. Since an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage, this amendment requires additional inspection and repair, and also adds additional airplanes which may be subject to similar cracking.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 11, 1984), to require inspection and repair, if necessary of the

body and canted bulkhead structure for cracks at the nose gear wheel well forward corners on Boeing Model 747 series airplanes, was published in the **Federal Register** on August 17, 1988 (53 FR 31012). The comment period for the proposal closed on October 11, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Boeing Commercial Airplanes suggested several wording changes to the AD, so as to align the wording with that of the referenced service bulletin. The FAA concurs with certain of these suggestions:

a. Paragraphs G.1. and J.1. have been reworded to clarify that the low frequency eddy current inspection must be performed "prior to the accumulation of 6,000 landings after modification * * *" (the proposal had stated "within 6,000 landings after modification * * *"). This is merely a clarifying change and reflects the intent of the FAA as to this requirement.

b. Throughout the final rule the words "* * * repair in accordance with FAA procedures * * *" have been changed to "* * * repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region * * *" The Manager of that office is the individual delegated the authority to approve designs or repair methods to be used in correcting an unsafe condition addressed by AD action.

The FAA has determined that these changes will not increase the scope of the AD, nor will they increase the economic burden on any operator.

The FAA does not concur with Boeing's suggestion that repairs may be performed in accordance with a method approved by an FAA Designated Engineering Representative (DER) of The Boeing Company. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make discretionary determinations of what the applicable requirement is.

The Air Transport Association (ATA) of America expressed no technical objections to the proposed rule. However, one of its members requested that the proposed initial compliance period be increased from 100 landings to 300 landings after the effective date of the AD to improve scheduling and flexibility. This operator advised that it had been inspecting in accordance with the existing AD at 1,000 landing intervals instead of 1,500 landings. The FAA does not concur with the recommendation. In light of the severity of the hazard involved, and the fact that there has been no additional data submitted that would support this increase, the FAA determined that the proposal for 100 landings is appropriate. This AD does contain, however, provisions for use of an alternate means of compliance, which may be requested by the operator if it has data to justify an increased initial compliance time.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

There are approximately 302 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that a total of 114 airplanes (including 24 additional airplanes) of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $2,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,140,000.

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. By superseding AD 84-18-02, Amendment 39-4906 (49 FR 35622; September 11, 1984), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 747 series airplanes, Groups 1, 2, and 3 as listed in Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body skin and the canted pressure bulkhead structure, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of Airworthiness Directive (AD) 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 4,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform a detailed visual inspection of the nose gear wheel well forward lower corners, exterior and interior area, for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations, in accordance with Boeing Service Bulletin 747-53-2112, Revisions 3 or 4.

2. Cracks found while conducting the inspections required by paragraph A.1., above, must be repaired as follows:

a. If the crack is visible on an interior surface, or exceeds any of the limits defined in paragraph A.2.b., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

b. If the crack is visible from an exterior surface only and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection is performed at intervals not to exceed 100 landings.

3. Inspections are to continue after repair. If additional cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office,

FAA, Northwest Mountain Region, prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a doubler in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph A., above.

C. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler, in accordance with Boeing Service Bulletin 747-53-2112:

1. Inspect the nose gear wheel well forward lower corners at the times and using the methods specified in either paragraph C.1.a. or C.1.b., below.

a. *Option I: External inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. After the initial inspection, continue to inspect as follows: Perform external general visual inspections at intervals not to exceed 100 landings, and external detailed visual inspections at intervals not to exceed 1,000 landings, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988.

b. *Option II: External and internal inspection.*

Within 1,500 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform an external and internal detailed visual inspection of the nose gear wheel well forward lower corner structure for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat external and internal detailed visual inspections at intervals not to exceed 1,500 landings.

2. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

3. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

D. For Group 1 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of a doubler, in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph C. of this AD.

E. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Perform the inspections and repairs, if necessary, in accordance with the requirements of paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

F. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of the hinge fairing rework or modification doublers in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD, except that repetitive inspection intervals shall not exceed 2,000 landings. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

G. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have not been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 6,000 landings after modification or within the next 100 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current (LFEC) inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds any of the limits in paragraph G.3., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

H. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of hinge fairing rework only in accordance with Boeing Service Bulletin 747-53-2112: Continue to perform the repetitive inspections, and to make repairs, if necessary, in accordance with the requirements of paragraph G. of this AD.

I. For Group 2 airplanes on which the initial inspection requirements of AD 84-18-02 have been conducted as of the effective date of this AD, and which have been modified by incorporation of the hinge fairing rework and modification doublers in accordance with Boeing Service Bulletin 747-53-2112:

1. If the underskin doubler was not cracked at the time of modification, within 10,000 landings after the modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspection at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

J. For Group 3 airplanes which have not been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747-53-2112:

1. Prior to the accumulation of 6,000 landings after hinge fairing modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a low frequency eddy current inspection for cracks in the underskin doubler at the nose gear wheel well forward lower corners, in accordance with Boeing Service Bulletin 747-53-2112, Revision 4, dated February 25, 1988. Repeat low frequency eddy current inspections in the underskin doubler at intervals not to exceed 2,000 landings.

2. If a crack is found that is visible on an interior surface or exceeds the limits defined in paragraph J.3., below, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, Northwest Mountain Region, prior to further flight.

3. If an underskin doubler crack is found that is not visible from the interior and has

not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of fasteners, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to the accumulation of 500 additional landings, provided that a detailed visual inspection of the nose gear wheel well forward corner structure is performed at intervals not to exceed 100 landings.

4. Inspections are to continue after repair. If additional cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

K. For Group 3 airplanes which have been modified by incorporation of the external doubler in accordance with Boeing Service Bulletin 747–53–2112:

1. If the underskin doubler was not cracked at time of modification, within 10,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection for cracks, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

2. If the underskin doubler was cracked at the time of modification, within 2,000 landings after modification or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an internal and external detailed visual inspection, in accordance with Boeing Service Bulletin 747–53–2112, Revision 4, dated February 25, 1988. Repeat internal and external detailed visual inspections at intervals not to exceed 2,000 landings.

3. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

4. Inspections are to continue after repair. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, prior to further flight.

L. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment supersedes AD 84–18–02, Amendment 39–4906.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–3033 Filed 2–8–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Amendments to the Equal Access to Justice Act

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule with request for comments.

SUMMARY: This rule amends the Commission's regulations in accordance with the standards required by the Equal Access to Justice Act, as amended. The rule conforms generally to the model rules established by the Administrative Conference of the United States.

EFFECTIVE DATE: February 9, 1989; comments must be received on or before March 13, 1989.

ADDRESS: Written comments should be addressed to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Sixth Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street NW., Sixth Floor, Washington, DC 20006, telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 5, 1985, Pub. L. 99–80, 99 Stat. 183, reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504 (EAJ Act), which had expired September 30, 1984. The EAJ Act provides for the award of attorneys' fees and other expenses to certain parties who prevail against the federal government in court cases and adversary administrative proceedings. Specifically, as relevant here, the EAJ Act applies to litigation conducted before the Commission under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1982), in which an eligible party prevails over the Department of Labor's Mine Safety and Health Administration. 29 CFR 2704.100 and 2704.103. Prevailing parties may receive awards if they meet the EAJ Act's eligibility standards (which set ceilings on the net worth and number of employees of parties) and if the government's position was not "substantially justified."

Under the amendments to the EAJ Act, the net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations, and other entities. 5 U.S.C. 504(b)(1)(B). Units of local government may also now be eligible for fee awards. 5 U.S.C. 504(b)(1)(B). Moreover, the position of the government that must be substantially justified has been defined to include the underlying governmental action or failure to act upon which the proceeding is based, as well as the government's position in litigation. 5 U.S.C. 504(b)(1)(E). Finally, whether the position of the agency is substantially justified shall be determined on the basis of the administrative record as a whole made in the adversary adjudication for which fees and other expenses are sought. 5 U.S.C. 504(a)(1). The Commission's regulations (§§ 2704.104 and 2704.105) have been amended to reflect these changes.

The Administrative Conference of the United States ("Administrative Conference"), responsible for coordinating the procedural rules adopted by various federal agencies to implement the EAJ Act, issued revised model rules implementing the amendments to the EAJ Act (51 FR 16659 (May 6, 1986)), after receiving public comment on draft model rules (50 FR 46250 (November 6, 1985)). The Commission's modifications to its regulations conform to the Administrative Conference's final model rules, although there are three departures.

First, the Commission's amended rule revising the effective dates in § 2704.102, entitled "When the Act applies," does not provide that the EAJ Act shall apply (1) to adversary adjudications "pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction;" or (2) "to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5,

1985, provided that an application for fees and expenses * * * has been filed with the agency within 30 days after August 5, 1985." No Commission cases arose in those situations, and such language would be superfluous.

Second, while a literal reading of 5 U.S.C. 504(a)(1) may be interpreted to prohibit discovery or evidentiary proceedings in an EAJ Act application case to determine substantial justification, the legislative history indicates that when the proceeding for which fees and expenses are sought was conceded by the agency on the merits, withdrawn by the agency, or otherwise settled before any of the merits are heard, the administrative record may include affidavits and other supporting documents filed by the parties in *both* the fee producing proceeding and the case on the merits. H.R. Rep. No. 120, Part 1, 99th Cong., 1st Sess. 13, *reprinted in* 1985 U.S. Code Cong. Ad. News 132, 141. The Commission's amended rule in § 2704.306, entitled "Further proceedings on the application," in accord with the intent of Congress reflected in the legislative history, permits the applicant and the Secretary of Labor to supplement the record with affidavits and other supporting documentary evidence, under the circumstances set forth above, for determining whether the Secretary's position was substantially justified. Such supplementation may be necessary if the underlying record of the settled or withdrawn case is abbreviated.

Third, the Commisssion has retained in § 2704.105, entitled "Standards for awards," the language that the Secretary may avoid an award by showing her position was "reasonable in law and fact." The Administrative Conference deleted the language in question in its model rule, stating that it was not certain that the "reasonable in law and fact" formulation reflected Congressional intent and that the case law was unsettled concerning the validity of the language in determining whether an agency's position was substantially justified. 51 FR 16661. Since the Administrative Conference's model rules were published, the Supreme Court has concluded that the phrase "substantially justified" means "justified in substance or in the main—that is justified to a degree that could satisfy a reasonable person"; the Court explained that this definition is no different from the "reasonable basis in law and fact" formulation adopted by the majority of Courts of Appeals. *Pierce* v. *Underwood*, __ U.S. __, __ S. Ct. __, 101 L.Ed. 2d 490, 504–05 (1988).

One other technical modification to the Commission's regulations deserves comment. The Commission has amended § 2704.104 to provide, in accordance with the EAJ Act, that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code may be an eligible party regardless of the net worth of such organization. *See* 5 U.S.C. 504(b)(1)(B). Such organizations were also exempt, with respect to net worth, under the EAJ Act as originally authorized and this rule change corrects a technical discrepancy in the Commission's present regulations.

This rule revises agency regulations of procedure and practice. The Administrative Procedure Act, 5 U.S.C. 553(b)(A), authorizes agencies to revise such regulations concerning internal procedures without prior notice or public comment. Because the Commission wishes to put these revised procedures into effect as soon as possible and the rule substantively conforms with the Administrative Conference's model rules, the Commission adopts these revised regulations as its final rule. Nevertheless, the Commission values any comments that the public may have on these matters. Public comment is accordingly invited. Comments may be mailed to the Commission's Executive Director at the address previously stated. It is requested that comments be filed no later than March 13, 1989. Upon receipt and consideration of any comments, these rules will be subject to possible change.

List of Subjects in 29 CFR Part 2704

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR Part 2704 is amended as follows:

PART 2704—[AMENDED]

1. The authority citation for Part 2704 is revised to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

2. Section 2704.102 is revised to read as follows:

§ 2704.102 When the Act applies.

The Act applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1985.

3. Section 2704.104 is amended by revising paragraph (b) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and employs not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees; and

(4) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees;

* * * * *

4. Section 2704.105 is amended by revising paragraph (a) to read as follows:

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Secretary's position was substantially justified is on the Secretary who may avoid an award by showing that her position was reasonable in law and fact.

* * * * *

5. Section 2704.201 is amended by revising paragraph (b) to read as follows:

§ 2704.201 Contents of application.

* * * * *

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants including their affiliates, as described in § 2704.104(f) of this part). However, an applicant may omit this statement if it attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a

ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section.

* * * * *

6. Section 2704.306 is revised to read as follows:

§ 2704.306 Further proceedings on the application.

(a) The determination of an award will be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (b) and (c) of this section.

(b) On request of either the applicant or the Secretary, or on the administrative law judge's own initiative, the judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(c) If the proceeding for which fees and expenses are sought was conceded by the Secretary on the merits, withdrawn by the Secretary, or otherwise settled before any of the merits were heard, the applicant and the Secretary may supplement the administrative record with affidavits or other documentary evidence.

(d) A request that the judge order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

Dated: February 3, 1989.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 89-3127 Filed 2-8-89; 8:45 am]

BILLING CODE 6735-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3508-8]

Approval and Promulgation of Implementation Plan, Texas

AGENCY: Enviromental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the anti-tampering (parameter) portion of the vehicle inspection and maintenance (I/M) program and certain Transportation Control Measures (TCMs) submitted as part of the Ozone State Implementation Plan (SIP) for Dallas and Tarrant (DFW) Counties. Elsewhere in today's Federal Register, EPA is proposing to approve commitments made by the State of Texas to expand the I/M program and to adopt additional TCMs. EPA is approving the previously proposed (July 14, 1987) portions of the I/M program and the TCMs as part of the Post-82 Ozone SIP for Dallas and Tarrant Counties as these regulations will assist in further control of volatile organic compound (VOC) emissions.

EFFECTIVE DATE: This rule will become effective on March 13, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

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

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gerald Fontenot, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (214) 655-7204.

SUPPLEMENTARY INFORMATION: A comprehensive description of the requirements of the Clean Air Act and EPA's policies under the Act was set forth in the proposal published in the Federal Register on July 14, 1987, (52 FR 26421). Other actions EPA is taking on other portions of the submittal are described elsewhere in today's Federal Register.

Background

On February 24, 1984, the EPA Region 6 Regional Administrator sent the Governor of Texas a formal notice for a revision to the ozone (O_3) SIP for Dallas and Tarant Counties, Texas. Texas submitted a revision for Dallas and Tarrant Counties in several parts in 1985 and 1986. That revision did not provide for sufficient VOC emission reductions to demonstrate timely attainment of the O_3 National Ambient Air Quality Standards (NAAQS). EPA, therefore, proposed to find that Texas had failed to respond adequately to the 1984 SIP call, and hence proposed sanctions on July 14, 1987. The reader is referred to EPA's proposed action discussed elsewhere in today's Federal Register.

The Texas Air Control Board (TACB) submitted an additional revision in December 1987 referred to as the Post-82 Interim SIP. The anti-tampering portion of the I/M program and certain TCMs found in the 1985, 1986, and 1987 revisions are approvable by EPA. EPA will approve these regulations because they assist in further control of VOC emissions.

1. I/M Requirements

The July 14, 1987, notice proposed to approve the parameter I/M program SIP revision if certain conditions were fulfilled. The notice also described the details of the program. On December 21, 1987, the State of Texas met the certain conditions by submitting letters of commitment from the local law enforcement agencies, recordkeeping requirements, quality control commitments, mechanic training and public information commitments, and the final rules. EPA is approving the anti-tampering portion of the I/M porgram as found in the 1985, 1986 and 1987 revisions since it will strengthen the existing SIP.

Elsewhere in today's Federal Register, EPA describes the commitments made by the State of Texas to expand the DFW I/M program to include an exhaust emissions (tailpipe) inspection program. EPA will review the entire expanded I/M program for approvability upon completion of the commitments.

2. Transportation Control Measures

The July 14, 1987, Federal Register notice proposed approval of the TCMs submitted in the 1985 and 1986 SIP revisions for the Post-82 SIP call contingent upon documentation of the evaluation of the TCMs specified under section 108(f) of the Clean Air Act. Texas submitted documentation in the 1987 SIP revision that provided sufficient justification that additional TCMs were not feasible during the timeframe covered by the 1985 and 1986 Post-82 SIP submittal, i.e., 1983 through 1987.

EPA is approving the TCMs which were proposed in the July 14, 1987, Federal Register notice and the additional infeasibility documentation submitted in the 1987 submittal since these measures contribute toward the reduction in VOCs and strengthen the existing SIP. The credit reduction for

TCMs in the 1985 and 1986 Post-82 SIP submittals was revised. However, the expansion and enhancement of the vehicle I/M program and the control of gasoline vapor pressure associated with the Post-82 Interim SIP affect the amount of credit each measure will provide for a given area. These controls will make the fleet more efficient and emit less pollutants, thereby reducing the amount of emission reduction attributed to TCMs.

In the 1987 SIP revision, Texas has submitted additional TCM commitments for 1987 through 1992. The commitment to adopt additional TCMs is discussed elsewhere in today's **Federal Register.**

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 April 10, 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, Ozone, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Authority: Sec. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note: Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 18, 1989.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart SS—Texas

1. Section 52.2270 is amended by adding paragraph (c) (66) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(66) Revisions to the plan for attainment of the standard for ozone in Dallas and Tarrant Counties were submitted by the Governor on September 30, 1985 and December 21, 1987.

(i) Incorporation by reference.

(A) Revisions to the Texas Air Control Board Regulation IV, Section 114.1 (c), (e), (f), 114.3, 114.5 (a), (b), (d), (e), (f), and (g) adopted July 26, 1985.

(B) Vehicle Inspection and Maintenance and Transportation Control Measures (VIMTCM), Appendix AG, Emission Reduction Commitments for Transportation Control Measures in Post-1982 SIP Areas adopted by the Texas Air Control Board on August 28, 1985.

(C) VIMTCM, Appendix AJ, Excerpted Senate Bill 725, section 35 (d) and (g) effective September 1, 1985; and House Bill 1593 sections 21 and 22 effective June 18, 1987.

(D) The following portions of VIMTCM, Appendix AK, Texas Vehicle Parameter Inspection and Maintenance Program adopted by the Texas Air Control Board on December 18, 1987.

1 Record keeping and Record submittal Requirements, pages 15–17

2 Quality Control, Audit and Surveillance Procedures, pages 17–18

3 Procedures to Assure that Noncomplying Vehicles are Not Operated on the Public Roads, pages 18–20

4 Mechanic Training Program, pages 21–23

5 A Public Awareness Plan, pages 23–25

6 Vehicle Maintenance Program (Anti-tampering), pages 25–27

(E) VIMTCM, Appendix AM, Department of Public Safety Rules and Regulations Concerning Vehicle Inspection and Maintenance Programs, Sections 1, 2, and 3 adopted by the Texas Air Control Board on December 18, 1987.

(F) VIMTCM, Appendix AN, Local Government Letters of Commitment to Enforce Vehicle Inspection and Maintenance Programs adopted by the Texas Air Control Board on December 18, 1987.

[FR Doc. 89–1585 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3516–3]

Approval and Promulgation of Implementation Plans; Various States

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision; Information Notice.

SUMMARY: USEPA hereby gives notice that it has formally (1) notified the Governor of the State of Ohio by letter on December 22, 1988, that the Ohio State Implementation Plan is substantially inadequate to attain and maintain the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in Hamilton County, Ohio; and (2) called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: The State of Ohio must submit by February 20, 1989, a schedule setting forth dates and increments of progress for correcting the Hamilton County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Hamilton County SO_2 plan to USEPA not later than June 22, 1990.

ADDRESSES: Copies of the documents associated with this notice are available for inspection at: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V, Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: USEPA approved portions of the Ohio SO_2 SIP for Hamilton County on January 27, 1981 (46 FR 8481), and April 20, 1982 (47 FR 16784), and the remaining portion on May 13, 1982 (47 FR 20586). The portion of Hamilton County which was originally designated nonattainment was redesignated to attainment on March 19, 1982 (47 FR 11870). Hamilton County was divided into two separate attainment areas on May 13, 1982 (47 FR 20586). However, since the time of these rulemakings, three modeling analyses were submitted to USEPA (one to support an Indiana SO_2 SIP and two others to support two separate permits for new sources in Ohio). The modeling analyses have each predicted violations of the SO_2 NAAQS due to existing sources that are located in Hamilton County, Ohio. The SO_2 NAAQS are violated whenever the following standards are exceeded more than once a year per site:

SULFUR DIOXIDE NAAQS

	Primary	Secondary
Annual arithmetic average	[1] 80 μg/m³	
Maximum 24-hour concentration	365 μg/m³	
Maximum 3-hour concentration		1300 μg/m³

[1] Micrograms per cubic meter.

The modeling analyses predicted the highest annual and the highest, second high 24-hour and 3-hour concentrations to be approximately:

PREDICTED AIR QUALITY VIOLATIONS

Modeling study	Highest annual	Highest second high 24-hour	Highest second high 3-hour
Dearborn County Indiana SO_2 SIP	90 $\mu g/m^3$	1200 $\mu g/m^3$	4000 $\mu g/m^3$
University of Cincinnati	129 $\mu g/m^3$	622 $\mu g/m^3$	
American Electric Power-Zimmer		765 $\mu g/m^3$	1998 $\mu g/m^3$

Based on the predicted violations, USEPA notified the Governor of Ohio on December 22, 1988, under section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H), that the SIP for SO_2 is substantially inadequate to attain and maintain the SO_2 NAAQS in Hamilton County. The finding of inadequacy and the call for a SIP revision were generally issued in accordance with USEPA's guidance on issuing notices of SIP inadequacy.[1] Under this guidance, the State would have to submit a commitment and a schedule for the development of the SIP revision to USEPA not more than 60 days from the date of notification. A fully adopted plan for Hamilton County would then have to be submitted within 1 year of the date of notification.

However, it is USEPA's practice to consider alternative schedules, where warranted. After discussions with the Ohio Environmental Protection Agency, USEPA is providing the State with 60 days to submit a commitment and schedule for the development of an approvable SIP and up to 18 months from the date of notification for submission of a fully State adopted SO_2 plan for Hamilton County, which assures the attainment and maintenance of the SO_2 NAAQS both in Hamilton County and the surrounding area.

Therefore, Ohio must submit a schedule for correcting the deficiency by February 20, 1989, and a plan and enforceable regulations for Hamilton County by no later than June 22, 1990.[2]

Conclusion

USEPA notified the Governor of the State of Ohio by letter that the Ohio SO_2 SIP is inadequate to assure the attainment and maintenance of the National Ambient Air Quality Standards. The notice of deficiency requires Ohio to submit the SIP revisions necessary to achieve the standards.

The USEPA considers today's notice to be informational only and to have no regulatory effect. It informs the public of a call for a SIP revision made by USEPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H). Any final definition of what would be an inadequate response to this SIP call, any further USEPA action that would result from an inadequate State response in the future, will be effective only after notice-and-comment rulemaking.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur/Oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: January 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–3072 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

[1] USEPA's guidance for issuing section 110(a)(2)(H) notices of SIP deficiencies is found in a November 2, 1983, **Federal Register** notice entitled "Compliance with the Statutory Provisions of Part D of the Clean Air Act" (48 FR 50686). "USEPA's Guidance Document for the Correction of Part D SIP's for Nonattainment Areas" (January 1984) contains more information on the content of the revisions USEPA requested. Although these documents were issued specifically to deal with areas designated nonattainment, they also contain USEPA's general guidance for issuing notices of SIP deficiency for areas with approved SIPs but with continued (or newly found) nonattainment problems.

[2] If the State does not submit a schedule by February 20, 1989, or a curative SIP revision to USEPA by June 22, 1990, the Clean Air Act gives USEPA certain options. It may initiate Federal promulgation under section 110(c)(1), propose funding restrictions under section 176(b), and/or, possibly, propose funding sanctions under section 316(b). Section 110(c)(1) authorizes the Administrator to propose and promulgate a Federal plan if a State fails to revise its SIP in a timely manner in response to a SIP call. Section 176(b) authorizes USEPA to withhold or restrict Clean Air Act funds. Section 316(b) authorizes USEPA to withhold, condition, or restrict sewage treatment construction grants in affected areas.

40 CFR Part 162

[OPP-00149B; FRL-3517-3]

Clarification of HIV (AIDS Virus) Labeling Policy for Antimicrobial Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of labeling policy for antimicrobial pesticide products bearing claims of effectiveness against HIV (AIDS virus).

SUMMARY: This notice announces a clarification of the labeling policy for HIV (AIDS virus) efficacy claims in antimicrobial pesticide product labeling. EPA considers antimicrobial pesticides to be unique because of the critical nature of the threat to public health resulting from ineffective use of products due to obsolete or misleading labeling and advertising. EPA has implemented and will continue to develop future initiatives designed to upgrade and clarify the labeling of all antimicrobial pesticides to reflect accurately the documented efficacy of products. It was not considered necessary to establish new policy or revise existing policy in order to approve HIV efficacy claims. Rather, a clarification and/or reinforcement of existing policies as they apply to HIV efficacy claims is needed to serve as guidance to antimicrobial pesticide product manufacturers and registrants. It is for these reasons that the Agency is announcing a clarification of HIV labeling policy. Registrants desiring to register a product or to amend an existing registration to include a HIV efficacy claim must comply with this policy. Sterilant products previously approved by EPA to bear HIV must be revised to comply with this policy.

FOR FURTHER INFORMATION CONTACT:

By mail: D. Jean Jenkins (General Information), William C. Campbell, Jr. (Technical data and labeling

requirements), Jeff Kempter and/or John Lee (Applications for registration), Antimicrobial Program Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office of location and telephone number: Room 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7470.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 28, 1986 (51 FR 19174), EPA issued a notice concerning "Advocacy of Pesticide Uses Which Do Not Appear on Registered Pesticide Labels." The main thrust of this Notice was to address the unwarranted promotion of efficacy claims for antimicrobial pesticides against HIV in advertising and other product related materials. At the time of this Notice, an acceptable test procedure was not yet available for evaluating the efficacy of antimicrobial pesticides against HIV, and therefore, EPA had not approved any label claims of effectiveness against HIV.

Since May 1986, EPA has received and approved three test procedures developed by three different commercial testing laboratories. The laboratories developed their test procedures in accordance with those already employed for testing disinfectants against other kinds of viruses, except for the virus-specific host and assay procedures. These procedures were approved by EPA following consultation with the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA). Staff members of both CDC and FDA agreed that the basic parameters of the three approved testing protocols were in agreement with those employed for testing disinfectants against other kinds of viruses and were valid test procedures. Based on these three approved procedures, several antimicrobial pesticide manufacturers tested their products and submitted data to EPA in support of proposed label efficacy claims against HIV. To date, data on 68 disinfectant products have been evaluated by EPA. The data demonstrate effectiveness of the products as virucides against HIV-1 on hard non-porous surfaces in the presence of moderate amounts of organic soil (5 to 10 percent) at the recommended label dosages in 30 seconds to 10 minutes at 20 to 25 °C.

This demonstration of acceptable performance against HIV-1 required that EPA consider approval of appropriate label claims. In consideration of EPA labeling policy for HIV claims, several labeling elements were addresed, including: acceptable terminology/nomenclature for designation of target pest; the use of featured statements/phrases, enlarged/emphasized lettering, special graphics, or product names for promotion of HIV efficacy claims; acceptable use patterns and required documentation; directions for use of products against HIV; and use and acceptability of supplemental labeling.

Evaluation of these labeling elements indicated that adequate regulations and policies existed to address issues that had surfaced, or were likely to surface, in the registration of antimicrobial pesticides efficacious against HIV. Therefore, it was not considered necessary to establish new policy or revise existing policy in order to regulate HIV efficacy claims. Rather, only a clarification and/or reinforcement of existing policies as they apply to HIV efficacy claims is needed to serve as guidance to registrants and/or manufacturers of antimicrobial pesticides.

II. Clarification of Labeling Policy

The following elements constitute a labeling policy clarification for HIV efficacy claims:

1. The only terminology/nomenclature that is acceptable for designation of the target pest(s) associated with human immunodeficiency syndrome is "human immunodeficiency virus Type 1 (HIV-1)" or "human immunodeficiency virus Type 2 (HIV-2)." Either of the above may be combined with the parenthetical phrase "(associated with AIDS)" or "(AIDS virus)."

2. Featured statements/phrases, emphasized/enlarged lettering, special graphics, or any product name, that employ the term *AIDS*, are prohibited. The terms "AIDS virus" or "Associated with AIDS" may be used for recognition purposes, *in parentheses*, to accompany the official name of the virus.

Featured statements/phrases, emphasized/enlarged lettering, or special graphics that are employed for the primary purpose of especially promoting or drawing attention to HIV efficacy without appropriate use information, are unacceptable. For example, a featured, incomplete phrase such as KILLS HIV-1 will not be permitted. However, a featured statement such as KILLS HIV-1 ON PRE-CLEANED ENVIRONMENTAL SURFACES/OBJECTS PREVIOUSLY SOILED WITH BLOOD/BODY FLUIDS is acceptable if the product is effective against HIV-1 when tested; the specific surfaces/objects recommended for treatment are likely to be soiled with blood/body fluids; and appropriate directions and other use information are provided. Such claims will be permitted only under the Directions for Use section of the label.

3. The only use patterns considered acceptable in conjunction with HIV efficacy claims are those that involve health care settings or other settings in which there is an expected likelihood of soiling of inanimate surfaces/objects with blood or body fluids, and in which the surfaces/objects likely to be soiled with blood or body fluids can be associated with the potential for transmission of HIV. EPA will require the substantiation of efficacy against the specific target pest, HIV-1, and the likelihood of blood and body fluid soiling and association of soiled surfaces with the potential transmissibility of HIV.

4. Special instructions for use of antimicrobial pesticides against HIV must be provided in the following format, with each section appropriately titled and the required use information included.

a. *Heading:* Identify as "SPECIAL INSTRUCTIONS FOR CLEANING AND DECONTAMINATION AGAINST HIV OF SURFACES/OBJECTS SOILED WITH BLOOD/BODY FLUIDS."

b. *Personal Protection:* The specific barrier protection items to be used when handling items soiled with blood or body fluids must be identified, such as disposable latex gloves, gowns, masks, or eye coverings.

c. *Cleaning Procedure:* The need to clean the specific surfaces/objects prior to disinfection must be identified, e.g., "Blood and other body fluids must be thoroughly cleaned from surfaces and objects before application of the disinfectant (or sterilant)."

d. *Disposal of Infectious Materials:* The use directions must state how and where to dispose of blood, body fluids, and cleaning materials that are removed from surfaces/objects, e.g., "Blood and other body fluids should be autoclaved and disposed of according to Federal, State, and local regulations for infectious waste disposal."

e. *Contact Time:* When a contact time for HIV is specified that is shorter than the contact time specified for other pathogens, then it must be qualified with a prominent statement such as "this contact time will not control other common types of viruses and bacteria."

5. Sticker-type labeling will be permissible for use in conjunction with HIV efficacy claims only if alone, or in conjunction with the remainder of the product label text, it provides all of the required HIV-related use information (i.e. use site, surfaces/objects, directions for use, etc.); does not conflict with the rest of the labeling; and complies with

the same labeling requirements that are applicable to the rest of the labeling text (scientific terminology, featured claims, etc.). Sticker-type labeling used solely for promotional purposes to draw attention to HIV effectiveness, rather than for providing valid use information, is not acceptable.

6. HIV related use information may be presented either on the product container label, or in accompanying technical brochures or literature. However, in the latter case, the product container label must specifically reference the accompanying literature where such information is presented.

III. Registration Requirements

Registrants desiring to register a product bearing HIV efficacy claims, or to amend an existing registration to include a HIV efficacy claim, must comply with the policy announced in this notice and pursue EPA approval through the required registration application procedures.

The **Federal Register** notice of May 28, 1986 (51 FR 19174), permitted registrants of sterilant products to claim efficacy against HIV without additional documentation of effectiveness other than the required sporicidal data, when directions for use as a sterilant were prescribed for HIV efficacy, and Agency approval of labeling was obtained. EPA allowed the sterilizer use because sterilization is an absolute term that denotes killing of all microorganisms, including the most resistant spore forms, against which these products are tested, and the treatment regimen is stringent (e.g., immersion for 10 hours). Sterilant products registered by EPA with approval to bear HIV efficacy claims must also bear labeling that is in compliance with the labeling policy announced in this clarification notice (See section II above). Therefore, sterilant products previously approved by EPA to bear HIV claims must be revised in accordance with this announcement, and registrants must pursue EPA approval through the required registration application procedures within 60 days of the date of this Notice. EPA will notify these registrants of this labeling clarification policy, the amended registration requirements, and the time frame for responding upon publication of this **Federal Register** Notice.

Dated: January 27, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-3066 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3516-7]

North Carolina: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revision is available for public review and comment.

DATES: Final authorization for North Carolina shall be effective April 10, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business on March 13, 1989.

ADDRESSES: Copies of North Carolina's final authorization application are available during 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying: North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602, Phone: 919/733-2178; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia 30365. Written comments should be sent to Mr. Otis Johnson, Jr., Chief, Waste Planning Section RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE; Atlanta, Georgia 30365, Phone: 404/347-3016.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(a)).

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for interim or final State authorization appear at 40 CFR Part 271.

B. North Carolina

North Carolina initially received final authorization on December 31, 1984. North Carolina received authorization for a revision to its program on March 25, 1986, for the Redefinition of Solid Waste provisions promulgated January 4, 1985. North Carolina has also received authorization for revisions to its program on October 4, 1988 for Closure Post Closure, and Financial Responsibility Requirements promulgated May 2, 1986, and

- Listing of Spent Pickle Liquor promulgated on May 28, 1986. Today, North Carolina is seeking approval of its program revision for the following authorities promulgated between 1/2/83 and 4/23/85.

Federal Requirement	State Authority
● 3006(f) Availability of Information, 40 CFR Part 2, Subpart A 5 U.S.C. 552.	10NCAC 10F.0040(a) 10NCAC 10F.0034(b) NCGS 6-19.2 NGCS 6-20
● Biennial Report 48 FR 3981-3983.	NCGS 130A-294(c) 10 NCAC 10F.0030(d) 10 NCAC 10F.0030(e) 10 NCAC 10F.0030(f) 10 NCAC 10F.0034(a)(c)
● Permit Rules: Settlement Agreement: 48 FR 39622, 9/1/83.	NCGS 130A-294(c) 10 NCAC 10F.0034(b) 10 NCAC 10F.0034(c)
● Interim Status Standards Applicability; 48 FR 57218-20, 11/22/83.	NCGS 130A-294(c) 10 NCAC 10F.0033(a)
● Chlorinated Aliphatic Hydrocarbon Listing (FO 24): 49 FR 5312, 2/10/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(e)
● National Uniform Manifest: 49 FR 10500-10510.	NCGS 130A-294(c) 10 NCAC 10F.0002(a) 10 NCAC 10F.0030(b) 10 NCAC 10F.0030(e) 10 NCAC 10F.0030(f)
● Listing Warfarin and Zinc Phosphide: 49 FR 19922 5/10/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(e)

Federal Requirement	State Authority
• Lime Stabilized Pickle Liquor Sludge: 49 FR 23284 6/5/84.	NCGS 130A-294(c) 10 NCAC 10F.0029(a)
• Settlement Agreement: Permit Rules: 49 FR 17718-17719 4/24/84.	NCGS 130A-294(c) 10 NCAC 10F.0034(g)
• Exclusion of Household Waste: 49 FR 44980, 11/13/86.	NCGS 130A-294(c) 10 NCAC 10F.0029(a)
• Interim Status Standards Applicability: 49 FR 46095, 11/21/84.	NCGS 130A-293(c) 10 NCAC 10F.0033(a)
• Corrections to Test Methods Manual: 49 FR 97391, 12/4/84.	NCGS 130-166.18(c) NCGS 130A-294(c) 10 NCAC 10F.0028(b) 10 NCAC 10F.0001(e) 10 NCAC 10F.0034(a)
• Satellite Accumulation: 49 FR 49571, 12/20/84.	NCGS 130A-294(c) 10 NCAC 10F.0030(c)
• Interim Status Standards for Landfills 50 FR 16044.	NCGS 130A-294(c) 10 NCAC 10F.0033(k) 10 NCAC 10F.0033(m) 10 NCAC 10F.0033(n)

EPA has reviewed North Carolina's application, and has made an immediate final decision that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until March 13, 1989. Copies of North Carolina's application for program revision are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

Approval of North Carolina's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina is not authorized by the Federal Government to operate the RCRA program on Indian lands. This authority will remain with EPA.

C. Decision

I conclude that North Carolina's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

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

Pursuant to the provisions of 5 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. The authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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 section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 22, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89-3073 Filed 2-8-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-73, Supp. 1]

Quality Workplace Environment Program

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to February 11, 1990, the expiration date of FPMR Temporary Regulation D-73. D-73 provides procedures to the development and maintenance of planning information, and reporting systems to ensure the efficient assignment and utilization of Federal work space. It also implements Executive Order 12411 signed by the President on March 29, 1983. The General Services Administration's authority for issuing this regulation is contained in Executive Order 12411 and in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

DATES: *Effective date:* February 11, 1989.

Expiration date: February 11, 1990.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate (202-566-1025).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend the Quality Workplace Environment Program and the related policies and procedures covering the improved assignment and utilization of space. GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

PART 101-17—[AMENDED]

Authority: Sec. 205(c), 63 Stat. 390 40 U.S.C. (486(c)).

In 41 CFR Chapter 101, FPMR Temp. Reg. D-73, Supplement 1 is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations Temporary Regulation D-73 Supplement 1

January 25, 1989.

To: Heads of Federal agencies

Subject: Quality Workplace Environment Program

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-73.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER.

3. *Expiration date.* This supplement expires February 11, 1990, unless sooner canceled or revised.

4. *Explanation of change.* The expiration in par. 3 of FPMR Temporary Regulation D–73 is revised to February 11, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–3040 Filed 2–8–89; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 78–72, 80–286; FCC 88–399]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain changes to the Part 69 access charge rules that will, effective on April 1, 1989, require the National Exchange Carrier Association (NECA) common line pool and local exchange carriers (LECs) that leave the pool to set their originating carrier common line (CCL) rates at one cent, and their terminating rates to recover the remaining interstate revenue requirement. If this method would result in an individual LEC having a terminating rate of less than one cent, that LEC is required to utilize equalized CCL charges. The Commission concluded that a balanced approach that protects against originating rates reaching too high a level for any individual company, yet minimizes the differentials between originating and terminating CCL charges, which is best for the new pooling environment.

EFFECTIVE DATE: April 1, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (FCC 88–399), adopted December 9, 1988, and released December 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission's access charge rules originally provided that non-traffic sensitive (NTS) costs allocated to the carrier common line (CCL) element would be recovered through a uniform charge assessed on both originating and terminating switched access minutes. In early 1986, however, the Commission adopted temporary measures to reduce some of the incentives for uneconomic bypass by freezing the terminating CCL charge and providing that any subsequent common line cost reductions would be applied to reduce the originating charge. This interim bifurcated CCL arrangement was initially scheduled to expire on December 31, 1987, but was extended to November 30, 1988, to coincide with the effective date of the $.60 subscriber line charge increase on this latter date.

2. On July 12, 1988, the Commission released a reconsideration order in its access charge proceeding (MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Memorandum Opinion and Order on Reconsideration and Order Inviting Comments*, 3 FCC Rcd 4543 (1988), *petition for review pending, Public Service Commission of the District of Columbia v. FCC*, D.C. Cir. No. 88–1661 (petition filed Sept. 12, 1988)) in which it extended the bifurcated CCL charge approach to March 31, 1989, to avoid unnecessary rate churn, to minimize incentives for originating end bypass, and to afford it time to invite and analyze comment on whether a bifurcated CCL charge structure should be continued in the new pooling environment. The Commission noted that the implementation of the common line pooling changes on April 1, 1989, offered an appropriate opportunity to consider whether bifurcated CCL charges should be retained for an additional period after that date or whether equalized charges should be reinstituted, and it asked for comment on this issue.

3. A number of commenting parties urged the Commission to permit each LEC the flexibility to set its originating rate at a level ranging from zero to the terminating rate of that LEC. The Commission declined to accord LECs this flexibility, noting that the order inviting comments disclaimed any intention to examine broader questions relating to CCL flexibility, and that it accordingly would be inappropriate to address such issues in this narrow proceeding.

4. Based on its review of the record, the Commission decided that a balanced approach that protects against originating rates reaching too high a level for any individual company, yet minimizes the differentials between originating and terminating CCL charges, would be best for the new pooling environment that will be implemented on April 1, 1989. Thus, effective April 1, 1989, the Commission will require LECs and the NECA common line pool to set their originating CCL rates at one cent ($.01), and to set their terminating rates to recover the remaining interstate CCL revenue requirement. If the remaining revenue requirement would produce a terminating charge of less than one cent, the Commission will require the LEC to equalize its CCL charges.

5. The Commission concluded that continuation of a bifurcated CCL rate scheme would help to deter bypass, encourage interexchange carriers to provide and market interexchange service in the serving areas of higher-cost LECs, and offer other advantages. It observed that the disadvantages associated with having a higher, equalized originating rate outweigh the problems associated with the measured form of bifurcation adopted in this order, and noted moreover that any problems relating to bifurcated rates would be mitigated by the one cent cap, or are abating due to other external factors.

Ordering Clauses

1. *It is hereby ordered*, That, pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 205, 403, 405, and 410 and 5 U.S.C. 553, that the CCL rate structure described in the foregoing paragraphs shall be implemented in the common line tariffs that will become effective on April 1, 1989.

2. *It is further ordered*, That the rule modifications are adopted, effective April 1, 1989.

List of Subjects in 47 CFR Part 69

Common carrier, Access charges, Common carrier, Resale, Wide Area Telephone Service (WATS).

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

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

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.105 is amended by revising paragraph (b) to read as follows:

§ 69.105 Carrier Common Line.

* * * * *

(b)(1) For purposes of this section and § 69.113:

(i) A carrier or other person shall be deemed to receive premium access if access is provided through a local exchange switch that has the capability to provide access for an MTS–WATS equivalent service that is substantially equivalent to the access provided for MTS or WATS, except that access provided for an MTS–WATS equivalent service that does not use such capability shall not be deemed to be premium access until six months after the carrier that provides such MTS–WATS equivalent service receives actual notice that such equivalent access is or will be available at such switch;

(ii) The term "open end" of a call describes the origination or termination of a call that utilizes exchange carrier common line plant (a call can have no, one, or two open ends); and

(iii) All open end minutes on calls with one open end (*e.g.*, an 800 or FX call) shall be treated as terminating minutes.

(2) For association Carrier Common Line tariff participants—

(i) The premium originating Carrier Common Line charge shall be one cent per minute, and

(ii) The premium terminating Carrier Common Line charge shall be computed by subtracting the sum of the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) of association Carrier Common Line tariff participants and of telephone companies that are not association Carrier Common Line tariff participants from the sum of the projected Carrier Common Line revenue requirements for association Carrier Common Line tariff participants and for telephone companies that are not association Carrier Common Line tariff participants, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to .45 multiplied by the projected non-premium terminating minutes of association Carrier Common Line tariff participants and of telephone companies that are not association Carrier Common Line tariff participants.

(3) If the calculations described in § 69.105(b)(2) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the Carrier Common Line tariff participants shall be computed by dividing the sum of the projected Carrier Common Line revenue requirements of such telephone companies and of telephone companies that are not association Carrier Common Line tariff participants, by the sum of the projected premium minutes and a number equal to .45 multiplied by the projected non-premium minutes of association Carrier Common Line tariff participants.

(4) The Carrier Common Line charges of telephone companies that are not association Carrier Common Line tariff participants shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). For each such Carrier Common Line access element tariff—

(i) The premium originating Carrier Common Line charge shall be one cent per minute, and

(ii) The premium terminating Carrier Common Line charge shall be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) from the Carrier Common Line revenue requirement for the companies participating in that tariff, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to .45 multiplied by the projected non-premium terminating minutes for such companies.

(5) If the calculations described in § 69.105(b)(4) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the companies participating in said Carrier Common Line tariff shall be computed by dividing the projected Carrier Common Line revenue requirement for such companies by the sum of the projected premium minutes and a number equal to .45 multiplied by the projected non-premium minutes for such companies.

(6) Telephone companies that are not association Carrier Common Line tariff participants shall submit to the Commission and to the association whatever data the Commission shall determine are necessary to calculate the charges described in this section.

§ 69.113 [Redesignated as § 69.114]

3. Section 69.113 is redesignated as § 69.114.

4. A new § 69.113 is added to read as follows:

§ 69.113 Non-premium charges for MTS–WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access (as this term is defined in § 69.105(b)(1)) in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112.

(b) The non-premium charge for the Carrier Common Line element shall be computed by multiplying the premium charge for such element by .45.

(c) The non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45.

(d) The non-premium charge or charges for the Transport element or elements shall be computed by multiplying the corresponding premium charge or charges by .45.

5. Section 69.201 is revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104, 69.106, and 69.111 through 69.112, charges for the access elements described in this Subpart shall be computed in accordance with this Subpart during the period commencing January 1, 1984 and ending December 31, 1992. This Subpart does not supersede Sections 69.106 (c) through (e).

6. Section 69.205 is amended by revising paragraph (a), removing the existing text of paragraph (b), and by relettering the subsequent paragraphs. Section 69.205 is revised to read as follows:

§ 69.205 Transitional premium charges.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive premium access in lieu of carrier charges that are computed in accordance with §§ 69.106, 69.111 and 69.112 of this part if any carrier or other person does not receive premium access, as this term is defined in § 69.105.

(b) Separate Local Switching transitional premium charges that are expressed in dollars and cents per access minute shall be computed for the

LS1 and LS2 categories. The LS1 category shall consist of local dial switching for services other than MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS. The LS2 category shall consist of local dial switching for MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS.

(c) The charge for an LS2 premium access minute shall be computed by dividing the premium Local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computed by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. The charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium access minute by the applicable LS1 transition factor. The premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for such element.

(d) During each of the following years the LS1 transition factor shall be:

(1) January 1, 1988 through March 31, 1989—.78;

(2) April 1, 1989 through June 30, 1990—.86;

(3) July 1, 1990 through June 30, 1991—.905;

(4) July 1, 1990 through June 30, 1992—.955; and

(5) July 1, 1992 through December 31, 1992—.98

(e) Transitional premium charges that are computed in accordance with applicable requirements shall be assessed for the Transport element or elements. Such premium charges shall be designed to produce total annual revenue that is equal to the premium transport revenue requirement. The premium transport revenue requirement shall be computed by subtracting projected revenues from non-premium charges attributable to the Transport element or elements from the revenue requirement for such element or elements.

§ 69.206 [Removed]

7. Section 69.206 is removed.

§ 69.207 [Removed]

8. Section 69.207 is removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-3049 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-269; RM-6281 & RM-6514]

Radio Broadcasting Services; Frankfort and Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 257C2 for Channel 257A at Frankfort, Michigan, in response to a petition filed by Forum Communications, Inc. We shall also modify the license of Station WBNZ(FM) to specify operation of Channel 257C2 in lieu of Channel 257A in accordance with Section 1.420(g) of the Commission's Rules. The coordinates for Channel 257C2 at Frankfort are 44-36-38 and 86-09-38. To accommodate the substitution at Frankfort, it is necessary to substitute the Channel 272A for Channel 257A (vacant) at Stephenson, Michigan. The *Notice* proposed Channel, 261A be substituted at Stephenson. In response to comments filed by Evangel Ministries, Inc., we have instead substituted Channel 272A for Channel 257A at Stephenson, which will prevent a conflict with its petition to substitute Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin and Channel 262C2 for Channel 261A at Menasha, Wisconsin. The coordinates for Channel 272A at Stephenson are 45-24-54 and 87-36-24. Since the communities of Frankfort and Stephenson, Michigan, are both located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for these allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 23, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket 88-269, adopted January 4, 1989, and released February 6, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by deleting Channel 257A and adding Channel 257C2 at Frankfort and by deleting Channel 257A and adding Channel 272A at Stephenson.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-3093 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-193; RM-6158 and RM-6250]

Radio Broadcasting Services; Philadelphia and Union, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* was issued in response to a petition filed by Quail Communications proposing the allotment of FM Channel 281A to Philadelphia, Mississippi. Petitioner failed to file supporting comments and as stated in the *Appendix* to the *Notice*, continuing interest is required before a Channel will be allocated. Therefore, in accordance with the Commission's Policy, no further consideration will be given to the allotment of FM Channel 281A at Philadelphia, Mississippi.

A counterproposal was filed by Double B Broadcasting, seeking the allotment of FM Channel 281C2 to Union, Mississippi, and indicated its intention to file an application for the use of the channel at Union. Channel 281C2 can be allotted to Union, Mississippi, in compliance with the spacing requirements provided there is a site restriction 4.5 kilometers southwest of the community. The site restriction will prevent a conflict with Channel 282A (vacant) State College, Mississippi. The coordinates for the restricted site are 32-32-01 and 89-08-26. With this action, this proceeding is terminated.

DATES: Effective March 23, 1989; The window period for filing comments for Channel 281C2 at Union, Mississippi will open on March 24, 1989, and close on April 24, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–193, adopted January 18, 1989, and released February 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Mississippi by adding Union, Channel 281C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–3094 Filed 2–8–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Public Meeting To Discuss Requirements for Control of Internal Doses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The proposed revision to 10 CFR Part 20, published on January 9, 1986, (51 FR 1092), contained a section (§ 20.205) that would have allowed licenses to control the internal dose from certain long-lived radionuclides on the basis of the dose actually delivered during the year from all intakes, both past and present (annual dose). The control of all other nuclides was to be based upon the dose, both present and future, that would be delivered as a result of intakes of radioactive materials during the year (committed dose). The NRC staff, during preparation of the final rule that would implement the 10 CFR Part 20 revision, deleted this option. This deletion effectively continues the present practice of requiring that internal doses to workers from all radionuclides would be controlled on committed dose equivalents.

At the request of the Nuclear Utilities Management and Resources Council (NUMARC), a meeting between industry representatives and NRC staff members is scheduled to hear industry concerns regarding the deletion of the proposed § 20.205 and discuss the impact of the 5-fold reduction in the occupational air concentration limit for insoluble uranium on nuclear fuel fabrication facilities.

DATE: Meeting to be held February 22, 1989, from 1:30–3:30 p.m.

ADDRESS: Meeting to be held in room 10–B–11 of the Commission's headquarters building at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Harold T. Peterson, Jr., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, 5650 Nicholson Lane South [142], Rockville, MD 20852. Telephone: (301) 492–3640. Facsimile: (301) 443–7804 or 443–7836. Verification: (301) 492–3607.

SUPPLEMENTARY INFORMATION:

The deletion of § 20.205 has been previously discussed in public meetings of the NRC Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Occupational and Environmental Health on May 31, 1988 and before the full ACRS on June 3, 1988; in the Commission's public meeting on 10 CFR Part 20 on November 10, 1988; and the NRC Advisory Committee on Nuclear Waste on December 21, 1988.

Persons wishing to make statements on these issues should notify the contact person identified in this document and submit a written request including the statement to be presented at lease one week in advance of the meeting. The statement should be no longer than 3 minutes.

Dated at Rockville, Maryland, this 6th day of February 1989.

Alan K. Roecklein,

Acting Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89–3083 Filed 2–8–89; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Technical Corrections

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes amendments to the Financial Assistance Rules, 10 CFR Part 600, to make technical, non-substantive corrections. Because of three changes to the rules in 1988, a detailed review of them has taken place and disclosed a number of technical errors (typographical errors, repetitions, incorrect citations, and the like) which warrant correction. These do not involve any substantive change.

DATE: Comments due by March 13, 1989.

ADDRESS: Comments should be addressed to: James J. Cavanagh, Director, Business and Financial Policy Division (MA–422), Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8192

Christopher Smith, Office of the Assistant General Counsel Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) is today issuing a proposed rule to make non-substantive changes to the Financial Assistance Rules (10 CFR Part 600) to correct errors appearing in it. There have been three significant amendments to the Rules in 1988: Changes to the way in which cooperative agreements are handled (53 FR 5260, February 22, 1988), adoption of the A–102 Common Rule (53 FR 8044, March 11, 1988), and the establishment of procedures for dealing with determinations of noncompetitive financial assistance and justifications of restricted eligibility (53 FR 12137, April 13, 1988). These changes have not only involved policy issues, but, in the case of the common rule, a substantial reorganization of the Financial Assistance Rules, with renumbering of various sections. Inevitably, errors have appeared in the text, including typographical mistakes, repetitions, and incorrect references.

II. Proposed Changes to 10 CFR Part 600

Section 600.2 is being amended by deleting the reference to OMB Circular A–102 in paragraph (f)(i) and to OMB Circular A–124 in paragraph (f)(iii). Circular A–102 was replaced by the Common Rule (adopted by DOE as Subpart E of the Financial Assistance Rules) and Circular A–124 was cancelled in March 1987. The remaining

numbering within the subsection is changed to reflect the deletions.

Section 600.10 is being corrected to reinsert a subsection initially included in the February 22 revision and inadvertently deleted in the March II revision. Section 600.10(b) is being corrected to remove the reference to OMB Circular A–102, Attachment M, as a result of the adoption of the Common Rule.

Section 600.14 is being amended to correct a typographical error in paragraph (a) and a repetition in paragraph (e).

Section 600.20 is being amended to correct a reference in paragraph (c) to § 600.108. This section was redesignated as § 600.32 in the March 11, 1988, Common Rule.

Section 600.30 is being amended to clarify a citation in paragraph (a)(2).

Section 600.102 is being amended to eliminate a reference to OMB Circular A–102 in paragraph (b)(1).

Sections 600.104, 600.106, and 600.108 of Subpart B of the Financial Assistance Rules are being designated "Reserved" sections. They were redesignated as §§ 600.30, 600.31, and 600.32, respectively, in DOE's March 11, 1988, addendum to the A–102 Common Rule. There are sections in Subpart B following them.

Section 600.114 is being amended to change a reference in (b)(ii) to reflect the redesignation of § 600.108 to § 600.32 in the March 11, 1988, **Federal Register** notice. This section is also being amended to delete the duplicate inclusion of (b)(iv).

Section 600.119 is being amended to clarify that the applicable section for procurement under financial assistance to governmental entities is contained in § 600.436, Subpart E, and to delete a reference to § 600.19(b)(1), which has been removed from the rule.

Section 600.207 is being amended to correct the references in paragraphs (b)(7), (8), and (9) from § 600.118 to § 600.33.

Section 600.305 is being amended to replace the reference in paragraph (c) to A–102 with the correct citation to Subpart E.

Section 600.315 is being amended to replace the reference to A–102 with the correct citation to Subpart E.

Section 600.402 is being amended to include the addition to the definition of "prior approval" contained in the March 11, 1988, final rule. It is also being amended to replace, in the definition of "supplies," the word "part" with the word "subpart."

Section 600.403 is being amended to replace "part" with "subpart" in the last line of paragraph (a)(3)(i).

III. Review Under Executive Order 12291

Today's proposed rule was reviewed under Executive Order 12291 (February 17, 1981). It involves only technical changes to the Financial Assistance Rules. DOE has concluded that it is thus not a "major rule" because its promulgation 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 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 in domestic or export markets. In accordance with requirements of the Executive order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule will have no effect on small entities. DOE thus certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly technical changes clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's proposed regulatory amendments, when finalized, will have direct effects on State recipients of financial assistance, but those direct effects will be insubstantial because they involve minor technical corrections to existing regulations. Accordingly, DOE has concluded that preparation of a federalism assessment is not warranted.

VIII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **"ADDRESS"** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by March 13, 1989 will be fully considered prior to publication of a final rule. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law, and that it should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Non profit organizations, Reporting and record keeping requirements, and Small businesses.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by amending Part 600 as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—[AMENDED]

a. The authority citation for Part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

§ 600.2 [Amended]

b. Section 600.2(f)(1) is amended by removing Sections 600.2(f)(1)(i) and (iii) and redesignating (f)(1)(ii) as (f)(1)(i) and (f)(1)(iv) through (f)(1)(vii) as (f)(1)(ii) through (f)(1)(v).

c. Section 600.10 is corrected by revising paragraph (a) and (b) to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the applicable forms in the Standard Form 424 (SF 424) series. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

* * * * *

§ 600.14 [Amended]

d. Section 600.14(a) is amended to change "from" in the first sentence to "for".

§ 600.20 [Amended]

f. Section 600.20(c) is amended by correcting the reference to "§ 600.108" to read "§ 600.32".

§ 600.30 [Amended]

g. Section 600.30(a)(2) is amended by correcting the reference to "§ 1040.4" to read "10 CFR 1040.4".

§ 600.102 [Amended]

h. Section 600.102(b)(1) is amended to remove the words "contained in OMB Circular A-102, as" in the second sentence.

§ 600.114 [Amended]

i. Section 600.114(b)(1)(ii) is amended by correcting the reference to "§ 600.108(d)" to read "§ 600.32(d)".

j. Section 600.114(b)(1)(iv) is corrected by removing the second version of this duplicated paragraph.

k. Section 600.119 is amended by revising paragraphs (a)(1) and (c)(2)(i) to read as follows:

§ 600.119 Procurement under grants and subgrants.

(a) * * *

(1) This section does not apply to procurements covered by § 600.436, Subpart E.

* * * * *

(c) * * *

(2) * * *

(i) If DOE or the grantee determines, on the basis of a review in accordance with § 600.104 or § 600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

* * * * *

§ 600.207 [Amended]

l. Section 600.207(b) (7), (8), and (9) are amended to revise the reference to "§ 600.118" to read "§ 600.33".

§ 600.305 [Amended]

m. In § 600.305, paragraph (b)(2)(ii) is amended by correctly designating (c) as (C), and correctly designated paragraph (b)(2)(ii)(C) is amended to revise the reference to "Attachment F of Circular A-102, 'Uniform requirements for grants to State and local governments'" to read "§ 600.424 of Subpart E".

§ 600.315 [Amended]

n. Section 600.315 is amended to revise the reference to "Attachment O of Circular A-102, 'Uniform requirements for grants to State and local governments,' as implemented by § 600.119 of this part" to read "§ 600.436 of Subpart E".

o. Section 600.402 is amended to revise the definitions of "prior approval" and "supplies" as follows:

§ 600.402 Definitions.

* * * * *

"Prior approval" means documentation evidencing consent prior to incurring specific cost. For the Department of Energy, this must be signed by a Contracting Officer.

* * * * *

"Supplies" means all tangible personal property other than "equipment" as defined in this subpart.

§ 600.403 [Amended]

p. Section 600.403 (a)(3)(i) is amended by changing the reference to "part" to read "subpart".

[FR Doc. 89-3024 Filed 2-8-89; 8:45 am]
BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards for Industries Without an Established Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing the establishment of a residual size standard of $3.5 million in average annual receipts for all industries for which no size standard exists at present. Industries without size standards consist of eight in transportation and public utilities; 43 in finance, insurance, and real estate; and one in nonclassifiable establishments. While requests for SBA's assistance from companies in these 52 industries are infrequent, they occasionally occur. Size standards are needed in all industries to establish eligibility for SBA's financial assistance and other programs.

DATE: Comments to be submitted on or before March 13, 1989.

ADDRESSES: *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: Norman Salenger or Alan Odendahl, Economists, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: In the latter part of 1988, SBA was contacted by several Federal agencies concerning a number of current and forthcoming solicitations for natural gas distribution (SIC code 4924). This industry was among the 53 four-digit Standard Industrial Classification (SIC) industries for which SBA did not have an established size standard. As a result, SBA established an emergency interim size standard for Natural Gas Distribution in November 1988. SBA's policy is to have a size standard for every industry. Size standards were not established previously for these 53 industries because SBA was not expected to receive requests for assistance from firms in these industries. Also, limited data on the structure of many of the 53 uncovered industries delayed the establishment of size standards. A similar situation led to the establishment of an emergency interim size standard for Commodity Brokers in August 1988.

To avoid the need for publishing separate notices in the **Federal Register** for each of the remaining 52 industries as a size standard becomes necessary, SBA is proposing that a residual size standard of $3.5 million in average annual receipts be established for these industries. This is the same size standard that is used as the residual standard for all industries not specifically listed under SIC Division 1—Services.

When SBA receives a request to establish a size eligibility criteria, either for the purpose of SBA's financial assistance or so that a small business set-aside solicitation may be issued, it currently takes at least several months to establish a size standard. The need for a size standard in these instances is much sooner than the time SBA can usually respond to such a request. This residual size standard would, accordingly, avbid the delay experienced up to now. SBA solicits and welcomes comments on the suitability of making the proposed $3.5 million size standard a final rule.

The industries for which no size standard currently exist include eight four-digit SIC industries within SIC Division E (Transportation, Communications, Electric, Gas, and Sanitary Services), 43 four-digit industries within SIC Division H (Finance, Insurance, and Real Estate), and the four digit industry of SIC code 9999, Nonclassifiable Establishments (the only industry in SIC Division K). This proposal would apply the residual standard of $3.5 million in average annual receipts to all these industries, leaving only SIC Division J (Public Administration), which is totally outside the purview of SBA's programs, not covered by size standards.

As indicated above, little data are available on many of the 52 industries without size standards, partly because they are not included in the economic censuses published by the U.S. Bureau of the Census. Data are also sometimes contradictory on the size structure and even on the number of firms in these industries. In this situation, it is judged appropriate to apply the "anchor standard" of $3.5 million to the uncovered industries, rather than to adopt some other size standard weakly supported by available evidence.

In 1985, the SBA's Size Policy Board adopted two anchor size standards to serve as reference points from which to begin considerations of a specific standard. For receipt-based size standards $3.5 million is the anchor and for employee-based size standards 500 employees was adopted. The dollar-based size standard originated in 1954, a short time after the inception of the Agency. At that time, size standards of $300,000 to $1,000,000 were established for the retail trade and service industries. In 1963, a single standard of $1,000,000 was established for both industries. Inflationary adjustments to this figure eventually led to the $3.5 million size standard in effect today for most retail trade and service industries.

In addition, the size standard is consistent with the $3.5 million already in use for the residual size standard for all industries not specifically listed in SIC Division I—Services (49 FR 39996, October 12, 1984; 50 FR 10495, March 15, 1985). The other anchor size standard recognized by the Agency is 500 employees. Employee-based size standards apply generally to the manufacturing industries. None of the 52 uncovered industries are included in the manufacturing industries. Thus the 500-employee size standard is an unsuitable alternative standard for these industries. However, SBA recognizes that a $3.5 million size standard may prove to be too low, or too high for one or more individual industries which now have no size standard. Therefore, comments and data on the size structure of such industries, or advice on sources of such data, are solicited.

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

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities. In past years firms in these 52 industries did not request SBA's financial assistance, and in many cases are excluded from such assistance. Additionally, there was little interest in setting aside procurements for exclusive small business bidding in these industries. These were the reasons why size standards were not established for these industries in the past. Therefore, the number of firms becoming eligible as small businesses overstates the expected incidence of use of the residual size standard. The establishment of a residual size standards avoids delay and the detailed procedure of establishing a separate size standard for each request to establish a size standard for an uncovered industry, which is estimated at three to four times a year.

Since the U.S. Bureau of the Census does not collect industry data for all of those industries for which this proposal applies, the SBA used its small business data base file entitled "United States Establishment and Enterprise Microdata" (USEEM) to evaluate the economic impact of this rule. These data provide industry information by employment size distribution for each four-digit Standard Industrial Classification (SIC) code. For each size class, USEEM provides the percentage of the industry's employees and sales as well as the average sales per firm and sales per employee. Federal procurement data for fiscal year 1987 were provided by the Federal Procurement Data Center (FPDC) which includes Federal contract dollars by four-digit SIC code.

There are 46,689 firms in the 52 industries not now covered by an SBA size standard. A total of 34,682 firms would become eligible to bid for Federal contracts set aside for exclusive small business bidding and 13,240 firms would become eligible by virtue of size for SBA's financial assistance under this proposed residual size standard. Since SBA is not authorized to make loans to firms who finance others, the number of firms eligible for financial assistance is much less than those eligible for Federal contracts.

The following table presents the total number of firms, number of small firms, total Federal procurement dollars, and expected small business share of Federal contracts under the proposed $3.5 million residual size standard for the 52 industries. In other industries where a size standard exists, Federal procurement data reflects, as one dollar amount, the procurement dollars going to small firms, but does not contain

more detail regarding the size of the firm receiving the contract. Since for these 52 industries there is no existing size standard, the procurement data cannot designate procurement dollars going to small firms. In order to estimate the expected small business share of Federal contracts under the residual size standard of $3.5 million, the percent of sales, Federal and others, in their industry by firms with $3.5 million in receipts or less was applied as the expected percent of Federal procurements by small firms. This assumes that small firms in these industries will participate in the Federal market in the same proportion that they participate in the total market of their industry.

IMPACT OF RESIDUAL SIZE STANDARD OF $3.5 MILLION

	All 52 industries	Gas and electric	Finance	Insurance	Other industries
Total firms	46,689	601	26,336	4,401	15,351
Firms becoming eligible for SBA loans	13,240	328	8,762	[3]	4,150
Expected SBA loans[1]	[4]	[4]	[5]	[3]	[4]
Firms becoming eligible for small business set-aside contracts	34,682	328	20,861	2,593	10,900
Federal procurement in FY 1987 (million of dollars)	$467.7	$308.0	$84.3	$35.0	$40.4
Expected small business share of Federal procurements (million of dollars)	$41.4	$20.7	$14.9	$0.3	$5.5

Source: USEEM, FPDC.
[1] Very few requests for loans were made to SBA in the past by firms in these industries.
[2] Based on same proportion these firms participate in all sales of their industry.
[3] None.
[4] Negligible.
[5] Small.

The impact on the smallest 328 firms providing gas and electric is expected to be minimal. Since many of these firms are monopolies in their locality, there would be almost no procurement impact due to the absence of competition. These firms should be considered sufficiently creditworthy as to be capable of obtaining financing without SBA's assistance, thus they would not be expected to qualify for or to seek an SBA loan.

The residual size standard is expected to have a minimal impact on financial assistance since, in part, SBA is not authorized to provide financial assistance to all types of firms. The SBA is prohibited from making loans to fiduciaries. The only firms that would become eligible for SBA's loans in the financial industries are those that are nonfiduciary service firms in SIC code 6099, Functions Related to Banking, Not Elsewhere Classified; SIC code 6211 Security Brokers; SIC code 6282, Investment Advice; and SIC code 6289, Services Allied to Securities and Commodities, Not Elsewhere Classified.

Insurance firms, as fiduciaries, are also not eligible for SBA's financial assistance. The insurance firms, with under $3.5 million in receipts, becoming eligible under the proposed rule account for a very small percentage of their industries' receipts. Federal contracting to these firms is expected to be less than one million dollars.

Other firms becoming eligible for SBA loans under this proposed rule are 1,334 Title Abstract Offices; 1,349 Oil Royalty Traders; and 1,467 Patent Owners and Lessors. The number of firms to become eligible for Federal contracts set aside for small business include the following: 4,553 Investors, Not Elsewhere Classified; 2,017 Cemetary Subdividers and Developers, and 40 Unit Investment Trusts. Loans to these aforementioned industries are expected to be negligible based on past requests for assistance, and contracts to small firms in these industries are expected to be about $5 million, based on their participation in their industry's sales.

SBA certifies that this proposed rule is not a major rule within the meaning of Executive Order 12291 because it is not expected to have an annual economic impact of $100 million or more, as previously discussed. This residual size standard is proposed to facilitate the processing of SBA's financial assistance for specific individual loan guarantees and for procurement assistance programs. Based on requests received to date, SBA anticipates that these 52 industry size standards would be needed only three to four times per year. Similarly, this regulation would not likely result in a major increase in costs or prices or have a significant adverse effect on the United States economy. This rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35. SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

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

Accordingly, Part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

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

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6) and Pub. L. 99–591, 99–661 and 100–656.

§ 121.2 [Amended]

2. Section 121.2(d), Table 2, is amended by adding a center heading after the column headings and before "SIC Division A—Agriculture" in the table "Final Rule Size Standards by SIC Industry," as follows:

(d) * * *

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

For all industries not specifically listed in this Table or Table 1 above, except for those in Divisions I and J of the SIC System, the size standard is $3.5 million in annual receipts.

Date: February 2, 1989.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 89–3011 Filed 2–8–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-20]

Proposed Alteration of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88-AGL-20, which was published in the **Federal Register** on October 17, 1988. That NPRM proposed to alter the description of Jet Route J-522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. The Minneapolis Air Route Traffic Control Center (ARTCC) objected to the establishment of J-522 due to its negative effect on traffic flow.

EFFECTIVE DATE: February 9, 1989.

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

The Proposed Rule

On October 17, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the description of J-522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. This change would have provided a chartered route through an area where aircraft are normally vectored. The Minneapolis Air Route Traffic Control Center (ARTCC) objected to the establishment of J-522 because the route extension would considerably increase the workload of other sectors in the ARTCC. Therefore, the extension of J-522 would have a negative effect on the flow of traffic.

List of Subjects in 14 CFR Part 71

Aviation safety, Jet routes.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88-AGL-20, as published in the **Federal Register** on October 17, 1988 (53 FR 40452) is hereby withdrawn.

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

Issued in Washington, DC, on January 31, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-3035 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AWP-19]

Proposed Alteration of VOR Federal Airway; Page, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-208 in the vicinity of Page, AZ. Currently, airways northbound and eastbound over the Grand Canyon area are required to maintain an altitude above 14,500 feet mean sea level (MSL) in order to avoid the flight-free area. This flight restriction creates a need for an airway with a lower minimum en route altitude (MEA) to accommodate aircraft unable to operate at high altitudes. This action aids flight planning.

DATE: Comments must be received on or before March 27, 1989.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88-AWP-19, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-19." The postcard will be dated/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-208 located in the vicinity of Page, AZ. The current airway structure traversing the Grand Canyon National Park has an MEA above 14,500 feet MSL established in Docket No. 25149, SFAR 50-2, effective September 22, 1988 (53 FR 36946). This altitude restriction prevents a number of aircraft from operating in this area. This action provides an airway with a lower MEA that bypasses

the Grand Canyon National Park. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-208 [Amended]

By removing the words "Peach Springs, AZ. From Page, AZ, via" and substituting the words "Peach Springs, AZ; Grand Canyon, AZ; INT Grand Canyon 067°T(080°M) and Tuba City, AZ, 218°T(231°M) radials; Tuba City; Page, AZ;".

Issued in Washington, DC on February 1, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-3036 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, California

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On January 17, 1989, (54 FR 1846), the Minerals Management Service (MMS) published a notice of proposed rulemaking in the **Federal Register** which would establish special emission control requirements for Outer Continental Shelf (OCS) facilities off the coast of California under the provisions of section 5(a)(8) of the OCS Lands Act, as amended. The public comment period for this proposed rule was to close on February 16, 1989. The MMS has determined that extension of the comment period is warranted. This notice extends the comment period for the proposed rulemaking until April 17, 1989.

DATE: Comments must be hand delivered or postmarked no later than April 17, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648.7816, (FTS) 959.7816.

SUPPLEMENTARY INFORMATION: On January 17, 1989, MMS published in the **Federal Register** a notice of proposed rulemaking to establish requirements governing the control of emissions which may result from operations conducted on Federal oil and gas leases in the OCS off the coast of California. The comment period for this proposed rule was to close February 16, 1989. Since the proposed rule had been developed with extensive input from Federal, State, and local agencies, and other interested parties, it was thought that a 30-day comment period would provide sufficient time for interested parties to review and analyze the proposed rule and to prepare and submit written comments.

The MMS received several requests for additional time within which to submit comments on the proposed rule. The requests were based on either a need for additional time to allow reviewers to gather the technical information necessary to support their comments; a need to allow times for commenters from similar organizations to discuss the proposed rule and consider the submission of consolidated comments on behalf of an association of commenters; or on a need for additional time to analyze the proposed rule and to prepare comments on behalf of other parties.

In view of the apparent need for additional time, it has been decided that an additional 60 days would be authorized for the submission of comments and recommendations; therefore, the comment period is being extended to April 17, 1989. Comments should be sent to the address provided above and must be hand delivered or postmarked by April 17, 1989.

Date: February 3, 1989.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-3044 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3508-9]

Approval and Promulgation of Implementation Plan; Texas

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule; deferral of sanctions.

SUMMARY: On July 14, 1987, EPA proposed to disapprove the ozone (O_3) Post-1982 State Implementation Plan (SIP) revision that Texas had submitted under the Clean Air Act (the Act) for Dallas and Tarrant Counties (DFW) because the DFW SIP revision submitted by the State did not persuasively demonstrate timely attainment of the national ambient air quality standard (NAAQS) for O_3. As a result of the proposed disapproval and the possibility of a construction ban which could result from a final disapproval, the Texas Air Control Board (TACB) developed a Post-82 "Interim" SIP which was submitted to EPA by the Governor of Texas on December 21, 1987. Based on the subsequent efforts and cooperation put forth by the State of Texas, and the additional control measures and commitments in the Post-82 Interim SIP, EPA today defers the

proposed finding that Texas did not adequately revise its Post-1982 SIP and thus defers the proposed sanctions, pending successful and timely completion of each of the commitments outlined in the Post-82 Interim SIP. Despite deferral of sanctions, additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, Post-87 SIP call. Texas has begun to meet the requirements of the May 26, 1988, SIP call by committing to develop an emission inventory and revise and adopt by July 21, 1989, the Volatile Organic Compound (VOC) regulations in Texas Air Control Board Rule 115 in accordance with EPA's guidance document "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988."

Today's notice also proposes to approve the stationary source volatile organic compound (VOC) regulation revisions associated with the initial Post-82 SIP and the Interim SIP to the extent that they represent an improvement over the previously approved regulations. The rule revisions, however, do not in all cases constitute Reasonable Available Control Technology (RACT) as required in SIP call areas and are not being proposed for approval as RACT. The notice also proposes to approve the commitments to the gasoline volatility program, the commitments related to the Inspection and Maintenance (I/M) Program, the commitments to the Transportation Control Measures (TCMs), the contingency provisions, and the schedules for the VOC regulation revision and I/M program submitted as part of the Post-82 Interim SIP. EPA proposes to defer action on the submitted pollution control strategy demonstration as a whole since the modeled required reduction reflected in the Interim SIP was based on a 1983 base year emission inventory which Texas is now in the process of updating as the initial step toward meeting the May 26, 1988, SIP call requirements.

DATE: Comments must be received on or before March 13, 1989.

ADDRESSES: Copies of the State submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VI, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202; Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–7214, (FTS) 255–7214; Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the EPA Region 6 Regional Administrator notified the Governor of Texas that the SIP the State had developed under Part D of the Act to demonstrate attainment by December 31, 1982, was inadequate to attain the O_3 standard for Dallas and Tarrant Counties, Texas. An additional SIP revision call was made in 1984 for Denton County, Texas, based on review of the O_3 data through December 1983. In response to the 1984 SIP call, Texas submitted revisions for Dallas and Tarrant Counties in 1985 and 1986. However, the revisions did not provide for sufficient and enforceable VOC emission reductions to attain the O_3 NAAQS. Based on the EPA's judgment in 1987 that Texas had failed to adequately carry out the requirements to revise its SIP after EPA had called for a SIP revision under section 110(a)(2)(H) of the Act, EPA proposed on July 14, 1987, to impose a ban under section 173(4) of the Act on permitting new or modified major VOC sources. EPA also proposed, however to approve the anti-tampering vehicle inspection and maintenance (I/M) program and certain Transportation Control Measures (TCMs) in the initial Post-82 SIP as helpful toward attaining the standard. This action is being finalized elsewhere in today's **Federal Register**. For important background information on today's notice, see 52 FR 26421, July 14, 1987.

State Action

At the August 14, 1987, TACB Board meeting, the Board members directed its staff to prepare a Post-82 Interim SIP revision to address the emission shortfall and regulation concerns with the initial Post-82 SIP revisions submitted to EPA in 1985 and 1986.

Texas held a public meeting on August 13, 1987, in Arlington, Texas and published a notice for public hearing on the proposed Interim SIP revision in the Texas Register. Public hearings were held on October 28, 1987, in Cleburne and Rockwall, Texas. On October 29, 1987, hearings were conducted in Arlington, Texas.

The TACB and EPA Region 6 met on several occasions to discuss corrections needed to the existing 1985 and 1986 SIP revisions as well as revisions needed to Regulation V, Volatile Organic Compound Regulations, specifically RACT requirements, test methods, recordkeeping requirements, alternative measures, applicability, and enforceability measures. The meeting dates were January 28, February 10, February 24, and March 23, 1988. TACB held public hearings June 28–30, 1988, for additional necessary Regulation V revisions.

Control Strategy

1. Emission Data

The emission inventory used in the Post-82 Interim SIP was the 1983 base year emission inventory used for the initial Post-1982 SIP submitted in 1985 and 1986. This inventory was the most current inventory available for the Interim SIP submittal due to the time restraints in submitting the SIP revision by the end of 1987. EPA will defer action on the overall control strategy in the Interim SIP revision since the emission reduction was based on the 1983 emission inventory, and Texas subsequently committed to develop a more current inventory, for the May 26, 1988, SIP call, which could substantially change the quantity of emissions, the control strategy, and the attainment demonstration for the DFW area.

Texas has corrected the concerns EPA raised in the July 14, 1987 proposed disapproval notice regarding the 1983 inventory and modeling in the initial Post-82 SIP. Texas added a NO_x emission inventory, projected VOC and NO_x emissions to 1997, based the inventory on a kilogram/day basis to account for summertime weekday emissions, and estimated the mobile source emissions with the use of a prototype of the MOBILE 4 model.

2. Modeling Analysis

Texas used Level III City Specific EKMA/OZIPP analysis as required by EPA guidance. EPA's concerns raised in the disapproval proposal notice have been addressed by the use of a straight line trajectory rather than an actual air parcel trajectory approach. Texas has also used the meteorological data suggested by EPA. With these recommended changes, the model, with the use of the 1983 emission inventory, predicted that a 43.9% and 41.7% VOC emission reduction for Dallas and Tarrant Counties, respectively, were needed to meet the ozone NAAQS by December 1991.

3. Areawide Requirements

Texas used an areawide I/M approach in the control strategy in order to account for emissions from vehicles that commute to Dallas and Tarrant counties. This area includes the entire Consolidated Metropolitan Statistical Area (CMSA) which consists of the following counties: Dallas, Tarrant,

Parker, Rockwall, Denton, Collin, Johnson, Ellis, and Kaufman.

EPA had already made a SIP call for Denton County in 1984. Since that time, monitored ozone exceedances have occurred in Parker, Rockwall, and Collin County. EPA made a Post-87 SIP call on May 26, 1988, for the Dallas-Fort Worth CMSA which will require all the counties in the CMSA to be addressed in the Post-87 ozone plan for the DFW area.

4. Stationary Source Regulation Revisions

As required by the Clean Air Act section 172 and the April 4, 1979, **Federal Register** notice (44 FR 20372), RACT has been required in Dallas and Tarrant Counties for all sources covered by EPA's Control Technology Guidelines (CTGs), which include major and minor sources, as well as all major non-CTG sources. Texas has adopted rules requiring control of all CTG category sources located in Dallas and Tarrant counties and has submitted negative declarations for seven of the category sources not located in these counties. These rules were submitted in the 1985 submittal.

EPA last approved revisions to Regulation V as part of the Harris County O_3 SIP on July 28, 1985 (50 FR 26362). Since that time, TACB made additional revisions on July 26, 1985 (numerous rules as part of the initial Post-1982 O_3 SIP for Dallas and Tarrant Counties and the Post-82 SIP for El Paso), March 27, 1985 (automobile and light duty truck surface coating rule for a source specific alternative compliance plan), November 13, 1987 (previous commitment to control sources specifically in Harris County), December 18, 1987, and October 14, 1988 (the last two as part of the Dallas and Tarrant Counties Post-1982 corrective SIP.)

As part of the initial Post-82 SIP submittal, TACB adopted on July 26, 1985, revisions to TACB's existing regulations controlling VOC loading and unloading, Stage I vapor recovery, vent gas emissions, cutback asphalt, solvent metal cleaning, certain surface coating operations, perchloroethylene dry cleaning, and gasoline tank truck leaks. The purpose of these revisions was to impose additional control on those source categories thus gaining additional VOC emission reductions. EPA's specific comments regarding Regulation V were given to Texas in a November 2, 1987, letter to TACB regarding the draft regulations submitted September 30, 1987. These comments addressed those rules that were revised July 26, 1985, and submitted as part of the initial Post-82 SIP as well as the draft regulations submitted September 30, 1987. In response to the May 26, 1988, SIP call, Texas has scheduled to address deficiencies existing in all VOC Regulation V and general rules and adopt these revisions by July 21, 1989, as they apply to all the SIP call areas in Texas. Some of these deficiencies have already been addressed for Dallas and Tarrant Counties as part of the Post-82 Interim SIP submittal as described below. Other federally approved rules which cover VOC storage tanks, petroleum refinery operations, additional surface coating operations, pharmaceutical manufacturing operations, and those which allow source categories to petition for source specific compliance plans, that apply in Dallas and Tarrant Counties may need revision similar to those rules discussed in today's notice which should be submitted as part of its initial response to the May 26, 1988, Post-87 SIP call.

On December 18, 1987, TACB adopted more revisions to TACB's regulations controlling cutback asphalt, surface coating, and graphic arts (printing). Regulations were also adopted for control of the following three new categories of emissions: Architectural coating, automobile refinishing coating, and consumer-solvent products. On October 14, 1988, TACB adopted revised rules controlling VOC loading and unloading, Stage I vapor recovery, water separation, vent gas emissions, cutback asphalt, solvent metal cleaning, surface coating, graphic arts, perchloroethylene dry cleaning, and gasoline tank trucks. These revisions include the addition of specific test methods and recordkeeping requirements for determining and demonstrating continual compliance with the rule, and the deletion of or modification to exemptions from the rules. For further details on these regulation revisions refer to the Technical Support Document (TSD).

Additionally, on November 13, 1987, regulation revisions were submitted by the Governor to EPA independently of the other DFW regulation revisions. They pertain to the Harris County 1982 SIP only. Therefore, EPA will take action separately on the November 13, 1987, adoption, specifically Regulation V Sections 115.163(b)(2)(A), 115.163(b)(2)(B), and 115.261–115.265.

Today's notice will act upon the VOC regulations that are applicable to Dallas and Tarrant Counties as they appear after the October 14, 1988, TACB adoption which was submitted to EPA on December 13, 1988. EPA believes the last two sets of adopted VOC revisions (October 14, 1988, and December 18, 1987) create an overall set of rules that are much clearer, more enforceable, and more effective in reducing VOC emissions in Dallas and Tarrant Counties than were previous versions. These revisions strengthen the SIP; however, EPA is not concluding that these rules represent RACT in all cases. The May 26, 1988, SIP call requires Texas to further revise, as indicated below, VOC regulations included in today's action. Also, the SIP call requires Texas to revise all VOC Regulation V and general rules applying to all ozone SIP call areas in Texas in accordance with the deficiencies EPA noted in its June 9, 1988, letter to TACB and in accordance with the EPA document "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988." Therefore, EPA is not now proposing approval of these specific rules as RACT. The rules are proposed for approval because they are a major improvement over previous versions. Some major deficiencies still existing with these rules included in today's action are listed as follows.

Exemption Levels

The Clean Air Act requires that both major and minor VOC sources in Dallas and Tarrant Counties falling under any of the Control Technique Guideline (CTG) categories must meet RACT level control requirements. "Major" sources are those emitting greater than or equal to 100 tons per year (tpy) of VOC and "minor" sources are those emitting less than 100 tpy. CTG's and other EPA guidance may establish exemption levels for some source categories based on conditions specific to certain sources such as production rate or size/type of equipment while other categories have no defined exemption levels or lower bounds. Certain processes such as cold solvent metal cleaning and degreasing apply to all operations no matter what the emission rate. For the surface coating categories, RACT should apply to all sources with actual daily VOC emissions of 15 pounds or greater summed from all surface coating operations in that category.

Texas has chosen to require all sources emitting 15 pounds VOC or greater per consecutive 24 hour period to utilize compliant coatings when available. Further, sources greater than this limit but less than 100 pounds VOC emissions in any consecutive 24 hour period are not required to use add-on control equipment in the absence of compliant coatings. This is a partial application of RACT. Sources greater than the 100 pounds per day level must fully apply RACT such as compliant coatings or use of add-on control

equipment to meet the emission limitation specified in the regulation.

While this is a partial application of RACT per EPA's past guidance, it has merit. First, it is an improvement over Texas' prior exemption of all sources less than 100 pounds VOC per day. Second, the State contends that requiring sources emitting 15 pounds VOC per day to retrofit with incinerators is economically infeasible. Texas contends that requiring add-on controls for all surface coating sources would not reflect RACT. However, Texas has not evaluated each source on a case-by-case basis to determine if other control options are feasible. EPA proposes today to approve this revised exemption level because it represents an improvement over the previously approved regulation. The rule does not represent RACT and EPA is requiring TACB in the May 26, 1988, Post-87 SIP call to reevaluate RACT on a source specific basis.

Continuous Applicability

It is EPA's position that once a source becomes subject to a rule by emitting or operating above the applicability cutoff, it must meet the requirements from that time forward ("once-in-always-in"). EPA believes that to effectively control VOC emissions, a source must continuously apply RACT level controls even if its day-to-day operation alternates above and below the exemption level.

Texas has not clearly stated that once sources are subject to a RACT level regulation or equivalent limitations, they shall always be subject to those requirements. This deficiency is particularly important with respect to Texas' VOC loading and unloading, surface coating, and vent gas control regulations. EPA is today proposing to approve revisions to these regulations because they represent an improvement over the previous approved regulation. The rules, however, do not represent RACT and Texas must further revise this rule as required by the May 26, 1988, SIP call.

A state may choose to limit a source to operate below the emission or operation cutoff rate. Texas may wish to do this through issuance of a Board Order or other federally enforceable mechanism and should provide the enforceable mechanism to EPA as a SIP revision for approval by EPA.

Alternative Test Methods

In numerous instances, the Texas rules allow the TACB to approve test methods which are alternatives to the EPA reference methods. EPA requires the use of EPA approved test methods as detailed in 40 CFR Part 60. Texas has specified these methods where applicable, with the exception of allowing the use of "equivalent test methods approved by the Executive Director of the TACB." EPA requires such equivalent methods to be submitted as SIP revisions since the integrity of a control strategy rests largely on the requirements of the specific rule and on agreeing on universal, replicable, and reliable test methods to determine if operations and emissions are in compliance. The control strategy also depends on assuring the effective reductions in emissions called for by the rule in the ozone strategy. Texas chose not to specify that these alternatives be approved by EPA. Texas is required by the May 26, 1988, SIP call, to remove this alternative test method provision or state that they will submit alternative methods in accordance with SIP revision protocol for EPA approval. Similarly, Section 115.163(e) allows alternate methods of demonstrating and documenting compliance to be approved by the Executive Director of the TACB. EPA likewise requires such alternatives methods to be submitted as a SIP revision to ensure consistency with the rule and not compromise the future effectiveness of this regulation. EPA today proposes to approve the various revisions which add test method requirements; however, compliance with the federally enforceable requirements of the SIP will be determined only by the approved EPA and ASTM test methods stated in the rules until Texas makes these required revisions. EPA is also proposing approval of the revisions to the General Vent Gas Rule (115.163) except for that part of the rule which allows discretionary approval.

Compliance with the SIP will be judged only by those provisions and criteria specified in 115.163 without consideration of the discretionary approval allowed by 115.163(e) until the State revises this rule.

Alternative Compliance Methods and Requirements

Similarly, the current Regulation V rules allow TACB to approve alternative compliance methods or requirements on petition by the source on a case-by-case basis. Alternative compliance methods are allowed under Section 115.401 of Regulation V. Such alternatives should achieve the same quantity of (equivalent) reductions intended by the rule and must not be used to avoid more stringent RACT level control. In cases where a surface coating operation claims it cannot meet the requirements, Section 115.193(c)(6) gives TACB the authority to specify alternative emission limits. As with the alternative test methods described above, EPA requires that any of these two alternatives, or other revisions, approved by the State be submitted to EPA for its review and approval as a SIP revision rather than generically be considered a part of the SIP upon State adoption. Texas has not clearly stated in its rules which alternate compliance methods and requirements will be submitted as SIP revisions or how such petitions must demonstrate compliance with the underlying SIP. Therefore, Texas must clearly state in the response to the May 26, 1988, Post-87 SIP call that alternative compliance methods under either of the aforementioned sections require EPA approval as SIP revisions in order that they be recognized as part of the SIP. In the absence of such case-by-case SIP approval, the specified enforceable requirements of the SIP will be the emission limits or the reduction requirements, the continual compliance requirements, and the methods and timeframes stated in the rules.

Non CTG Major Sources

The Clean Air Act, as interpreted in EPA's Post-82 SIP revision guidance, requires that all major non-CTG VOC sources in Dallas and Tarrant Counties have specific RACT applied to them. Major non-CTG sources are those whose total unregulated emissions equal 100 tons per year or more. Texas submitted documentation on March 11, 1988, showing that all major non-CTG sources in Dallas and Tarrant Counties are subject to control requirements found in Regulation V or that such controls are economically infeasible. Texas regulates these sources as well as smaller sources by controlling all vent gas streams greater than 100 pounds per day and greater than 0.009 psia true partial pressure (612 ppm). This rule requires any vent, regardless of the origin of the VOC emissions, to incinerate the vent emissions if the quantity or concentration are greater than the limits described above. EPA intends that RACT be applied to the process which is the source of the VOC emissions and not just the vents. Controls resulting in additional VOC reduction beyond incineration must be evaluated. These controls include use of improved work practices, process requirements, or improved fugitive VOC capture.

EPA encourages TACB to continue their evaluation of source specific future control requirements for non-CTG major sources beyond incineration. EPA is proposing to approve revisions to the Vent Gas rule for Dallas and Tarrant Counties as an improvement over the

previous version and is allowing Texas additional time to develop industry specific RACT level controls in the response to the May 26, 1988, Post-87 SIP call.

Automobile and Light-Duty Truck Compliance Date

Texas submitted revisions to its automobile surface coating rule, Section 115.191(a)(8), in the initial Post-82 SIP. Those revisions contained provisions such as allowing monthly averaging of coating emissions and a new compliance date which extended the final compliance date by one year. Some of the provisions in the Interim SIP revisions submitted on December 13, 1988, including monthly averaging, have been deleted by the State at EPA's request, but the extended compliance date has not been changed. While EPA considers the revisions to be an improvement to the rule, the later compliance date allowed by Texas is a relaxation. EPA proposes to approve this rule since it is an improvement over the previous regulation, however, this revised regulation is not being approved as RACT and EPA is not proposing to approve the compliance date extension. Therefore, the date for compliance in the federally approved regulation remains December 31, 1986.

5. I/M Requirements

Texas submitted in the Post-82 Interim SIP a proposed expanded vehicle inspection and maintenance (I/M) program. The Interim SIP commits to expand the parameter I/M program to include the surrounding counties in the CMSA, which includes Denton County, and to expand the program in Dallas and Tarrant Counties to include an idle exhaust emissions check. The TACB has committed to seek additional legislative authority to include the perimeter counties in the I/M program, to seek the additional resources needed by the Texas Department of Public Safety to administer the new expansions in the I/M program, and to adopt final rules.

Texas must complete the remainder of the expanded I/M program before EPA can complete review of the program for approvability. Additionally, EPA must finish the criteria for what constitutes an enhanced 1/M program and determine if Texas's program meets the criteria. TACB's efforts toward completion of the expanded I/M program are on the schedule outlined in the Post-82 Interim SIP submittal.

A public hearing was held on July 26, 1988, in Arlington, Texas, concerning revisions to Regulation IV, Control of Air Pollution from Motor Vehicles. EPA provided comments on the revisions to Regulation IV at that time. The revisions included the addition of hydrocarbon and carbon monoxide cutpoints for the emissions check and the addition of specific conditions for acceptable vehicle engine and catalytic converter replacement. Elsewhere in today's FR is a notice approving the parameter I/M program submitted in the original Post-82 SIP in 1985 and 1986 for Dallas and Tarrant counties.

6. Transportation Control Measure (TCMs)

In the July 14, 1987, FR notice, EPA proposed approval of the TCM measures submitted in the initial Post-82 SIP revision contingent upon documentation of the evaluation of the TCMs specified under section 108(f) of the Clean Air Act. Texas submitted acceptable documentation in the Interim SIP. Therefore, EPA is approving these Post-82 TCM measures elsewhere in this FR.

The Post-82 Interim SIP revision provides for additional TCMs for Dallas and Tarrant Counties. The TCMs to be implemented include intersection signal improvements and a travel demand management program which together are predicted to reduce VOC emissions by 3181 kg/day in Dallas County and 1591 kg/day in Tarrant County. These measures satisfy EPA's prior guidance on TCMs and Texas has committed in the SIP to implement these measures or others at a minimum reduction level of 20% per year in a five year timeframe. Therefore, EPA is proposing to approve the additional TCM measures committed to in the Post-82 Interim SIP.

7. Gasoline Volatility Control Program

Texas commits to controlling the volatility of all gasoline marketed for use in motor vehicles during the summer ozone season in Dallas and Tarrant Counties. Texas has taken credit for VOC reductions obtainable if EPA's proposed nationwide gasoline volatility program (52 FR 31274, August 19, 1987) is finalized. If EPA does not finalize its action by May 16, 1989, then Texas has committed to initiate rulemaking for control of gasoline volatility in the Dallas and Tarrant County area for implementation in May 1990.[1]

Texas has estimated reductions using EPA's results from a prototype of MOBILE 4. EPA's concerns raised in the July 14, 1987, proposal have been addressed with this new modeling analysis. Reductions were estimated for inuse motor vehicles which will result from lower evaporative losses due to a lower RVP during normal operation and hot-soak conditions and from stationary source reductions which occur from all gasoline marketing operations when fuel is stored, transferred, or dispensed. EPA is proposing to approve this commitment as part of the Post-82 Interim SIP.

Schedules

Texas submitted schedules in the Interim SIP that outlined the milestones that were to be completed in the future in order to carry out SIP commitments. The schedules were for Regulation V review, modifications, and adoption, and for commitments to fulfill the I/M and TCM requirements. The commitments have been carried out to date. These schedules are proposed to be approved as part of the Post-82 Interim SIP and can be found in the Technical Support Document.

Contingency Provision

Texas has included in the Interim SIP a contingency provision to adopt additional control measures in order to demonstrate attainment if the VOC control measures committed to in the SIP revisions are insufficient to effect RFP between 1983 and 1991. This includes a commitment by Texas to adopt a gasoline volatility control program by May 16, 1989, for implementation in May 1990 if EPA fails to take final action on the proposed national program. It also includes a commitment for additional measures if Texas cannot get the appropriate legislative authority and funding to implement the I/M programs. EPA is proposing to approve this contingency plan as part of the Post-82 Interim SIP.

Post-87 Requirements

The Post-82 Interim SIP is not a plan designed to avoid future planning requirements, such as the requirements of the May 26, 1988, Post-87 SIP call, but is in fact a plan that, when implemented, will substantially reduce VOC emissions. Texas has made a first step toward an areawide approach by extending the I/M program to the entire CMSA i.e. the areawide approach is the scope described in the proposed Post-87 guidance published November 24, 1987, 52 FR 226. Texas is still required to meet EPA's Post-87 requirements for the Dallas-Fort Worth CMSA as identified in the SIP call letter from EPA on May 26, 1988, associated guidance, and EPA's future policy on Post-87 ozone attainment.

[1] In the event that EPA publishes a final volatility rule that differs from the proposed rule, EPA will assess the impact of such a rule on the Texas commitment to initiate rulemaking, and whether state rulemaking would raise any issues under section 211(c)(4) of the Clean Air Act regarding federal preemption.

Conclusion

The original Post-82 submittals in 1985 and 1986 and the Post-82 Interim SIP revisions claim to provide for sufficient VOC emission reductions to demonstrate attainment of the ozone NAAQS by December 31, 1991. According to EKMA modeling performed in the Interim SIP, the 1983 emissions inventory must be reduced by 43.9% in Dallas County and 41.7% in Tarrant County. The Post-82 Interim additional revisions provide for a reduction of the 1983 base year VOC inventory by 44.3% in Dallas county and 43.4% in Tarrant county. Since the percent reductions were determined by a 1983 emission inventory, EPA is deferring action on the control strategy as a whole until a more current emission inventory and control strategy is developed in response to the May 26, 1988, Post-87 SIP call. Based on the efforts and cooperation put forth by the State, the additional adopted measures in the Interim plan; and Texas' commitment to meet the milestones outlined in the Interim SIP schedules, EPA is deferring its proposed finding that Texas had failed to meet the requirements to respond adequately to the 1984 SIP call, and thus defers the proposed sanctions pending successful and timely completion of each of the commitments outlined in the Post-82 Interim SIP submitted on December 21, 1987. Despite deferral of this finding and sanctions, additional SIP revisions will be required for the DFW area in accordance with the May 26, 1988, Post-87 Ozone/Carbon Monoxide SIP call and EPA's future policy on Post-87 ozone attainment. With the qualifications described above, EPA also proposes to approve the stationary source VOC regulations found in the initial Post-82 SIP and the Interim SIP submittals as submitted on December 21, 1987 and December 13, 1988, to the extent that they represent an improvement over the previously approved regulations. The rule revisions, however, do not in all cases constitute RACT as required in SIP call areas and are not being proposed for approval as RACT. EPA also proposes to approve the commitments of the I/M and TCM Program, outlined in the Post-82 Interim SIP, the Post-82 Interim SIP contingency plan, the gasoline volatility program commitments, and the regulation revision and I/M schedule submitted as part of the Post-82 Interim SIP, because they are all helpful steps toward attainment of the ozone standard in the DFW area.

Under 5 U.S.C.(605(b)), I certify that SIP approvals do not have a significant 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.

List of Subjects in 40 CFR Parts 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: December 29, 1988.

Robert E. Layton,

Regional Administrator.

[FR Doc. 89–1586 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3516–2]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan: Extension of Comment Period

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published December 27, 1988 (53 FR 52202), has been extended 30 days from date of publication. This notice proposed to approve a revision to the Wisconsin State Implementation Plan (SIP), which consists of the addition of Natural Resources § 154.12(10) of the Wisconsin Administrative Code, Rothschild Reasonably Available Control Technology Sulfur Limitations, to the Wisconsin SIP. The revision sets sulfur dioxide emission limits for sources in the City of Rothschild and the Town of Weston. These sources are located in Marathon County, Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Date: January 31, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–3071 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–618, RM–6525]

Radio Broadcasting Services; Redwood Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by CD Broadcasting Corporation, proposing the substitution of Channel 249C1 for Channel 249A at Redwood Falls, Minnesota, and modification of its license for Station KLGR–FM to specify operation on Channel 249C1. The coordinates used for Channel 249C1 at Redwood Falls are 44–32–33 and 95–07–57.

DATES: Comments must be filed on or before March 30, 1989, and reply comments on or before April 14, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–618, adopted December 21, 1988 and released February 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do nt apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-3097 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-4, RM-6565]

Radio Broadcasting Services; Mansfield, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Kennedy Broadcasting, Inc. seeking the allotment of Channel 268A to Mansfield, Pennsylvania, as the community's first local FM service. To avoid a conflict with pending allotment proposals at Covington and Galeton, Pennsylvania, the Commission has substituted Channel 277A for consideration. Channel 277A can be allotted to Mansfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to recently allotted Channel 222A at Riverside, Pennsylvania. The coordinates for this allotment are North Latitude 41-47-38 and West Longitude 77-09-37. Canadian concurrence is required.

DATES: Comments must be filed on or before March 30, 1989, and reply comments on or before April 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John A. Kennedy, President, Kennedy Broadcasting, Inc., R.D. 1, Box 460, Cogan Station, Pennsylvania 17728 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-4, adopted January 4, 1989, and released February 6, 1989. 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., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 78

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-3098 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 509 and 552

[GSAR Notice No. 5-227]

General Services Administration Acquisition Regulation; Contractor Qualifications; Solicitation Provisions and Contract Clauses

AGENCY: Office of Acquisition Policy, GSA

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would add Subpart 509.3 to provide coverage on first article testing, and add Sections 552.209-74, 552.209-75, and 552.209-76 to provide the text of the clauses prescribed in Subpart 509.3.

DATE: Comments are due in writing on or before March 13, 1989.

ADDRESS: Comments should be addresed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Carrie L. Bumgarner, Esq., Office of GSA Acquisition Policy and Regulations, (202) 523-4766.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule simply implements the requirements outlined in FAR 9.306 regarding solicitation requirements for first article testing by the Contractor, first article testing by the Government, and for waiving the requirerent for first article testing and approval. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 509 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 509 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 509—CONTRACTOR QUALIFICATIONS

2. Subpart 509.3 is added to read as follows:

Subpart 509.3—First Article Testing and Approval

509.302 General.

When first article testing and approval is appropriate for a procurement pursuant to FAR 9.3, the general policy of the Federal Supply Service (FSS) is to require:

(a) The contractor to perform required testing, unless after coordinating with the technical specialist and Quality Assurance Divison (FQA) the contracting officer determines that Government testing is in the best interest of the Government;

(b) That the first article be produced at the same facility where production quantities will be produced; and

(c) That the first article serve as the manufacturing standard.

509.303 Use.

The contracting officer shall coordinate all determinations to require first article testing and approval with the technical specialist and the Office of Quality and Contract Administration, Quality Assurance Division (FQA). At the time of coordination, the contracting officer should obtain the following information from the technical specialist and FQA:

(a) The test requirements for inclusion in the solicitation as outlined in FAR 9.306 (a) and (b).

(b) Advice on whether the contractor or the Government should perform required testing.

(c) The information necessary to complete the fill-in requirements of FAR clauses 52.209–3 First Article Approval—Contractor Testing [and alternates], and 52.209–4 First Article Approval—Government Testing [and alternates].

509.306 Solicitation requirements.

The contracting officer shall insert the provision at 552.209–74, Waiver of First Article Testing and Approval Requirement, in solicitations that require first article testing and approval. Any determinations to waive first article testing under FAR 9.306(c) must be approved by the technical specialist and the Quality Assurance Division (FQA). The first article tests that will be performed by the contractor (or the Government, if the Government elects to perform the testing) must be set forth in the solicitation.

509.308 Contract clauses.

509.308–1 Testing performed by contractor.

In accordance with FAR 9.308–1, the FSS contracting officers shall use the clause at FAR 52.209–3 with its Alternate I and the supplemental clause at 552.209–75, Supplemental Requirements for First Article Approval–Contractor Testing.

509.308–2 Testing performed by the Government.

In accordance with FAR 9.308–2, FSS contracting officers shall use the clause at FAR 52.209–4 with its Alternate I and the supplemental clause at 552.209–76, Supplemental Requirements for First Article Approval—Government Testing.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 552.209–74, 552.209–75, and 552.209–76 are added to read as follows:

552.209–74 Waiver of First Article Testing and Approval Requirements.

As prescribed in 509.306, insert the following provision;

Waiver of First Article Testing and Approval Requirement (XXX 1989)

(a) The Government reserves the right to waive the requirements of first article testing set forth elsewhere in this solicitation as to those Offerors offering a product which has been previously procured and approved by the General Services Administration under the same specification and at the same facility.

(b) Offerors must submit an offer including testing and approval, however, an Offeror may submit an alternate offer excluding testing and approval, provided the Offeror satisfies the requirements for the waiving of first article testing.

(c) Before a waiver of the first article testing requirement of this solicitation will be considered, the Offeror is requested to identify the procurement under which the product offered was previously approved and accepted: _____.

(Offer to insert both contract number and appplicable national stock number)

(End of provision)

552.209–75 Supplemental Requirements for First Article Approval—Contractor Testing.

As prescribed in 509.308–1, insert the following clause:

Supplemental Requirements for First Article Approval—Contractor Testing (1989)

(a) The term "Contracting Officer" as used in FAR 52.209–3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either, (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 a.m. and 5:00 p.m., Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each notated as to whether they pass or fail the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity it shall be in the last scheduled delivery under the contract.

(End of Clause)

552.209–76 Supplemental Requirements for First Article Approval—Government Testing.

As prescribed in 509.308–2, insert the following clause:

Supplemental Requirements for First Article Approval—Government Testing (1989)

(a) The term "Contracting Officer" as used in FAR 52.209–4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor delivers the approved first article as part of the contract quantity it shall be in the last scheduled delivery under the contract.

(End of Clause)

Dated: January 31, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–3038 Filed 2–8–89; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

West Girard Timber Sale Proposals

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for the development of a series of timber sales on the McCloud, Mount Shasta and Shasta Lake Ranger Districts, Shasta-Trinity National Forests, Shasta County, California. The environmental impact statement will describe the environmental consequences of the proposed timber sales in the West Girard released roadless area.

DATE: Comments concerning the scope of the analysis should be received by August 1, 1989.

ADDRESS: Written comments concerning the scope of the analysis must be sent to Steven D. Clauson, District Ranger, McCloud Ranger District, Box 1620, McCloud, California 96057.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to William L. Branham, Planning Officer, McCloud Ranger District, McCloud, California, phone 916–964–2184.

SUPPLEMENTARY INFORMATION: The majority of the proposed project area is currently unroaded, and was released for multiple use management in the California Wilderness Act of 1984. The harvest proposals may also include adjacent areas which are already roaded. If approved, the timer sales are scheduled to be sold in 1992 and 1993.

Specific Alternatives have not been formulated. The Forest Service will consider a range of alternatives, including no action and alternatives with greater or lesser levels of harvest. The EIS will evaluate a range of harvest methods, and consider the impact of each alternative on dispersed recreation and other resources. Alternatives will include measures to protect spotted owls, fish and water quality.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forest, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring possible alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Additional opportunities for public involvement will be announced through the local news media.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that reviewers participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by June 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable law, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Robert R. Tyrrel,
Forest Supervisor.

Date: January 30, 1989.

[FR Doc. 89–3119 Filed 2–8–89; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Henrieville Resource Conservation and Development, Utah

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service,

U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Henrieville Resource Conservation and Development Measure, Garfield County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, Salt Lake City, Utah 84147, telephone 801/524–5050.

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

Henrieville Resource Conservation and Development, Utah; Notice of a Finding of No Significant Impact

The project concerns a plan for three erosion control structures and four grade stabilization structures to protect the culinary water collection system and delivery pipeline for the Town of Henrieville, Utah. The proposed project will prevent Henrieville Creek from undercutting the spring and horizontal well and erosion from destroying the delivery pipeline for the Town's 169 residents.

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

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

(Catalog of Domestic Assistance Program under No. 10.901—Resource Conservation and Development Program. Executive Order 12372, regarding state and local clearing house review of Federal and federally assisted programs is applicable.)

Dated: January 31, 1989.

Francis T. Holt,

State Conservationist.

[FR Doc. 89–3042 Filed 2–8–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–801]

Final Determination of Sales at Less Than Fair Value; Calcined Bauxite Proppants From Australia

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: We determine that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of the subject merchandise from Australia. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Australia as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377–3818 (Letort) or 202/377–8668 (Capwell).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The estimated margin of sales at less than fair value is 75.00 percent *ad valorem*, as shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 21, 1988, we made an affirmative preliminary determination in this case (53 FR 47842—November 28, 1988). Since the publication of that notice, we have received no response or comments from Comalco Aluminum Limited (Comalco), which accounted for virtually all the exports to the United States from Australia during the period of investigation. We have received no comments from any other interested party in this investigation.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified soley according to the appropriate HTS item number(s). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The products covered by this investigation are calcined bauxite proppants, which are currently provided for under HTS item number 2606.00.00.60.

Period of Investigation

The period of investigation for calcined bauxite proppants from Australia extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because Comalco failed to submit an appropriate response.

United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, marine insurance, and brokerage and handling charges.

Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Australia or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the

petition was based on the petitioner's manufacturing costs plus petitioner's general expenses, which were higher than the statutorily required minimum of 10 percent. To this cost of production we made the statutorily mandated addition of 8 percent for profit.

Critical Circumstances

The petitioner alleges that "critical circumstances" exist with respect to imports of calcined bauxite proppants from Australia. Under section 735(a)(3) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of Bureau of the Census import data, we find that imports of calcined bauxite proppants from Australia have not been massive over a relatively short period of time. Therefore, we need not address the issues of whether importers knew, or should have known, that the exporters were selling the subject merchandise at less than its fair value, or whether there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation.

In light of the above, we determine that critical circumstances, within the meaning of section 735(a)(3) of the Act, do not exist with respect to imports of calcined bauxite proppants from Australia.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of calcined bauxite proppants from Australia that are entered, or withdrawn from warehouse, for consumption, on or after November 28, 1988, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 75.00 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist in this case, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. If, however, the ITC determines that material injury, or threat of material injury, does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on calcined bauxite proppants from Australia which are entered, or withdrawn from warehouse, for consumption, on or after the date on which liquidation was suspended. The antidumping duty will equal the amount by which the foreign market value of the subject merchandise exceeds United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

February 2, 1989.

[FR Doc. 89-3113 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 88-00016.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the Wood Machinery Manufacturers of America (WMMA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Woodworking machines, woodworking systems, and accessories, principally, but not exclusively, classified in SIC ¢ 3553, including: Cutting machines (including boring, dowelling, carving, dovetailing, mortising, planing, routing, sawing, shaping, profiling, tenoning, chucking, turning, and veneering machines); sanding machines (including edge, flat surface, irregular surface, and special-purpose sanding machines); gluing, laminating, and assembling machines (including assembly clamping, auxiliary gluing, edge gluing, surface gluing, pressing, and laminating machines); finishing machines (including applicator, auxiliary finishing, and drying machines and ovens); wood drying equipment (including dryers, kilns, and moisture measurement equipment); auxiliary machines and equipment (including environmental and safety equipment, materials handling equipment, auxiliary attachments, tool maintenance equipment, and tooling); special product and special purpose machines; logging and sawmilling machines (including log handling and preparation machines, log conversion equipment, and other auxiliary equipment and attachments); and wood residue utilization systems or equipment.

Services

Engineering, design, and related services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Abrasive Engineering & Manufacturing, Olathe, KS; Alexander Dodds Company, Grand Rapids, MI; Black Bros. Company, Mendota, IL; C. R. Onsrud, Inc., Troutman, NC; Crouch Machinery, Inc., Pinehurst, NC; CTD Machines, Inc., Los Angeles, CA; Delta International Machinery Corporation, Pittsburgh, PA; Diehl Machines, Wabash, IN; Fulghum Industries, Inc., Wadley, GA; Industrial Woodworking Machine Company, Garland, TX; James L. Taylor Manufacturing Company, Poughkeepsie, NY; Jenkins Division, Kohler General Corporation, Sheboygan Falls, WI; Ken Hazledine Machine Company, Inc., Terre Haute, IN; L.R.H. Enterprises, Inc., Van Nuys, CA; Lancaster Machinery Company, Lancaster, PA; Medalist Automated Machinery, Oshkosh, WI; Mereen-Johnson Machine Company, Minneapolis, MN; Mid-Oregon Industries, Bend, OR; Montaco, Inc., Orlando, FL; Newman Machine Company, Inc., Greensboro, NC; North American Products Corporation, Jasper, IN; Northfield Foundry & Machine Company, Northfield, MN; Oliver Machinery Company, Grand Rapids, MI; Onsrud Machine Corporation, Wheeling, IL; Powermatic, McMinnville, TN; Robert A. Martin Company, Inc., Harvey, IL; Robert Bosch Power Tool Corporation, New Bern, NC; The Wallace Company, Pasadena, CA; Thermwood Corporation, Dale, IN; Timesavers, Inc., Minneapolis, MN; Tyler Machinery Company, Inc., Warsaw, IN; Whirlwind, Inc., Dallas, TX; and Yates-American Machinery, Inc., Beloit, WI.

Export Trade Activities and Methods of Operation

1. WMMA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology Rights in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology Rights by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products, Services and/or Technology Rights;

e. Provide or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their Products, Services, and/or Technology Rights or offer their Export Trade Facilitation Services through the certified activities of WMMA and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with WMMA or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology Rights requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other point venture entities, owned exclusively by Members, to export Porducts to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services to Members.

2. WMMA and/or its Members may enter into agreements wherein WMMA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products, Services, and/or Technology Rights in that country or market. In such agreements, (i) WMMA or the Members(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through WMMA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. WMMA and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods);

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products, Services, and/or Technology Rights in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WMMA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export

Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about WMMA's or its Members' export operations, including without limitation sales and distribution networks established by WMMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. WMMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by WMMA itself, or by agreement with Members or other parties.

5. WMMA and/or its Members may meet to engage in the activities described in paragraphs 1 through 4 above.

6. WMMA and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in the other activities described in paragraphs 1 through 5 above, to non-members.

7. WMMA and/or its Members may forward to the appropriate individual Members requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: February 3, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-3082 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held March 2, 1989 at 10:00 a.m. in Conference Room, Building A, Room 802 at the Fashion Institute of Technology, 227 West 27th Street, New York, New York 10001. Building A is the David Dubinsky Student Center just off 8th Avenue. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; review of Office of Textiles and Apparel export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Date: February 3, 1989.

James H. Babb,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 89-3045 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

NIST/OSI Implementors' Workshop; 1990 Meeting Dates

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announced four (4) workshop sessions to reach implementor agreements on Open Systems Interconnection (OSI) computer network protocols.

DATES: The following constitutes the schedule for the workshops for the year of 1990. The dates are firm:

March 12-16, 1990
June 18-22, 1990
September 10-14, 1990
December 10-14, 1990

The meetings will be hosted by NIST and will be held at Gaithersburg, Maryland.

ADDRESS: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, Room B-217, Gaithersburg, MD 20899, Telephone: (301) 975-3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NIST representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION: Tim Boland (301) 975-3608.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangement and accommodations. NIST reserves the right to cancel any part of the workshops.

Raymond G. Kammer,

Acting Director.

Date: February 3, 1989.

[FR Doc. 89-3063 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Marine Mammals: Application for Permit; Sea World, Inc. (P2U) Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. Type of Permit: Public Display.

3. Species and Number of Marine Mammal Requested: One (1) killer whale (*Orcinus orca*).

4. Requested Activity: Import from Sao Paulo, Brazil.

5. Duration of Activity: The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not

necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protection Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Date: February 1, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-3029 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-22-M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel will discuss the follow-up report of the Sea Grant Office to the Assistant Administrator of Oceanic and Atmospheric Research, be advised on artificial intelligence updates, transition activities, the fellowship program, new panel candidates and discuss new business. The panel members will also participate in a joint session with the Sea Grant Director's Council. In addition, time will be devoted to discussion of the application of a Sea Grant Program for Sea Grant College Status.

The last session of the afternoon of Tuesday, February 28, 1989, will be devoted to discussion of an application for Sea Grant College designation. This session will be closed since the discussion is likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy.

DATES: The announced meeting is scheduled for three days, Monday, February 27, Tuesday, February 28, and Wednesday, March 1, 1989, as follows: February 27, 9:00 a.m.–12:00 noon, February 28, 3:00 p.m.–4:30 p.m. and 4:30 p.m.–6:00 p.m., and March 1, 1989, 9:00 a.m.–12:00 noon.

The February 28, 4:30–6:00 p.m. session will be closed to the public. All other sessions will be open sessions.

ADDRESS: The meetings will be held at: Wild Dunes Resort & Conference Center, Isle of Palms, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, Room 826, Rockville, Maryland 20852, (301) 443–8886.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on February 7, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in this closed portion may be exempted from the provisions of the Act relating to open meetings and public participation therein because this item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6). This section covers discussions which are likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.)

Date: February 7, 1989.

Alan R. Thomas,

Acting Assistant Administrator Oceanic and Atmospheric Research

[FR Doc. 89-3223 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Academic Catalyst Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Academic Catalyst Corporation, having a place of business at 14 Madison Avenue, Valhalla, NY 10595, an exclusive right in the United States to practice the invention embodied in U.S. Patent No. 4,722,851 "Flan-Type Pudding Using Cereal Flour." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

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

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

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

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

[FR Doc. 89-3118 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Upjohn Company, having a place of business in Kalamazoo, MI, an exclusive license in the United States and certain foreign countries to practice the invention entitled, "Cytotoxic Agent Against Specific Virus Infection," U.S. Patent Application Serial Number 7-223,270. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

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

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

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order

Department, NTIS, 5285 Port Royal Road, Springfield, VA 22151.

Douglas J. Campion,

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

[FR Doc. 89-3117 Filed 2-8-89; 8:45 am]

BILLING CODE 3510-04-M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act—Referrals; Central Valley Project, California

Under section 309 of the Clean Air Act and CEQ's regulations implementing the National Environmental Policy Act (NEPA), the Administrator of the Environmental Protection Agency (EPA) is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If, after this review, the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council on Environmental Quality (CEQ). 42 U.S.C. 7609; 40 CFR 1504.2(b).

On February 3, 1989, CEQ received a referral from the Acting Administrator of EPA, referring the proposal by the Department of the Interior, Bureau of Reclamation, to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project. EPA's letter states that,

> "Accordingly, I have determined that making irretrievable long-term commitments of water use without benefit of an EIS [environmental impact statement] violates the purposes and intent of NEPA. Further, in the absence of environmental analysis that would indicate otherwise I believe that renewal of these contracts is unsatisfactory from the standpoint of environmental quality in the San Joaquin River/Sacramento-San Joaquin Delta/San Francisco Bay area. *Letter from John A. Moore, Acting Administrator, EPA, to the Honorable A. Alan Hill, Chairman, CEQ,* February 2, 1989.

Under the CEQ referral regulations, the Department of the Interior has twenty-five (25) days to deliver a response to CEQ and EPA. This period expires on February 28, 1989. During this period, CEQ will accept comments from any interested person in support of either the referring agency (EPA) or the lead agency (Department of Interior). The comments may address whether the referral raises issue(s) of national importance because of the treat to national environmental resources or policies or for some other reason; whether CEQ should proceed with consideration of the issues raised in the referral; and any suggestions as to procedures to be followed during the course of the referral. Comments addressing the merits of the issues raised in the referral should be deferred until CEQ determines whether it will proceed with the referral, after the Department of Interior's response has been received.

FOR FURTHER INFORMATION AND TO RECEIVE THE REFERRAL MATERIAL, CONTACT: Sara Nero, Office of General Counsel, CEQ, (202) 395-5754.

DATES: Comments must be received by CEQ no later than close of business on February 28, 1989. Comment letters should addressed to Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, Northwest, Washington, DC 20503.

A. Alan Hill,

Chairman.

[FR Doc. 89-3216 Filed 2-8-89; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 2, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on March 6-7, 89, from 8:00 a.m. to 5:00 p.m., at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on technical developments and strategic operations issues. The meeting at HQ Strategic Air Command (SAC) will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3116 Filed 2-8-89; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Flood Control Plan for Valley Creek, Birmingham, Jefferson County, AL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Channel improvements to reduce flooding along Valley Creek.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Jones, PD-EI, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628, Phone: (205) 690-2725.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Implement flood control measures to preserve and protect businesss and residences along Valley Creek, in Birmingham, Alabama. The study is being undertaken under the authority of the House of Representatives resolution adopted June 19, 1963, contained in House Document No. 414. Several alternatives are being evaluated for this proposed action and they are listed below.

2. Alternatives

Alternatives to the proposed action which will be considered include the following:

a. No action:

b. Combination of channel clearing and widening and bridge widening.

c. Deepen creek to increase flow capacity:

d. Relocation of residences in the flood plain:

e. Construct levees:

f. Construct reservoir:

Scoping Process

a. The scoping process, as outlined by the Council on Environmental Quality in November 29, 1978 **Federal Register**, National Environmental Policy Act of 1969 Regulations, will be utilized to involve Federal, State, and local agencies and other interested persons. Evaluation of preliminary engineering, enviromental and economic factors indicate that an Environmental Impact Statement is appropriate for the alternatives identified to date.

b. Significant issues to be addressed in detail in the DEIS will include socioeconomics issues such as the effects of relocation of families, purchasing of property, disruption of normal activities and water quality.

c. The proposed action will be coordinated with the Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, the Alabama State Historic Preservation Officer, the Advisory Council on Historic Preservation, Environmental Protection Agency, and the U.S. Fish and Wildlife Service.

d. Upon completion of the DEIS, the report will be circulated for review by Federal, State, and local government agencies. In addition, the public will be allowed to comment during the same time span.

e. An initial public workshop with local residents and other interested parties was held in June 1988 in Birmingham, Alabama. A subsequent workshop will again be held in June 1989 in Birmingham to discuss the alternatives with local officials and the public.

4. The DEIS will be made available to the public in October 1989.

Date: February 7, 1989.

Louis J. Martinez,

LTC, Corps of Engineers, Acting District Engineer.

[FR Doc. 89-3120 Filed 2-8-89; 8:45 am]

BILLING CODE 3710-CR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before March 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 3, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants under the Graduate Assistance in Areas of National Need Program
Frequency: Annually
Affected Public: Non-Profit institutions
Reporting Burden:
Responses: 400
Burden Hours: 2000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by eligible non-profit institutions to apply for funding under the Graduate Assistance in Areas of National Need Program. The Department uses the information to make grant awards.

[FR Doc. 89-3134 Filed 2-8-89; 8:45 am]

BILLING CODE 4000-01-M

National Council on Vocational Education; Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: February 27, 1989—9:00 p.m. to 3:00 p.m.

ADDRESS: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037, location to be posted in Hotel, (202) 857-3388.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

AGENDA: The proposed agenda will include: an Executive Committee Planning Session to plan the National Council's meetings and agenda for the year.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, February 2, 1989.

Joyce Winterton,

Executive Director.

[FR Doc. 89-2957 Filed 2-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Floodplain/Wetlands Involvement for Site Characterization at Yucca Mountain, NV

AGENCY: Department of Energy.

ACTION: Floodplain/wetlands involvement and opportunity for comment.

SUMMARY: The Department of Energy proposes to construct facilities such as access roads, utility lines, a muck-storage area, several trenches, and drill and core holes in Yucca Mountain, Nevada, to support site characterization activities. Yucca Mountain in Nye County, Nevada is a potential site for the United States' first underground repository for the permanent disposal of commercial spent nuclear fuel and high-level radioactive waste.

DATE: Comments must be received on or before April 1, 1989.

ADDRESS: Address written comments to: Deborah Valentine, Office of Civilian Radioactive Waste Management, Department of Energy, Mail Stop 7F-070, RW-333, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5559.

FOR FURTHER INFORMATION CONTACT:

1. Ms. Deborah Valentine at the above address.
2. Mr. Robert Kaiser, Yucca Mountain Project Office, Department of Energy, 101 Convention Center Drive, Las Vegas, Nevada 89109, (702) 794-7954.

SUPPLEMENTARY INFORMATION: Before a decision is made concerning the suitability of the site, the geology and hydrology of Yucca Mountain must be characterized to ensure that it can safely accommodate the waste. Characterization of the Yucca Mountain site will involve the construction of an Exploratory Shaft Facility (ESF), which requires excavation of two large shafts (out of floodplain), and the construction of several surface support facilities within the floodplain. DOE expects to begin some of the proposed actions in the floodplain in May 1989. DOE is considering several measures, including re-routing segments of several dry washes around critical facilities, and straightening banks along several wash segments to avoid adverse effects related to the location of surface facilities in the floodplain. In floodplain areas remote from ESF activity, trenches and drill and core holes will be necessary to support ground-water recharge investigations and subsurface formation studies. The specific locations of the proposed actions can be found in the Site Characterization Plan (SCP) for the Yucca Mountain Site in Nevada in section 6.2.4 at page 6-121ff. The specific locations of the potential areas of the 100-year and 500-year flood can be found in the SCP in section 6.1.2 at page 6-69. The SCP was issued for public review and comment on December 28, 1988. Copies are available upon request from: U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, Tennessee 37831. In addition, copies have been placed in selected libraries throughout Nevada, as well as DOE public reading rooms in Headquarters, in Las Vegas, and the Operations Offices nationwide. The complete list of those locations was published in the **Federal Register** on December 30, 1988, at 53 FR 53057.

Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), DOE has determined that the proposed actions will be within the 100-year Flood Boundary of several dry washes. Planned work will include construction and floodplain modifications as described above. The DOE will prepare a floodplain/wetlands assessment.

Pursuant to 10 CFR 1022.4, this Public Notice provides the opportunity for public review and comment on this proposed floodplain action. Comments received will be evaluated and considered before making a decision on the proposed action. Comments should be addressed to Deborah Valentine at the above address.

Issued in Washington, DC, February 3, 1989.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-3111 Filed 2-8-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Grants; California Cast Metals Association

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of intent to award a noncompetitive grant agreement to the California Cast Metals Association.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.7, a grant is to be funded to the California Cast Metals Association (CCMA) based on an application dated November 14, 1988.

The Office of Conservation and Renewable Energy intends to award a grant in the amount of $48,400. The purpose of the grant is to revise and condense the CCMA 1981 *Foundary Engineering Study* and *Workbook* into a single *Foundry Industry Energy Conservation Workbook* reflecting the most recent foundry energy conservation technology. The practices and technology discussed in this revised workbook will be presented to foundry owners and managers through a series of workshops to be held at six locations nationwide.

This proposed project management has both an affiliation with and understanding of the foundry industry. The CCMA is privy to both the needs of the foundry industry and the current innovative practices and technologies developed to meet these industry needs. As the prime sponsor of this project CCMA has obtained the endorsement of the American Cast Metals Association (ACMA), which is the principle national corporate trade association of the metal casting industry. The ACMA will assist the CCMA with the workshops and distribution of this workbook to all the operating firms of the metal casting industry.

The *Foundry Energy Conservation Workbook* which will include the most recent available foundry energy conservation technology, will represent a significant contribution to improved energy efficiency in the Primary Metals Industry, SIC 33. This is consistent with the advancement of the public purpose of stimulating energy conservation. The objectives of the proposal have a high probability of success because the techniques and technology to be provided are based on past successful material developed by these associations and the most recent processes established by their corporate membership.

The proposed award will be funded in fiscal year 1989. The time required for completion of the project (excluding time required for printing the *Workbook* by the DOTE) is seven (7) months. The resulting *Foundry Industry Conservation Workbook* will be distributed to foundries nationwide. This notice represents the only official notice of intent on the part of the DOE.

ADDRESS: Request for information regarding the proposed assistance award and any written inquiries

concerning this notice shall be addressed to: Charles J. Glaser, U.S. Department of Energy, Office of Industrial Programs, CE–14, Room 5F–044, Washington, DC, 20585, (202) 586–1298.

Issued in Washington, DC on January 23, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89–3110 Filed 2–8–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER83–726–000 et al.]

Boston Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER83–726–000]

January 31, 1989.

Take notice that on January 19, 1989, the Boston Edison Company (Edison) tendered for filing a transmission rate revised in accordance with the requirements of the Commission's Opinion No. 310 issued August 1, 1988 and Opinion No. 310–A issued December 20, 1988 for service to the Town of Norwood, Massachusetts. Edison states that copies of the filing have been served on the Town of Norwood and all persons listed on the Commission's official service list.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. AES Cedar Bay

[Docket No. QF89–126–000]

On January 19, 1989, AES Cedar Bay, Inc. (Applicant), c/o Jeffrey V. Swain, Vice President, 1925 North Lynn Street, Suite 1200, Arlington, VA 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Jacksonville, Florida. The facility will consist of an extraction/condensing steam turbine generator and a coal fired boiler. Thermal energy recovered from the facility will be used for industrial processes in the Siminole Kraft paper mill. The net electric power production capacity of the facility will be 249,000 KW. The primary source of energy will be coal. Construction of the facility is scheduled to begin January 1990.

Comment date: March 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ER88–619–003]

Take notice that on January 24, 1989, Gulf States Utilities Company (Gulf States) tendered for filing its compliance filing in compliance with the Commission's order issued January 18, 1989.

Comment date: February 15, 1989, 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. 89–3135 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES89–16–000 et al.]

Gulf States Utilities Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 3, 1989.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ES89–16–000]

January 31, 1989.

Take notice that on January 26, 1989, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue secured and/or unsecured short-term promissory notes not to exceed $400,000,000 principal amount in the aggregate outstanding at any time and to issue up to a like amount of principal of Applicant's Bonds in one or more series and security for the Notes. These issues will be exempted from competitive bidding requirements pursuant to § 34.2(a)(1) (ii) and (iii) of the Commission's Regulations. The Notes and Bonds would be issued at various times after authorization is granted but no Note or Bond would have a maturity after December 31, 1991.

Comment date: February 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas & Electric Company

[Docket No. ES89–15–000]

Take notice that on January 25, 1989, Kansas Gas & Electric Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to 250,000 shares of its common stock. Without par value. The securities are to be issued from time to time pursuant to the Applicant's 401(k) Plan.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES89–14–000]

Take notice that on January 24, 1989, UtiliCorp United Inc. ("Applicant") filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 4,000,000 shares of preference stock, without par value, and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER89–194–000]

Take notice that on January 24, 1989, Idaho Power Company (Idaho Power) tendered for filing the Average System Cost (ASC) determined by the Bonneville Power Administration (BPA), BPA's written ASC report, and Idaho Power's ASC schedules for Idaho Power's Idaho exchange jurisdiction.

The ASC rates filed have been determined pursuant to the Revised Average System Cost Methodology approved by the Commission in its Order No. 400 issued October 1, 1984, in

Docket No. RM84–16–000, and section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 830–839h). This act provides for the exchange of electric power between Idaho Power and BPA for the benefit of Idaho Power's residential and farm customers.

A copy of the filing has been served upon BPA and all parties to Idaho Power's Appendix 1 filing with BPA.

Comment date: February 17, 1989, 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. 89–3136 Filed 2–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL89–13–000 et al.]

Hydroelectric Applications; The Eyak Corp. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Declaration of Intention.

b. Project No.: EL89–13–000.

c. Date Filed: December 27, 1988.

d. Applicant: The Eyak Corporation (AK).

e. Name of Project: Power Creek Hydroelectric Project.

f. Location: Power Creek, Cordova, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Stephen M. Rehnberg, Chief Executive Officer, The Eyak Corporation, Post Office Box 340, Cordova, Alaska 99574, (907) 424–7161.

i. FERC Contact: Hank Ecton, (202) 376–9073.

j. Comment Date: March 6, 1989.

k. Description of Project: The proposed Power Creek Hydroelectric Project, a run of river project, would consist of: (1) A 120–foot–long diversion weir and intake structure; (2) two 6,375–foot–long, 72–inch–steel–pipe pressure penstocks; (3) a steel-and-concrete powerhouse, containing two generating units, with a total generating capacity of 10,000 kilowatts; (4) a concrete-and-rock-filled tailrace; (5) a 7.5-mile-long primary transmission line, 1.5 miles overhead and 6 miles under Eyak Bay; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: All power developed by the project will be sold to the local electric utility, Cordova Electric Cooperative.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. Type of Application: Acceleration of License Expiration.

b. Project No.: 2188–019.

c. Date Filed: December 16, 1988.

d. Applicant: The Montana Power Company.

e. Name of Project: Missouri-Madison.

f. Location: On the Madison and Missouri Rivers in Cascade, Gallatin, Lewis, and Clark, and Madison Countries, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Michael Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. FERC Contact: Dean C. Wight, (202) 376–9287.

j. Comment Date: March 13, 1989.

k. Description of Application: The applicant, licensee for the referenced project, seeks to accelerate the expiration of the license from November 30, 1998, to November 30, 1994. The license was issued on April 23, 1956, effective as of December 1, 1948 (15 FPC 1330) and consists of nine developments: Hebgen, Madison, Hauser, Holter, Black Eagle, Ryan, Rainbow, Cochrane, and Morony Dams. The total installed capacity of the developments is 286 megawatts. The applicant states that the earlier expiration date will facilitate financing of proposed rehabilitation and capacity expansions of the project by allowing the applicant to make earlier application for a new license. *See* 18 CFR, Part 16—Procedures Relating to Takeover and Relicensing of Licensed Projects, and Notice of Proposed Rulemaking in Docket No. RM87–33–000, issued May 24, 1988.

l. This notice also consists of standard paragraphs: B, C and D2.

3 a. Type of Application: Transfer of License.

b. Project No.: 3083–036.

c. Date Filed: December 23, 1988.

d. Applicant: KAMO Electric Cooperative, Inc., Oklahoma Municipal Power Authority.

e. Name of Project: Kaw Project.

f. Location: On the Arkansas River in Kay County, Oklahoma.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: S. Dean Sanger, General Manager, KAMO Electric Cooperative, Inc., P.O. Box 577, Vinita, OK 74301, (918) 256–7501.

i. FERC Contact: Mary Nowak, (202) 376–9634.

j. Comment Date: March 6, 1989.

k. Description of Project: KAMO Electric Cooperative, Inc., (KAMO) and the Oklahoma Municipal Power Authority (OMPA), licensees for FERC Project No. 3083, propose a partial transfer of license by transferring KAMO's remaining 0.5% share to co-licensee OMPA. OMPA would be the sole owner and licensee of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Amendment of License.

b. Project No.: 4114–014.

c. Date Filed: December 19, 1988.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Lower Saranac.

f. Location: On the Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Sanford L. Hartman, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 540, New York, NY 10170, (212) 986–0440.

i. FERC Contact: Mr. Dean Wright, (202) 376–9287.

j. Comment Date: March 10, 1989.

k. Description of Project: The applicant, licensee for the referenced project, seeks to amend the license by altering the transmission line route and project boundary. The proposed 46 kilovolt (kV) transmission line would extend from the project powerhouse approximately 1,400 feet south to the existing New York State Electric and Gas Indian Rapids-Kent Falls transmission line No. 879. The proposed transmission line would replace the proposed 2,500-foot-long transmission line authorized by the project license.

l. This notice also consists of standard paragraphs: B, C and D1.

5 a. Type of Application: Surrender of Exemption.

b. Project No.: 4538–002.

c. Date Filed: December 30, 1988.

d. Applicant: Utah Power and Light Company.

e. Name of Project: Electric Lake Hydroelectric Project.

f. Location: On Electric Lake in Emery County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Jody L. Williams, 1407 West North Temple, Room 339, Salt Lake City, Utah 84140, (801) 220–4910.

i. FERC Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: March 9, 1989.

k. Description of Project: On June 28, 1984, an exemption was issued to Utah Power and Light Company. The project consisted of a 5kW unit installed in the valve chamber of the Electric Lake dam.

The exemptee states that the generating unit was damaged and stopped operating because of constant exposure to dampness in the valve chamber, and that other options were investigated and found not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6 A. Type of Application: Exemption (5 MW or less).

B. Project No.: 6623–001.

C. Date Filed: July 31, 1984.

D. Applicant: Eric R. Jacobson and Hydro-West, Inc.

E. Name of Project: Bridal Veil Falls.

F. Location: On Bridal Veil Creek in San Miguel County, Colorado.

G. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

H. Applicant contact: Michael T. Mishkin, esq., Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue NW., Washington, DC 20044, (202) 626–6779.

I. FERC Contact: Mr. William Roy-Harrison, (202) 376–9830.

J. Comment Date: March 20, 1989.

K. Description of Action: The proposed project was originally noticed on February 5, 1985, as a license application. The applicant now, through a proposed settlement agreement filed May 27, 1988, with the Commission, wishes to convert the project from a license to an exemption. All project facilities as originally noticed would remain the same. The applicant further request a waiver of § 4.33(d)(3) of the Commissions regulations.

This notice is without prejudice to the Commission's ultimate decision on acceptance or rejection of the proposed settlement agreement between Idarado Mining Co., and the applicant.

l. This notice also consists of the following standard paragraphs: B, C, and D3a.

7 a. Type of Application: Amendment of License.

b. Project No.: 7045–003.

c. Date Filed: November 2, 1988.

d. Applicant: Mainstream Hydro Corporation.

e. Name of Project: Claremont Water Power Project.

f. Location: On the Sugar River in Claremont, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. George Lagassa, Consultant, P.O. Box 947, North Hampton, NH 03862, (603) 964–7113.

i. FERC Contact: Lawrence Marquez, (202) 376–1763.

j. Comment Date: March 3, 1989.

k. Description of Project: Rather than construct the intake at northerly end of the Broad Street Dam and start the penstock from that point, we propose to erect a *new water diversion structure* 250' downstream of the Broad Street Dam. This diversion structure will consist of two feet of permanent, concrete spillway anchored to ledge (crest elevation 508' msl) and three feet of steel, hydraulically operated, flashboards (maximum crest elevation 511' msl).

The proposed new diversion structure will divert water into a *new intake structure and canal* located at its northerly end. The proposed canal will be trapezoidal in shape, be 55' wide at the intake, and extend 100' in a northeasterly direction to its 25' wide terminus. By using the route of an old canal (long since filled in with earth), this route should provide minimal construction difficulties.

New Penstock Route: At this point water will flow into a submerged, 10' I.D. penstock, which will continue approximately 230' in a northeasterly direction to the existing intake at the Upper Sullivan Dam.

From here it will turn easterly (more directly downstream) and extend an additional 50 feet to a *proposed new powerhouse* (40' W x 30' L, identical in size and layout to the powerhouse originally licensed). Again, water from the turbines will discharge into a *tailrace canal*, with approximately the same dimensions and layout as approved in the original license, with the major difference being that the proposed new powerhouse and tailrace will be located *on the northerly instead of the southerly side of the sugar river.* In addition, to facilitate efficient operations, we also propose to move the installation of the 40 kW minimum flow turbine from the southerly end of the dam to the northerly end, adjacent to the existing intake structure on the Upper Sullivan Dam. Like the minimum flow turbine originally proposed, this installation would use the same configuration of siphon inlet tube and enclosed turbine-generator unit.

The proposed changes will produce a gross head of 46.5 ft., an average *net head* of 43 ft. (as opposed to 50') and generating CAPACITY in the main powerhouse of 1515 kW, in two machines of 1000 kW and 515 kW respectively. Together with the 40 kW minimum flow unit, total capacity of 1555 kW should allow the generation of 6,000,000 kWh/year.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8 a. Type of Application: Minor License.

b. Project No.: 9713–001.

c. Date Filed: July 21, 1988.

d. Applicant: Alpine Hydroelectric Company.

e. Name of Project: Alpine Project.

f. Location: On the Cascade Alpine Brook in Coos County, New Hampshire.

g. Field Pursuant to: Federal Power Act, U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Harold Turner, Alpine Hydroelectric Company, P.O. Box 7191, Concord, NH 03301, (603) 497–3940.

i. FERC Contact: Steven H. Rossi; (202) 376–9814.

j. Comment Date: April 6, 1989.

k. Description of Project: The proposed project would consist of: (1)

The existing 25-foot-high and 178-foot-long dam of cut granite masonry construction; (2) an existing reservoir having a surface area of 0.44 acre and a storage capacity of 3.7 acre-feet at normal pool elevation of 1,220 feet MSL; (3) an existing 12-inch-diameter and 2,200-foot-long buried cast iron penstock equipped with new bifurcation; (4) a new concrete and brick powerhouse containing a single generating unit rated at 115 kW; (5) a tailrace discharging into the river; (6) a new 50-foot-long, three-phase transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 500,000 kWh. The existing dam is owned by the James River Paper Company, Berlin, New Hampshire.

l. Purpose of Project: Project power would be sold to the James River Paper Company or the Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10634–000.

c. Date Filed: August 8, 1988.

d. Applicant: City of Manassas, Virginia.

e. Name of Project: Summersville Dam.

f. Location: On the Gauley River near Summersville, Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Clyde D. Wimmer, 9027 Center St., P.O. Box 560, Manassas, VA 22110, (703) 335–8226.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 3, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Summersville Dam and reservoir and would consist of: (1) a proposed intake structure; (2) a proposed penstock 24 feet in diameter and 1,900 feet long; (3) a proposed reinforced concrete powerhouse housing two 40,000-kW and one 20,000-kW hydropower units; (4) a proposed tailrace; (5) a proposed 138-kV transmission line 12 or 24 miles long; and (6) appurtenant facilities. The estimated annual energy production is 255 GWh. Project power would be used by Manassas to meet its own system demand and would be sold to other utility systems. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $350,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10674–000.

c. Date Filed: October 11, 1988.

d. Applicant: Midtec Paper Company.

e. Name of Project: Midtec Project.

f. Location: On the Fox River in Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. C.E. Wise, Manager or Engineering, Maintenance & Utilities, Midtec Paper Company, North Main Street, Kimberly, WI 54136, (414) 788–3511 Ext. 447.

i. FERC Contact: Robert Bell, (202) 376–9237.

j. Comment Date: April 7, 1989.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers Cedars Lock and Dam and impoundment and would consist of: (1) An existing intake structure; (2) 31 existing 12 foot 8 inch diameter penstocks 66 inches long; (3) an existing powerhouse containing 3 generating unit with a total installed capacity of 2700 kW; and (4) appurtenant facilities. The proposed project would have an average annual generators of 8600 MWh.

l. Purpose of Project: All energy generated would be used by applicant in its mills.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No. 10685–000

c. Date Filed: November 3, 1988.

d. Applicant: North Coast Development Co., Inc.

e. Name of Project: Crater Lake.

f. Location: At Crater Lake in Sec 11, T15W, R3W and Sec 14, T15S, R3W, Copper River Meridian near Cordova, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Howard T. Harstad, P.O. Box 98787, Des Moines, WA 98198, (206) 243–8606.

i. FERC Contact: Ms. Julie Bernt, (202) 376–1936.

j. Comment Date: March 29, 1989.

k. Description of Project: The proposed project would consist of: (1) Intake No. 1 at water surface elevation 1,514 at Crater Lake, intake No. 2 on a stream from Crater Lake at elevation 340 feet, and intake No. 3 on an unnamed stream to the north of Crater Lake; (2) a 12-inch-diameter, 3,300-foot-long penstock from intake No. 1 terminating at powerhouse No. 1, and two 12-inch-diameter, 3,300-foot-long penstocks from intake No. 2 and intake No. 3 terminating at a storage tank at the powerhouse No. 1 site; (3) a 24-inch-diameter, 1,200-foot-long penstock from the storage tank to powerhouse No. 2; (4) powerhouse No. 1 at elevation 335 feet containing two generating units each with a rated capacity of 500 kW, and powerhouse No. 2 at elevation 27 feet containing two generating units each with a rated capacity of 300 kW; and (5) approximately 1,500 feet of transmission line. Applicant estimates the average annual energy production to be 4 MWh and the cost of the work to be performed under the preliminary permit to be $52,000.

l. Purpose of Project: The power produced will be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No. 10710–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Monroe Street Second Powerhouse Project.

f. Location: At the Monroe Street and Upper Falls developments of the Spokane River Project No. 2545, on the Spokane River in Spokane County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4138.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the reservoir formed by the Division Street Control Works, which spans the north channel of the Spokane River at the upstream tip of Havermale Island, and would consist of: (1) modifications to the south channel to increase the peak flow Capacity; (2) an intake on the south channel adjacent to the Upper Falls dam and intake; (3) a 20-foot-diameter, 1,040-foot-long underground penstock; (4) a 40 foot by 80 foot powerhouse adjacent to the Monroe Street powerhouse containing two identical generating units with a total capacity of 37.5 MW and an average annual output of 175 GWh; (5) modifications to the Monroe Street tailrace; and (6) a 350-foot-long, 115 KV transmission line connecting to the

applicant's existing Post Street Substation. The estimated cost of remaining permit activities is $200,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No. 10711–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Long Lake Second Powerhouse.

f. Location: At the Long Lake development of the Spokane River Project No. 2545, near Reardan in Lincoln County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4138)

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the Long Lake dam and reservoir and would consist of: (1) an intake at the cutoff dam, which is 600 feet upstream of the Long Lake dam; (2) a 20-foot-diameter, 1,000-foot-long penstock; (3) a 40 foot by 80 foot powerhouse adjacent to the existing powerhouse containing a generating unit with a capacity of 50 MW and an average annual output of 94 GWh; (4) a tailrace; and (5) a connection to the existing 115 KV transmission line from the Long Lake powerhouse. The estimated cost of remaining permit activities is $150,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10712–000.

c. Date Filed: December 15, 1988.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Nine Mile Second Powerhouse Project.

f. Location: At the Nine Mile development of the Spokane River Project No. 2545, in Spokane County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger D. Woodworth, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220, (509) 482–4138.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would utilize the existing 58-foot-high, 364-foot-long, concrete gravity Nine Mile dam and reservoir, which has a 420 acre surface area at normal full pool elevation 1,606.6 feet, msl. Depending on the results of feasibility studies, the reservoir elevation could be raised, by modifying the existing dam or constructing a new dam, to 1,616.6 feet, msl, producing a 500 acre surface area, and a single generating unit could be added, with a capacity of 15 MW and an average annual output of 32 GWh. The estimated cost of remaining permit activities is $150,000.

l. Purpose of Project: Project power would be used to serve the applicant's load requirements or to displace higher cost thermal resources.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10715–000.

c. Date Filed: December 30, 1988.

d. Applicant: Island Power Company, Inc.

e. Name of Project: Upper Wailua Water Power Project.

f. Location: On the North Branch of the North Fork Wailua River in Kauai County, Hawaii.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: McNeill Watkins II, 1400 L Street NW., Washington, DC 20005, (202) 371–5785.

i. FERC Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: March 30, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing Wailua-Hanalei extension tunnel; (2) a proposed intake structure constructed at the tunnel outlet; (3) a proposed 6,400-foot-long penstock; (4) a proposed powerhouse containing one generating unit rated at 1,260 kW; (5) a proposed 12-kV transmission line, approximately 3-miles long; and (6) appurtenant facilities. The estimated average annual energy output for the project is 7,200,000 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $290,000.

l. Purpose of Project: Energy produced at the project would be sold to the Kauai Electric Division.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 10717–000.

c. Date Filed: January 4, 1989.

d. Applicant: Blue Marsh Hydro Associates.

e. Name of Project: Blue Marsh Dam.

f. Location: On Tulpehocken Creek near Reading, Berks County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Kenneth R. Broome, Blue Marsh Hydro Associates, 15 Fawn Drive, Reading, PA 19607.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 10, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Blue Marsh Dam and reservoir and would consist of: (1) an existing intake structure; (2) an existing 48-inch diameter pipe; (3) a proposed penstock 48-inches in diameter and 50 feet long; (4) a proposed concrete block powerhouse housing a 400-kW hydropower unit; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The estimated annual energy production is 2.4 MWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $16,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to constuct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wilflife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 6, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3133 Filed 2–8–89 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88-29-004]

Florida Gas Transmission Co.; Proposed Changes In FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Florida Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

1st Revised Sheet No. 57D

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. 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 action 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. 89-3137 Filed 2-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-24-003]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes In FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet No. 52f.18
First Revised Sheet No. 52f.19
First Revised Sheet No. 52f.20
First Revised Sheet No. 52f.21.

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. 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. 89-3138 Filed 2-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-26-002]

Transwestern Pipeline Co.; Proposed Changes In FERC Gas Tariff Pursuant to Order No. 497

February 6, 1989.

Take notice that on January 31, 1989, Transwestern Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

1st Revised Sheet No. 30F
1st Revised Sheet No. 30G
1st Revised Sheet No. 30H
1st Revised Sheet No. 30I
1st Revised Sheet No. 34E
1st Revised Sheet No. 34F
1st Revised Sheet No. 34G
1st Revised Sheet No. 34H

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by February 13, 1989. 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. 89-3139 Filed 2-8-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings And Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $29,300,785, plus accrued interest, obtained by the DOE from Amorient Petroleum Company, California (Case No. KEF-0101), Salomon, Inc. (Case No. KEF-0109), Coral Petroleum, Inc. (Case No. KEF-0114), International Crude Corporation (Case No. KEF-0115) and Conoco Inc. (Case No. KFX-0027). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate and postmarked no later than October 31, 1989 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute funds obtained from Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation and Conoco Inc.

The DOE has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude

oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of refined petroleum products. Applications must be filed in duplicate and postmarked no later than October 31, 1989. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

Date: February 3, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Names of Firms: Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, Conoco Inc.

Dates of Filings: February 8, 1988, June 17, 1988, August 2, 1988, August 2, 1988, November 14, 1983

Case Numbers: KEF-0101, KEF-0109, KEF-0114, KEF-0115, KFX-0027.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed five Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Amorient Petroleum Company, California (Amorient),[1] Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation and Conoco Inc.[2] These five firms remitted a total of $29,300,785 to the DOE.[3] An additional $6,182,544 in interest has accrued on that amount as of December 31, 1988. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from the five firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty (80) percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988)(*Shell Oil*), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988)(*Allerkamp*), and the procedures

[1] The Amorient Consent Order refers to the firm's sales of crude oil and refined petroleum products during the period from August 19, 1973 through January 27, 1981. However, after reviewing the ERA audit file concerning Amorient's pricing practices, we find that it is likely that the firm sold only crude oil during the consent order period. This finding in no way represents a determination on any of the factual or legal issues involved in the Amorient enforcement proceeding that was settled by the Consent Order. Rather, it represents our determination as to the most equitable and efficient method of treating the Amorient consent order funds for purposes of this Subpart V proceeding.

[2] On December 12, 1985, the OHA issued a Decision and Order concerning the petition to implement refund procedures for $11 million in crude oil overcharge funds and $3 million in petroleum product overcharge funds obtained from Conoco Inc. pursuant to a court approved settlement. *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). One crude oil refund of $135,846 was granted to a direct purchaser of crude oil in that proceeding. *See Conoco Inc./Delmarva Power*, 17 DOE ¶ 85,622 (1988). We will distribute the $10,864,154 in residual funds in the Conoco escrow account, plus accrued interest, pursuant to the procedures set forth in this Decision.

[3] In addition to the $10,864,154 in the Conoco escrow fund, Amorient remitted $1,083,442 to the DOE pursuant to a July 8, 1985 Consent Order, Number 940X00166Z; Salomon, Inc. remitted $16,250,000 to the DOE pursuant to a March 24, 1988 Consent Order, Number 6C0X00249Z; Coral Petroleum, Inc. remitted $1,000,000 pursuant to a settlement approved on February 8, 1988, Consent Order Number 650X00320Z; and International Crude Corporation remitted a total of $103,188.89 pursuant to a Consent Order entered into between its president, Gregg Pritchard, and the DOE for $36,093.09, Consent Order Number 6A0X00327Z, and an award by the bankruptcy trustee of International Crude Corp. for $67,095.80.

have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606. (Temp. Emer. Ct. App. 1988)

II. The Proposed Decisions and Orders

On September 14, 1988, the OHA issued a Proposed Decision and Order establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco Inc. 53 FR 36486 (September 20, 1988). On October 17, 1988, the OHA issued a Proposed Decision and Order establishing the same tentative procedures to distribute the alleged crude oil violation amounts obtained from Amorient. 53 FR 43028 (October 25, 1988). The OHA tentatively concluded that the monies in those cases should be distributed in accordance with the MSRP and the April 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the Proposed Decisions and Orders, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. Both Decisions stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decisions and Orders.

III. Discussion of the Comments Received

In response to the Proposed Decisions and Orders, the OHA received comments from Philip P. Kalodner, counsel for 6 electric utilities, 14 foreign-flag shipping companies, and 4 pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. In his comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Kalodner, such a distribution will preclude claimants from obtaining "their full direct restitutionary share of crude oil refunds." Kalodner Comments at 4. Kalodner claims that the 20 percent reserve is insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that assurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the States and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." *Id.* at 5.

Kalodner's arguments are not persuasive. The DOE could not, and did not, give assurances as to the precise level of restitution that would be afforded to claimants from the crude oil overcharge funds. Instead, the DOE agreed that it would apply existing Subpart V regulations and precedents to claims for crude oil overcharge funds. Accordingly, Kalodner's premise as to assurances given by the DOE is incorrect. It must be emphasized that neither the Subpart V refund regulations nor the Settlement Agreement addresses any particular formula OHA must employ when granting refunds from the claimants' 20 percent set-aside. In fact, that the DOE has considerable discretion in how to allocate available funds among claimants was fully endorsed by Judge Theis and by TECA when they approved OHA's use of the "full parity" methodology to be used in paying claims. *See In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323–24 (D. Kan. 1987); *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 at 26,927. (Temp. Emer. Ct. App. 1988) The court's determination upholding the full parity method severs the self-interested arguments of parties on both extremes. It defeats the challenge from the States, who sought to minimize the amount of refunds paid to Subpart V claimants from the 20 percent reserve, and it also defeats the attack from Kalodner's clients, who seek to increase their refunds by inflating the per-gallon amount of refunds in Subpart V proceedings.[4]

Moreover, there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants. His argument is based on a pyramid of speculation and unsubstantiated allegations. For example, Kalodner contends that, given OHA's record of approval of refund cases, including those in which the States have filed comments, there will be essentially no disallowance of pending claims. Kalodner, in effect, assumes that the volumes claimed in the remaining refund applications will not significantly decrease through the OHA's analyses of those claims. Indeed, facts known today belie the validity of the "worst case scenario" raised by Kalodner. First, not all volumes submitted by claimants will prove to be valid, and volumes will decrease through the OHA analysis of those claims. For example, in *Borst Oil Corp.*, 17 DOE ¶ 85,232 (1988), we denied claims based on purchases of 747 million gallons by petroleum resellers who failed to prove they were injured by crude oil overcharges. In *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988), we held that the States, in challenges to

[4] Mr. Kalodner also suggests in his comments that we add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–175. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

refund applications filed by foreign flag ocean carriers, have submitted information that rebutted the presumption that the carriers were injured by crude oil overcharges and shifted the burden of going forward with evidence back to the carriers. We therefore established a schedule for the submission of additional legal arguments and factual materials. It is unclear the extent to which those applications will be granted. There are thousands of other refund claims in which serious challenges have been raised. These disputes will have to be adjudicated before the magnitude of valid claims can be accurately determined. We therefore reject Kalodner's arguments regarding the sufficiency of the 20 percent set-aside.

Based upon the foregoing conclusions, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to this determination in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the Proposed Decisions and Orders, and order the disbursement of 80 percent of the alleged crude oil violation amounts to the states and federal government.

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $29,300,785 in alleged crude oil violation amounts covered by this Decision, plus the $6,182,544 in interest which has accrued on that amount as of December 31, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted earlier, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $7,096,666, including interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *See Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See Tarricone*, 15 DOE at 88,893–96. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *See Tarricone*, 15 DOE at 88,896. They can, however, use econometric evidence of the type employed in the OHA Report on Stripper Well Overcharges. *See* 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($29,300,785) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This yields a volumetric refund amount of $0.0000144982 per gallon.[5]

Refund applications submitted pursuant to this Decision must be postmarked no later than October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶ 85,568 (1988). As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the Subpart V crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an Application for Refund. The application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationship to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained its purchase volume figures and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

[5] The total volumetric refund amount approved in all proceedings finalized prior to and including *Shell Oil* was $0.0008442315. *Shell Oil*, 17 DOE at 88,406. When the volumetric amount approved in *World Oil Co., New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988), and this Decision is added to that amount, the current total per-gallon refund is $0.0008623945. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future.

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e., by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Settlement Agreement in the Stripper Well Exemption Litigation);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the appropriate regulatory authority of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although the applicant need not use any special application form to apply for crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $35,483,289 ($29,300,785 in principal plus $6,182,544 in interest) involved in this Decision, or $28,386,663, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $28,386,663 and transfer one-half of that amount, or $14,193,331.50, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reported requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco Inc. may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to paragraphs (4), (5), and (6) below, all of the funds from the following subaccounts:

Amorient Petroleum Company, California, Account No. 940X00168Z
Salomon, Inc., Account No. 6COX00249Z
Coral Petroleum, Inc., Account No. 650X00320Z
International Crude Corporation, Account No. 6AOX00327Z
Conoco Inc., Account No. RCOA00002Y.

(4) The Director of Special Accounts and Payroll shall transfer $14,193,331.50 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from December 31, 1988 to the date of transfer into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $7,096,606 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from December 31, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

George B. Breznay,
Director, Office of Hearings and Appeals.
Date: February 3, 1989.

[FR Doc. 89-3112 Filed 2-8-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59860; FRL-3517]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: 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 nine such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-37, 89-38, 89-39—January 1, 1989.
Y 89-40—January 4, 1989.
Y 89-41—January 5, 1989.
Y 89-45—January 11, 1989.
Y 89-46, 89-47, 89-48—January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. 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 89–37

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Reactant for a polymer adhesive raw material. Prod. range: 45,454–113,636 kg/yr.

Y 89–38

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Saturated polyester resin.
Use/Production. (S) Low profile additive for sheet molding compound. Prod. range: Confidential.

Y 89–39

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 89–40

Manufacturer. Minnesota Mining & Manufacturing Co., 3M.
Chemical. (G) Arylalkyl polyester diol.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Y 89–41

Manufacturer. Minnesota Mining & Manufacturing Co., 3M.
Chemical. (G) Aromatic polyester urethane.
Use/Production. (G) Binder resin. Prod. range: Confidential.

Y 89–45

Manufacturer. Confidential.
Chemical. (S) Phenol; formaldehyde; sodium hydroxide; and potassium hydroxide.
Use/Production. (S) Thermosetting binder for plywood. Prod. range: Confidential.

Y 89–46

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Intaglio varnish.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89–47

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Alkyd resin.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 89–48

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Intaglio varnish.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Date: January 13, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–3067 Filed 2–8–89; 8:45 am]

BILLING CODE 8560–50–M

[OPTS–51725; FRL–3517–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: 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 forty-two such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89–136, 89–137, 89–138, 89–139, 89–140, 89–141, 89–142, 89–143, 89–144, 89–145, 89–146, 89–147, 89–148, 89–149, 89–150, 89–151, 89–152, 89–153, 89–154, 89–155, 89–156, 89–157, 89–158, 89–159, 89–160, 89–161, 89–162, 89–163, 89–164, 89–165—December 25, 1988.

P 89–166—March 4, 1989.

P 89–167—January 29, 1989.

P 89–171—March 6, 1989.

P 89–172—March 5, 1989.

P 89–173, 89–174—March 7, 1989.

P 89–175, 89–176, 89–177, 89–178—March 11, 1989.

P 89–179, 89–180—March 12, 1989.

Written comments by:

P 89–136, 89–137, 89–138, 89–139, 89–140, 89–141, 89–142, 89–143, 89–144, 89–145, 89–146, 89–147, 89–148, 89–149, 89–150, 89–151, 89–152, 89–153, 89–154, 89–155, 89–156, 89–157, 89–158, 89–159, 89–160, 89–161, 89–162, 89–163, 89–164, 89–165—November 25, 1988.

P 89–166—February 2, 1989.

P 89–167—December 30, 1988.

P 89–171—February 4, 1989.

P 89–172—February 3, 1989.

P 89–173, 89–174—February 5, 1989.

P 89–175, 89–176, 89–177, 89–178—February 9, 1989.

P 89–179, 89–180—February 10, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51725]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

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 89–136

Manufacturer. Ethyl Corporation.
Chemical. (S) Octenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 PPM 4 hr. species(Rat).

P 89–137

Manufacturer. Ethyl Corporation.
Chemical. (S) Decenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 PPM 4 hr. species(Rat).

P 89–138

Manufacturer. Ethyl Corporation.
Chemical. (S) Dodecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm species(Rat).

P 89–139

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species (Rat). Acute dermal toxicity: LD 50 > 10 g/kg species (Rabbit). Inhalation toxicity: LC50 33, 400 ppm 4 hr species(Rat).

P 89–140

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexadecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–141

Manufacturer. Ethyl Corporation.
Chemical. (S) Octadecenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–142

Manufacturer. Ethyl Corporation.
Chemical. (S) Eicosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–143

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–144

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–145

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–146

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–147

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontenes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–148

Manufacturer. Ethyl Corporation.
Chemical. (S) Octanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–149

Manufacturer. Ethyl Corporation.
Chemical. (S) Decanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rat).

P 89–150

Manufacturer. Ethyl Corporation
Chemical. (S) Dodecanes
Use/Production. (G) Chemical intermediate. Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm species(Rats).

P 89–151

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–152

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexadecanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–153

Manufacturer. Ethyl Corporation.
Chemical. (S) Octadecanes
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–154

Manufacturer. Ethyl Corporation.
Chemical. (S) Eicosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–155

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–156

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–157

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89–158

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg

species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89-159

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontanes.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89-160

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetradecenes.
Use/Production. (G) Component. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10 g/kg species(Rat). Acute dermal toxicity: LD50 > 10 g/kg species(Rabbit). Inhalation toxicity: LC50 33,400 ppm 4 hr. species(Rats).

P 89-161

Manufacturer. Ethyl Corporation.
Chemical. (S) Docosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 89-162

Manufacturer. Ethyl Corporation.
Chemical. (S) Tetracosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 89-163

Manufacturer. Ethyl Corporation.
Chemical. (S) Hexacosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 89-164

Manufacturer. Ethyl Corporation.
Chemical. (S) Octacosenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 89-165

Manufacturer. Ethyl Corporation.
Chemical. (S) Triacontenes.
Use/Production. (G) Component. Prod. range: Confidential.

P 89-166

Manufacturer. Confidential.
Chemical. (G) Modified polyether carbodiimide.
Use/Production. (G) Crosslinking agent for carboxylated polymers. Prod. range: Confidential.

P 89-167

Manufacturer. Confidential.
Chemical. (G) Poly(ester-imide).
Use/Production. (G) Industrially used chemical with an open use. Prod. range: 1,500-6,000 kg/yr.

P 89-171

Importer. Confidential.
Chemical. (S) Benzenepentanol, gamma-methyl-; 2-methyl-5-phenyl-pentanol.
Use/Production. (G) Dispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species(Rat). Eye irritation: Moderate species(Rabbit). Skin irritation: Moderate species(Rabbit). Mutagenicity: Negative. Skin sensitization: Negative species (guinea pig).

P 89-172

Manufacturer. Sanncor Industries, Inc.
Chemical. (S) 2-Methyl-omega-hydroxy-poly(oxy-1,4)butandiyl polymer with 3-hydroxy-2-hydroxymethyl-2-methyl propanic acid, meta-tetramethyloxylene dissocyanate and 3-amino methyl-3,5,5-trimethyl cyclohexylamine.
Use/Production. (G) Fabric coating. Prod. range: Confidential.

P 89-173

Manufacturer. Monsanto Company.
Chemical. (G) Modified methylated, butylated-melamine/formaldehyde resin blocked alkylbenzene sulfonic acid.
Use/Production. (G) Component of thermosetting paint formulations. Prod. range: Confidential.

P 89-174

Importer. Huls America Inc.
Chemical. (G) Alkyd resin.
Use/Import. (S) Liquor ingredient. Import range: Confidential.

P 89-175

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Production. (S) Coating. Prod. range: Confidential.

P 89-176

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coating. Prod. range: Confidential.

P 89-177

Manufacturer. Confidential.
Chemical. (G) Aqueous dispersion of polyurethane urea.
Use/Production. (S) Component of industrial adhesives. Prod. range: Confidential.

P 89-178

Manufacturer. Confidential.
Chemical. (G) Aqueous dispersion of polyurethane urea.
Use/Production. (S) Component of industrial adhesives. Prod. range: 203,500-407,000 kg/yr.

P 89-179

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, metal salt.
Use/Production. (G) Polymerization catalyst. Prod. range: 6,000-40,000 kg/yr.

P 89-180

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid, metal salt.
Use/Production. (S) Coatings. Prod. range: Confidential.

Date: January 31, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-3068 Filed 2-8-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51724; FRL-3517-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: 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 (PMNF) 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 seven such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-231—March 27, 1989.
P 89-232, 89-233—March 29, 1989.
P 89-234, 89-235, 89-236—April 2, 1989.
P 89-238—March 27, 1989.

Written comments by:

P 89-231—February 25, 1989.
P 89-232, 89-233—February 27, 1989.
P 89-234, 89-235, 89-236—March 3, 1989.
P 89-238—February 25, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-52724]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. 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 89–231

Importer. Pfister Chemical, Inc.

Chemical. (S) 3-diazo-3, 4-dihydro-4-oxo-1-naphthalene-sulfonic acid, sodium salt monohydrate.

Use/Import. (S) Intermediate for the production of photo sensitiers used in microelectronics industry. Import range: 3,000 kg/yr.

P 89–232

Importer. Confidential.

Chemical. (G) Brominated aromatic carbonate oligomer.

Use/Import. (S) Flame retardant for plastics. Import range: Confidential.

P 89–233

Importer. Confidential.

Chemical. (G) Brominated aromatic carbonate oligomer.

Use/Import. (S) Flame retardant for plastics. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 15,000 kg/yr species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 89–234

Importer. GE Plastics.

Chemical. (G) Oligomeric phosphate ester.

Use/Import. (S) Flame retardent for thermoplastic resin. Import range: Confidential.

P 89–235

Manufacturer. Confidential.

Chemical. (S) Tall oil fatty acids; pentaerythritol; cyclohexanedimethanol; ethylene glycol; benzoic acid; chlorendicanhydride; maleic anhydride.

Use/Import. (S) Polymer used as the major vehicle component of a protective coating formulated use on metal substrates. Prod. range: 35,121–90, 718 kg/yr.

P 89–236

Importer. Harvey E. Giss and Associates.

Chemical. (S) 4-Dibenzylamino-2-methyl benzldehyde-diphenyl hydrazone.

Use/Import. (S) Electrographic photoconductor. Import range: 1,000–5,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Guinea pig). Mutagenicity: Negative. Skin sensitization: Negative species (Guinea pig). Phototoxicity: Negative species (Guines pig).

P 89–238.

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Dispersing agent. Prod. range: Confidential.

Date: January 18, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–3069 Filed 2–8–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program October 1, 1988–December 31, 1988

Summary Report

Total Number of Sponsored Events	6
Total Number of Sponsoring Organizations	6
Total Number of Commissioners/ Employees Attending	13
Total Amount of Reimbursement Expected:	
Transportation	$3,149.35
Subsistence	2,450.30
Other expenses	503.60
Total	6,103.25

Individual Event Reports Attached. Amount of Reimbursement Shown May be Estimated.

Individual Event Report

Sponsoring Organization

WSBK–TV/Gillett Communications of Boston, Inc., 83 Leo Brimingham Parkway, Boston, Massachusetts 02136

Date of the Event

October 13, 1988

Description of the Event

To participate as panel members at the National Broadcast Association for Community Affairs Convention—1988

Commissioners Attending

None

Other Employees Attending

Diane Killory—General Counsel
Richard Bozzelli—Special Assistant—Office of General Counsel

Amount of Reimbursement

Transportation	$297.00
Subsistence	157.50
Other expenses	71.60
Total	526.10

Individual Event Report

Sponsoring Organization

SLACK Incorporated, 6900 Grove Road, Thorofare, New Jersey 08086

Date of the Event

October 5, 1988

Description of the Event

To speak on Federal, Legal and Regulatory Issues at the Atlantic Cable Show—1988

Commissioners Attending

None

Other Employees Attending

Lisa Hook—Legal Assistant—Office of the Chairman

Amount of Reimbursement

Transportation	$131.35
Subsistence	49.50
Other expenses	11.00
Total	191.85

Individual Event Report

Sponsoring Organization

California Cable Television Association, 4341 Piedmont Avenue, Oakland, California 94611

Date of the Event

December 7–9, 1988

Description of the Event

To participate in the 1988 Western Cable Show

Commissioners Attending

None

Other Employees Attending

Renee Licht—Attorney Advisory—Mass Media Bureau
John Wong—Electronics Engineer—Mass Media Bureau
Ronald Parver—Supv. Attorney—Mass Media Bureau
William Johnson—Deputy Chief—Mass Media Bureau
John Haring—Chief—Office of Plans and Policy

Amount of Reimbursement

Transportation	$1,870.00
Subsistence	1,1411.89
Other expenses	247.64
Total	3,529.44

Individual Event Report

Sponsoring Organization

Bellcore—Bell Communications Research, 6200 Route 53, Lisle, Illinois 60532

Date of the Event

November 21–22, 1988

Description of the Event

To participate in Bellcore's Telecommunications Industry Perspectives 88 Symposium

Commissioners Attending

None

Other Employees Attending

John Haring—Chief—Office of Plans and Policy

Amount of Reimbursement

Transportation	$417.00
Subsistence	118.00
Other expenses	0.00
Total	535.00

Individual Event Report

Sponsoring Organization

EIC/Intelliegence, Inc., 48 West 38th Street, New York, New York 10018

Date of the Event

October 4, 1988

Description of the Event

To participate at the Tele/Scope Sixth Annual Telecommunications Forum

Commissioners Attending

None

Other Employees Attending

Peter K. Pitsch—Chief of Staff—Office of the Chairman

Amount of Reimbursement

Transportation	$116.00
Subsistence	0.00
Other expenses	40.00
Total	156.00

Individual Event Report

Sponsoring Organization

United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105

Date of the Event

October 10–12, 1988

Description of the Event

To participate and speak at USTA's 91st Annual Convention held in New York City

Commissioners Attending

Dennis R. Patrick—Chairman

Other Employees Attending

Peter K. Pitsch—Chief of Staff—Office of the Chairman
James D. Schlichting—Legal Assistant—Office of the Chairman

Amount of Reimbursement

Transportation	$318.00
Subsistence	713.50
Other expenses	133.36
Total	$1,164.86

Donna R. Searcy,

Secretary.

[FR Doc. 89–3047 Filed 2–8–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Triple-S Communications et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Edward C. Suggs, Rebecca J. Suggs, Michael E. Suggs d/b/a Triple-S Communications, Loris, SC.	BPH–870915ME	88–598
B. Robert L. Rabon, Loris, SC.	BPH–87091 8MA	
C. Drake Davis Heniford, Loris, SC.	BPH–87091 8MT	
D. Loris Radio Limited Partnership, Loris, SC.	BPH–87091 8MW.	
E. Augusta Radio Fellowship Institute, Inc. d/b/a South Carolina Radio Fellowship, Loris, SC.	BPED–87091 8NH.	

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B,C,D,E
3. Ultimate, A,B,C,D,E

II.

Applicant, City/State	File No.	MM Docket No.
A. C. Ray Helton, Green Valley, AZ.	BPH–871022MH	88–615
B. Abundant Life Ministries, Green Valley, AZ.	BPH–871022MK	
C. Crystal Sets, Inc., Green Valley, AZ.	BPH–871022MD (Previously Dismissed).	

Issue Heading and Applicant(s)

1. Character/ Misrepresentation, A
2. Comparative, A, B
3. Ultimate, A, B

III.

Applicant, City and State	File No.	MM Docket No.
A. Voice of Calvary Educational Ministries, Inc., Roanoke, VA.	BPED–830419AH.	88–585
B. Unity of Roanoke Valley, Salem, VA.	BPED–830830AE	

Issue Heading and Applicant(s)

1. Environmental Impact, B
2. 307(b)-Noncommercial Educational, A, B
3. Contingent Comparative-Noncommercial Educational, A, B
4. Ultimate, A, B

IV.

Applicant, City and State	File No.	MM Docket No.
A. Marilyn S. & James W. Cobb, Nappanee, IN.	BPH–871120MF	88–586
B. Nappanee Broadcasting Corp., Nappanee, IN.	BPH–871022MG	
C. Andrew Lawrence Banas, Nappanee, IN.	BPH–871023MK	

Issue Heading and Applicant(s)

1. Comparative, All
2. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-3095 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Jack A. Tucey et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Jack A. Tucey, Avalon, CA.	BPH-860521ME	89-9
B. Bay Broadcasting Systems, Avalon, CA.	BPH-860529MC	
C. Thomas Quinn Turner, III, Avalon, CA.	BPH-860529MD	
D. Crescent Rainbow Limited Partnership, Avalon, CA.	BPH-860530MG	
E. VLM Enterprises, Inc., Avalon, CA.	BPH-860530MI	

Issue Heading and Applicant(s)

1. Environmental, D & E
2. Comparative, All Applicants
3. Ultimate, All Applicants

II.

Applicant, City and State	File No.	MM Docket No.
A. Smith Broadcasting, Inc., South Pittsburg, TN.	BPH870629NL	89-5
B. Tennessee Broadcast Group Limited Partnership, South Pittsburg, TN.	BPH870630MO	
C. James V. Long, South Pittsburg, TN.	BPH870630MR	
D. Eaton P. Govan, Jr., South Pittsburg, TN.	BPH870630ND	

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Financial Qualifications, C
3. Comparative, A-D
4. Ultimate, A-D

III.

Applicant, City and State	File No.	MM Docket No.
A. Impulse, Inc., Salisbury, MD.	BPH-860507ML	89-1
B. Thompson's Radio Limited Partnership, Salisbury, MD.	BPH-860507MN	
C. Salisbury FM Broadcasting Company, Salisbury, MD.	BPH-860507MP	
D. First Minority Broadcasters of Salisbury, Incorporated, Salisbury, MD.	BPH-860507MR	
E. William H. Mallery d/b/a Salisbury Broadcasting, Salisbury, MD.	BPH-860507MT	
F. Bruce D. Blanchard, Salisbury, MD.	BPH-860507NK	
G. Connor Broadcasting Corp., Salisbury, MD.	BPH-860507QE	
H. Marlene Powell Levering Tr/as Salisbury Broadcasting Company, Salisbury, MD.	BPH-860507MM (Dismissed Previously).	
I. Gallus Radio Broadcasting, Inc., Salisbury, MD.	BPH-860507MS (Dismissed Previously).	

Issue Heading and Applicant(s)

1. Air Hazard, D
2. Comparative, All
3. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the isues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-3096 Filed 2-8-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-103]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: February 2, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board"), by Resolution No. 88-1575, dated December 29, 1988, made it clear that the protections afforded those dealing with insured savings and loan associations in "repos" of government and mortgage-backed securities by amendments to the Bankruptcy Code by Resolution No. 84-572 would also be afforded to securities dealers and others engaged in repo transactions with Western Savings and Loan Association, Phoenix, Arizona ("Western"). Thereafter, the Board found that paragraph 3 of Resolution No. 88-1575, which was inapplicable to Western, was inadvertently included. Accordingly, this new Resolution deletes Paragraph 3 and corrects the numbered paragraphs following Paragraph 2. In addition, the definition of "Repos Assets" inadvertently included "whole loan mortgages and interests therein" and this phase is also deleted. In view of possible reliance on this language, however, the amendment of the

definition of "Repo Assets" will not be immediately effective.

EFFECTIVE DATE: February 2, 1989. The definition of "Repo Assets" will become effective March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377–6428; or Debra Buie, Attorney, Office of General Counsel, (202) 377–6851; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for Western Savings and Loan Association, a Arizona chartered institution ("Western"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to Western, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, The Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows: 1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to Western shall be conducted solely by the FSLIC (and not the Arizona Superintendent of Banks) as receiver, conservator or similar official ("Receiver") under Federal law and regulations, Board Resolution No. 84–572, and these resolutions.

2. The Receiver will perform all of Western's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

4. In any termination of the receivership of Western or disposition of Western's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84–572 and these resolutions.

5. Notwithstanding any other provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all if its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

6. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

7. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

8. In connection with a Repo or New Repo counterparty's exercise of remedies upon failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

9. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; *provided,* however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

10. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by Western, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any tranferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to Western in exchange for such transfer and provided further that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

11. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of Western's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; *provided,* however, that a liquidation of Repo Assets at any point during such period or after a longer period of time shall not in and of itself constitute a commercially unreasonable time.

12. In connection with any Repo or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right or notice and purchase (12 CFR 563.B–2) and the contractual language required thereby, if applicable to any Repo Assets.

13. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84–572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 4, 5, 6, 7, 8, 10, and 12, the proviso to paragraph 9, and the second sentence of paragraph 11 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on

the appointment of the Receiver for Western.

14. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolution No. 84–572 and these resolutions in continuing to renew and enter into Repos with Western, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84–572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days and any such amendment or rescission shall operate only prospectively.

"Cross Default" means, as to any counterparty to a Repo or New Repos, (a) the failure by Western or the Receiver to make any payment of funds or delivery of additional Repo Asset to any other Repo or New Repo counterparty when due, (b) the failure by Western or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the Federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by Western (or the Receiver, in the case of New Repos) pursuant to which Western or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortage Corporation, or (to the extent that Repo Assets are securities that are direct to obligations of or that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to Western or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3100 Filed 2–8–89; 8:45 am]

BILLING CODE 6720–01–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 revise currently approved information collection 3090–0121, Contractor's Report of Orders Received, GSA Forms 72 and 72A. This information is used by GSA to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on future contracts based on volume, and for special reports.

AGENCY: Office of Acquisition Policy (V), 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, 5,982; responses, 20 per year; average hours per response, .264; burden hours, 32,204.

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 Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: February 1, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–3039 Filed 2–8–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M–0399]

Abbott Laboratories; Premarket Approval of Murine® Sterile Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Sterile Saline Solution. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Nonpreserved Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 8, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 13, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On July 28, 1988, Abbott Laboratories, Columbus, OH 43215, submitted to CDRH an application for premarket approval of Murine® Sterile Saline Solution. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Non-preserved Saline Solution.

On November 8, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH

based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 13, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 1, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–3055 Filed 2–8–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1989:

Name: National Advisory Council on Health Professions Education.

Date and Time: March 30–31, 1989, 9:00 a.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on March 30, 9:00 a.m.–12:00 noon.

Closed for Remainder of Meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, financial management and legislative implementation update, and future agenda items. The meeting will be closed at 12:00 noon on March 30, 1989, for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

Agenda Items are subject to change as priorities dictate.

Date: February 6, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–3092 Filed 2–8–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of Pub. L. 92–463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress:

Health Care Technology Study Section;
Health Services Research and Developmental Grants Review Committee;
National Advisory Council on Health Care Technology Assessment.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, Room G400, 330 Independence Avenue SW., Washington, DC 20201, telephone (202) 245–6791.

Copies may be obtained from Mr. James E. Owens, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3091.

Dated: January 31, 1989.

Donald E. Goldstone,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89–3101 Filed 2–8–89; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF(Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, Feb. 25, 1970, as amended most recently in pertinent part at 48 FR 54130, Nov. 30, 1983) is

amended to reflect a retitling of an office in the Food and Drug Administration.

FDA proposes to retitle the Office of Compliance in the Center for Devices and Radiological Health as the Office of Compliance and Surveillance to give higher visibility to its postmarketing product surveillance commitment.

Section HF-B Organization and Functions is amended as follows:

1. Delete paragraph o-2 Office of Compliance (HFWC) in its entirety.

2. Insert new paragraph o–2 Office of Compliance and Surveillance (HFWC) reading as follows:

(o–2) *Office of Compliance and Surveillance (HFWC).* Advises the Center Director and other Agency officials on legal, administrative, and regulatory programs and policies concerning Agency compliance responsibilities relating to medical device and radiological health activities.

Develops, directs, coordinates, evaluates, and monitors compliance and surveillance programs covering regulated industry.

Conducts field tests and inspections when necessary for regulatory purposes and evaluates industry quality control and testing programs to assure compliance with regulations.

Provides advice to Agency field offices on, and manages Center activities relating to legal actions, case development, and contested case assistance.

Designs, develops, and implements Center programs to collect, evaluate, and disseminate medical device data, including information on injuries and other experience; register device establishments; and list products.

Manages and coordinates Center activities under the Government-wide Quality Assurance and Bioresearch Monitoring Programs.

Coordinates all field planning activities and issues all field assignments for the Center.

Provides technical support and guidance in the development and review of standards and regulations, and the training of Federal and State compliance personnel.

Advises actual or potential manufacturers concerning the requirements of the law and regulations.

Date: January 30, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89–3102 Filed 2–8–89; 8:45 am]

BILLING CODE 4160-1-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4120-10]

Proposed Decertification of All or a Portion of the Powder River Coal Production Region in Montana and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice.

SUMMARY: On December 15, 1988, the Powder River Regional Coal Team (RCT) recommended (1) not to initiate the coal activity planning process within the Powder River Region until at least the next RCT meeting and (2) not to delete Musselshell, Yellowstone, and Golden Valley counties, Montana, from the region but rather to gain public comment on partial and total decertification of the Powder River Coal Region. This notice implements these recommendations in accordance with the concurrence of the Director of the Bureau of Land Management.

DATE: Public comments on the proposal are requested on or before April 10, 1989.

ADDRESS: Public comments are to be sent to State Director (925), Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, telephone 307–772–2571 or FTS 328–2571, at the above address.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Powder River RCT reviewed the need for additional Federal coal leasing within the Powder River Coal production region. The RCT recommended that no regional Federal coal leasing activity planning efforts be initiated at this time. The RCT recommendation was based largely on a recognition of limited leasing interests in the region, soft market conditions for the foreseeable future, and public input. The Director of the Bureau of Land Management and the Department of the Interior concur with this recommendation.

During this same public meeting, the RCT reviewed a proposal to delete Musselshell, Yellowstone, and Golden Valley counties, Montana, from the Powder River Coal Production region. If deleted, these counties would have been opened to Federal coal leasing-by-application. Based largely on public discussion, the RCT recommended not to delete these three counties. Instead, the RCT concluded that public comments should be requested on partial as well as total decertification of the Powder River Region. The remainder of this ntoice explains the implications of partial and total regional decertification.

The Powder River Coal Production Region is composed of Campbell, Converse, Crook, Goshen, Johnson, Natrona, Niobrara, Sheridan, and Weston counties, Wyoming, and Big Horn, Golden Valley, Musselshell, Powder River, Rosebud, Treasure, and Yellowstone counties, Montana. The Powder River RCT guides, among other things, the regional Federal coal leasing processes within these counties. Currently, with the exception of emergency coal leasing pursuant to 43 CFR Part 3425, all coal leasing efforts within the region must be conducted through the regional coal activity planning process set out in 43 CFR Part 3420. This activity planning process is more expensive and time consuming than coal leasing-by-application. Due to the limited leasing potential and soft regional coal market conditions, the RCT has not recommended any regional coal activity planning efforts in the past 5 years. However, a small number of apparently viable coal leasing interests have been recognized in the region during the past 5 years. These leasing interests have not been pursued because no regional coal activity planning has been pursued.

However, if the region were partially or totally decertified, then these areas would be opened to leasing-by-application pursuant to 43 CFR 3425.1–5. Lease applications could then be generally processed in approximately 1 year, rather than the 3 year minimum timeframe necessary for regional coal activity planning to result in a competitive lease sale. Partial decertification would be implemented by removal of Musselshell, Yellowstone, and Golden Valley counties, Montana, from the region. The RCT's oversight of leasing-by-application in these three counties could be retained via RCT charter modification. The remainder of the region would remain as it is and, therefore, be subject to the regional coal activity planning process.

Total decertification would be implemented by removal of all counties from the region. The RCT would recommend to the Secretary of the Interior to revise its charter to allow it to guide leasing-by-application within the region. The revised charter would have a provision to allow for the re-establishment of the regional activity planning process, should market conditions strengthen and more

widespread regional leasing again becomes necessary.

The reason for the RCT's proposal of partial and total decertification is to allow for an accommodation of the limited leasing potential within the subject areas, during the current soft coal market, and with the maximum administrative efficiency (i.e., time, Federal personnel, and Federal funds).

The RCT will review all public responses to this notice at the next RCT meeting in 1989. Based on public input and regional coal leasing needs, the RCT will develop at its next public meeting, a recommendation on whether to (1) keep the region in tact (no change), (2) partially decertify the region and allow for coal leasing-by-application with RCT oversight in Musselshell, Golden Valley, and Yellowstone counties, Montana, or (3) decertify the entire region thereby allowing leasing-by-application throughout the region with RCT oversight. Public comments and suggestions are requested on these proposals within 60 days of the date this notice is published in the Federal Register. Comments are requested to be sent to the address above. The public RCT meeting during which the RCT will develop its recommendations on partial or total decertification will be announced in a subsequent Federal Register notice.

Ray Brubaker,

State Director.

[FR Doc. 89-3122 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-22-M

[CA-020-09-4050-90]

California; Cancellation of Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council meeting, originally scheduled for Tuesday, February 14, 1989 has been cancelled. The meeting will be rescheduled at a later date.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana at 916-257-5381.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 89-3126 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ 020-41-5410-10-ZAFG; AZA-23675]

Mineral Interest Applications: Arizona

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Lakeview City, Inc. has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 E.
Sec. 9;
Sec. 13;
Sec. 14;
Sec. 15;
Sec. 22;
Sec. 23;
Sec. 24;
Sec. 27.
T. 6 N., R. 3 E.,
Sec. 18;
Sec. 19.
Containing approximately 6,000 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, January 11, 1989, whichever occurs first.

Henri R. Bisson,

Acting District Manager.

Date: February 1, 1989.

[FR Doc. 89-3121 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-32-M

[MT-020-09-4212-11; MTM 55856]

Revocation of Classification and Opening of Land; Montana

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice.

SUMMARY: This action revokes Recreation and Public Purpose Classification MTM 55885 and opens the lands affected to the operation of the public land and mining laws. They have been and remain open to mineral leasing.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Loren Glade, BLM Miles City District Office, P.O. Box 940, Miles City, Montana 59301, 406-232-4331.

SUPPLEMENTARY INFORMATION: The Recreation and Public Purpose Act classification effected by the Initial Classification Decision of September 15, 1982, for the following described lands is hereby revoked as provided for in 43 CFR 2450.6:

Principal Meridian

T. 9 S., R. 55 E., Section 30, That part of lot 5 (formerly lot 2) described my metes and bounds as follows: Commencing as a point 200 feet east of the west quarter corner; thence S 89° 55' E 500 ft., thence N 0° 5' W 250 ft., thence N 89° 55' W 500 ft., thence S 0° 5' E 250 ft., to the point of Beginning excepting therefrom lot 6.

The area described contains 1.53 acres in Carter County.

1. At 9 a.m. on March 3, 1989, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to March 3, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on March 3, 1989, the land will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a rights of possession are governed by State law where not in conflict with Federal Law. The Bureau of Land Management will not intervene in disputes between rival locators across possessory rights since Congress has provided for such determinations in local courts.

Date: February 1, 1989.

Mat Millenbach,

District Manager.

[FR Doc. 89-3123 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-DN-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Bosie, Idaho, effective 10:00 a.m., February 2, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 9, and the survey of the center line of the right-of-way of State Route No. 28 in section 9, T. 9N., R. 30 E., Bosie Meridian, Idaho, Group No. 772, was accepted January 30, 1989.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrice, Bosie, Idaho, 83706.

February 2, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho

[FR Doc. 89-3124 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-920-09-4214-11, AR-035025]

Proposed Modification and Continuation of Withdrawal; Arizona

February 2, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: NOTICE.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Public Land Order 3858, which withdrew lands in the Coconino and Apache National Forests. This notice pertains only to the lands within the Coconino National Forest. Another notice will be published at a later date for the land located within the Apache National Forest.

The lands continue to be utilized for the purpose for which they were withdrawn, that of protecting archaeological sites. The sites covered by the withdrawal on the Coconino include the Chavez Pass Ruins, 70.00 acres; the Clear Creek Ruins, 82.08 acres (a resurvey and designation of lots in the area increased the size from 80.00 acres to 82.08 acres, and the Winona Ruins, 160.00 acres.

It is anticipated that there will be no change in land use. The Forest Service proposes that the lands will remain closed to operation of the mining laws only.

DATE: Comments to this notice should be received by May 10, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-241-5531.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 3858, withdrawing lands from mining claim location for an indefinite period of time be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 State. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

Gila and Salt River Meridian

T. 16 N., R. 11 E.,
Sec. 12, ptn. SW¼;
Sec. 13, ptn. NW¼.
T. 13 N., R. 5 E.,
Sec. 11, ptn. SW¼.
T. 21 N., R. 9 E.,
Sec. 11, ptn. SE¼;
Sec. 12, ptn. SW¼;
Sec. 13, ptn. NW¼;
Sec. 14, ptn. NE¼.

The areas described contain 312.08 acres in Coconino and Yavapai Counties.

The purpose of the withdrawal is to protect valuable archaeological sites from prospecting and disturbance caused by mining operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connecton with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of final determination will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Larry P. Bauer,

Deputy State Director, Division of Mineral Resources.

[FR Doc. 89-3125 Filed 2-8-89; 8:45 am—

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9400, Block 167, 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 an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: 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: February 1,1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-3041 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD)

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5727, Block 244, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Saction, 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 § Section 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: February 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-3037 Filed 2-8-89; 8:45 am]

BILLING CODE 4310-MR-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday and Wednesday March 14-15, 1989. The topic to be discussed is "The Year 1999: The Economic Policy Context Shaping International Voluntarism."

Date: March 14-15, 1989.

Time: Tuedsay, March 14: 2:00 p.m.-5:30 p.m.

Time: Wednesday, March 15: 9:00 a.m.-3:30 p.m.

Place: The National Press Club, 14th and F Streets, NW. Washington, DC 20045.

The meeting is free and open to the public. However, NOTIFICATION BY MARCH 10, 1989 THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED.

Persons wishing to attend the meeting must call Melissa Nuwaysir, (703) 875-4407, or write, not later than March 10 The address is: The Advisory Committee on Voluntary Foreign Aid, Room 305, SA-8, Agency for International Development, Washington, DC 20523.

Date: January 28, 1989.

Thomas A. McKay,

Deputy Assisant Administrator for Private and Voluntary Cooperation, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 89-3043 Filed 2-8-89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 300)]

Burlington Northern Railroad Co.; Abandonment of Railroad in Crawford and Labette Counties, KS; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 26.8 miles of railroad between milepost 145.70 near Cherokee and milepost 172.50 near West Parsons in Crawford and Labette Counties, KS.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from the publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Rail Section, AB-OFA.**" Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3079 Filed 2-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-215)]

Chicago and North Western Transportation Co.—Abandonment—Between Norma and Cornell—in Chippewa County, WI; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon 19.7 miles of railroad between Norma (milepost 3.4) and Cornell (milepost 23.1), in Chippewa County, WI.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from the publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in the result.

Noreta R. McGee,
Secretary.

[FR Doc. 89–3006 Filed 2–8–89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Crime Information Center Advisory Policy Board; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), and Title 41, CFR 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its renewal.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from State and local criminal justice representatives; six are appointed by the Director, FBI, consisting of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Interested persons are invited to submit comments regarding the renewal of the National Crime Information Center (NCIC) Advisory Policy Board to Mr. William A. Bayse, Committee Management Liaison Officer, Technical Services Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–324–5350.

William S. Sessions,
Director.

[FR Doc. 89–3078 Filed 2–8–89; 8:45 am]
BILLING CODE 4410-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* March 3, 1989.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: The meeting will review applications submitted to the Humanities Projects in Libraries and Archives Program, Division of General Programs, for projects beginning after October 1, 1989.

2. *Date:* March 6–7, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Preservation Program, Office of Preservation, for projects beginning after July 1, 1989.

3. *Date:* March 10, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the U.S. Newspaper Program, Office of Preservation, for projects beginning after July 1, 1989.

4. *Date:* March 13–14, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Preservation Program, submitted to the Office of Preservation, for projects beginning after July 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 89–3081 Filed 2–8–89; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting to Comment on the First Biennial Revision of the U.S. Arctic Research Plan; Meeting

In accordance with the Arctic Research and Policy Act of 1984, Pub. L. 98–373, the National Science Foundation announces the following meeting:

Name of Meeting: First Biennial Revision of the U.S. Arctic Research Plan—Opportunity to Comment.

Date of Meeting: March 2, 1989, 9:00 am to 12:00 pm.

Place: Anchorage, Alaska (Federal Bldg., 222 W. 7th St., Rm. C–122).

Purpose of Meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the Plan (due in July 1989). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations in Alaska from February 15–March 10, 1989:

Anchorage, Alaska: The Alaska Resources Library, Federal Building, 222 W. 7th St., 1st Floor;

Juneau, Alaska: The Alaska State Library, State Office Building, entrance on 4th Street, Circulation Desk, 8th Floor;

Fairbanks, Alaska: The Rasmusen Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (Arctic Research Commission, Governor of Alaska, residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review, and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions.

The biennial revision to the Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas
2. Atmosphere and Climate
3. Land and Offshore Resources
4. Land-Atmosphere Interactions
5. Engineering and Technology
6. People and Health

Coordinated interagency efforts and supporting programs are also discussed. These include: Atmosphere-Ocean and Atmosphere-Land interactions, human adaptation, data and information systems, logistics, and international activities.

Public Participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments may be submitted to the address below by March 10, 1989.

For Further Information: If you would like to review a copy of the biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Plan, National Science Foundation, 1800 G Street, NW., Room 620, Washington, DC 20550, or call (202) 357–7817.

Information will be available after February 13, 1989.

Costs: None.

Jerry Brown,

Head, Arctic Staff (for the Interagency Arctic Research Policy Committee), Division of Polar Programs, National Science Foundation.

[FR Doc. 89–3115 Filed 2–8–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Technical Specification 3.5.1 and Table 2.1 to incorporate revised steam/feedwater flow mismatch reactor trip setpoints and revised limiting conditions for operation. The reactor trip on steam/feedwater flow mismatch would occur on either high or low mismatch of 25% when the reactor is above 50% power. Below 50%, the trip would not activate, but reactor protection would be provided by a 50% setting on pressurizer level which would be active at all power levels. The proposed changes are designed to correct a single failure deficiency in the steam/feedwater flow reactor trip circuit identified in an earlier report dated November 20, 1987.

The Need for the Proposed Action

The proposed amendment is required to implement the changes described above and thereby correct a single failure deficiency in the reactor protection system.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 17, 1989 (54 FR 1808). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 31st day of January, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-3084 Filed 2-8-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on February 21–23, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). Notice of this meeting was published in the Federal Register on January 26, 1989 [54 FR 3877].

Tuesday, February 21, 1989—1:00 p.m.–5:00 p.m. (Open)

Comments by ACNW Chairman regarding items of current interest.

NRC Staff (DHLWM) Presentation on Current Status of the Review of the Site Characterization Plan (SCP) and related topics.

Wednesday, February 22, 1989—8:30 a.m.–5:00 p.m. (Open)

Presentation by the Department of Energy (DOE) on the Site Characterization Plan (SCP) and related topics.

Executive Session—Preparation of ACNW Reports.

Thursday, February 23, 1989—8:30 a.m.–4:30 p.m. (Open)

State of Nevada (Nevada Nuclear Waste Projects Office) Technical Comments on Consultation Draft Site Characterization Plan (CDSCP).

NRC Staff (RES) Presentation on Proposed Rule on Disposal of Greater than Class C Radioactive Waste.

Administrative Session—Future Agenda, By-Laws and New Members, etc.

Executive Session—Complete Preparation of ACNW Reports.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: February 2, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-3085 Filed 2-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-603-CP/OL and 50-604-CP]

All Chemical Isotope Enrichment, Inc. (AIChemIE Facility-1 CPDF) and AIChemIE Facility-2 Oliver Springs; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Thomas S. Moore, Chairman
Christine N. Kohl
Howard A. Wilber

Eleanor E. Hagins,

Secretary to the Appeal Board.

Dated: February 3, 1989.

[FR Doc. 89-3086 Filed 2-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. NPF–62 issued to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The amendment consists of proposed changes to the Technical Specifications (TS) related to four issues. The first proposed change would allow the Clinton Power Station (CPS) to perform its first reactor refueling, in which new types of reactor fuel will be utilized, and to proceed with subsequent reactor operation with the reloaded core.

The reload for Cycle 2 is generally a normal reload with no unusual core features or characteristics. Proposed TS changes related to Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Linear Heat Generation Rate (LHGR) limits for the new fuel, MAPLHGR and Minimum Critical Power Ration (MCPR) limits for all of the fuel using Cycle 2 core and transient parameters.

The second proposed change would permit CPS operation in the maximum extended operating domain (MEOD) with (a) up to 50°F reduction in feedwater temperature and (b) elimination of APRM setdown.

The MEOD includes expansion of the normal power/flow map into new regions. One region, which involves operation at rated power at lower than rated core flow rates, is called the

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintainance of the facility.

extended load line region (ELLR). The other region, which involves operation at core flows at up to 107% of rated flow is called the increased core flow region (ICFR). Operation in the ELLR and ICFR permits greater operational flexibility and an improved unit capacity factor.

Reduced feedwater temperatures can arise from the inoperability or degraded performance of individual feedwater heaters or string(s) of feedwater heaters or by deliberate reduction of feedwater heating.

The third proposed change would revise the Romote Shutdown System Controls to include additional control switches for valves 1E12–F068B and 1E12–F014B and circuit breaker 252A–T1AA1.

Current operation of these components, when the normal control switch is inaccessible, requires them to be operated manually. The circuitry is therefore being modified to add control switches for these components. The addition of these control switches will enhance the operation of the Remote Shutdown System to the acceptable methods recognized by the NRC for satisfying GDC–19.

The fourth proposed change consists of several changes to the surveillance requirements for the jet pumps. One would allow present Surveillance Requirement 4.4.1.2 to be performed with THERMAL POWER in excess of 25% OF RATED THERMAL POWER instead of the present prior to exceeding 25% OF RATED THERMAL POWER.

Another proposed change also revised Surveillance Requirements 4.4.1.2 by deleting the requirement that the recirculation flow control valves be in the same position when performing the surveillance.

The proposed changes also include combining the sections which currently and separately address single and double loop operation into a single section.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the licensee's amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 22, 1988 (53 FR 47285). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact to this action and has determined not to prepare an environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated September 6, 1988 (2) Amendment No. 18 to License No. NPF–62, and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. 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.

Dated at Rockville, Maryland, this 31st day of January 1989.

For The Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–2 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–3087 Filed 2–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL and 50–444–OL; ASLBP No. 82–471–02–OL]

Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2 (Offsite Emergency Planning); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning), Docket Nos. 50–443–OL and 50–444–OL, is hereby reconstituted by appointing Administrative Judge Kenneth A. McCollom in place of Jerry R. Kline who has disqualified himself in this proceeding.

As reconstituted, the Board is comprised of the following Administrative Judges:

Ivan. W. Smith, Chairman
Richard F. Cole, Member
Kenneth A. McCollom, Member
James H. Carpenter, Alternate Member

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Kenneth A. McCollom, Member, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Dated at Bethesda, Maryland, this 3rd day of February, 1989.

[FR Doc. 89–3088 Filed 2–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, this Appeal Board will consist of the following members: Christine N. Kohl, Chairman, Dr. W. Reed Johnson, Howard A. Wilber.

Eleanor E. Hagins,

Secretary to the Appeal Board.

Dated: February 3, 1989.

[FR Doc. 89–3089 Filed 2–8–89; 8:45 am]

BILLNG CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26518; File No. SR–DTC–88–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company; Participant Terminal System

The Depository Trust Company ("DTC") on January 3, 1989, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would permit DTC to adopt certain new procedures in the use of its Participant Terminal System ("PTS"). The Commission is publishing this notice to solicit public comment on the proposal.

I. DTC's Description of the Proposal

DTC states in its filing that its existing

procedures require a DTC participant to submit hard copy identification data: (1) To identify, for tax purposes, the securities that it holds at DTC in its own account for investment purposes (in distinction from the securities it holds at DTC for customers or other brokers); and (2) to release securities from such investment identification. Under this proposal, DTC's participants would be able to submit such data electronically by the use of PTS.

II. DTC's Rationale for the Proposal

DTC states that the proposal is consistent with the Act, particularly section 17A of the Act, in that it would use automation to increse efficiency in the clearing and settlement of securities transactions and would remove a possible disincentive for depository immobilization of securities certificates.

III. Proposal's Effectiveness and Solicitation of Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–88–21 and should be submitted by March 2, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

February 3, 1989.

[FR Doc. 89–3050 Filed 2–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26517; File No. SR–OCC–89–02]

Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corp. Relating to Securities Clearing Group Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section 78s(b)(1) (the "Act"), notice is hereby given that on January 24, 1989, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

Attached as Exhibit A is a copy of a proposed rule change of The Options Clearing Corporation (OCC) reflecting the agreement it has entered into with several other registered clearing agencies. The Agreement [1] creates a Securities Clearing Group (SCG) from within the Securities and Exchange Commission's Monitoring Coordination Group (MCG). The Agreement identifies various areas of cooperation between and among the other members of the SCG to, among other things, increase the coordination of clearing agency clearance and settlement, and facilitate the sharing of certain clearing and settlement information among clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As a result of developments surrounding the October, 1987 Market Break, the SCG was created to review various issues relating to the clearance and settlement of securities transactions, improved linkages of the clearance and settlement facilities, and development of uniform standards and procedures for clearance and settlement. The stated purposes of the SCG are to (i) Increase cooperation and coordination of persons involved in the clearance and settlement of securities transactions, (ii) promote the increased access to surveillance information and member risk monitoring through the sharing of certain information regarding the clearance and settlement of securities transactions.

The members of SCG have executed the attached agreement to accomplish this purpose. The agreement, in section 3, identified various areas of cooperation between and among members of the SCG to, among other things, increase and facilitate the sharing of certain clearance, settlement and surveillance information among clearing agencies.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended, in that it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Rel. No. 23600 (Nov. 21, 1988); 53 FR 46353 (Nov. 30, 1988).

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–OCC–89–02 and should be submitted by March 2, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

February 3, 1989.

[FR Doc. 89–3051 Filed 2–8–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35-24814]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 3, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–7336)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By prior Commission order, dated February 26, 1987 (HCAR No. 24326), Consolidated was authorized to issue and sell, from time-to-time within two years of the effective date of authorization, up to $250 million principal amount of its debentures, in one or more series, with maturities of up to 30 years. That order permitted Consolidated to sell the debentures on a competitive basis, or pursuant to an exception from the competitive bidding requirements of Rule 50, subject to a reservation of jurisdiction over the associated fees, expenses, terms and conditions. On October 29, 1987 Consolidated issued and sold, at competitive bidding, $100 million principal amount of its 9⅛% Debentures Due October 1, 1992, of which $50 million was authorized under earlier Commission orders dated April 5, 1985, August 29, 1986 and March 30, 1987, (HCAR Nos. 23655, 24180 and 24357, respectively), and $50 million herein. Subsequently, on January 25, 1989, Consolidated issued and sold, at competitive bidding, an additional $100 million principal amount of its 9⅜% Debentures Due February 1, 1997 pursuant to authority permitted in this file.

Consolidated now requests the authority to issue and sell the remaining $100 million principal amount of its debentures not heretofore issued and sold under the February 26, 1987 order, through February 28, 1991, less any additional amounts issued and sold prior to February 26, 1989. In all other respects the authority requested and permitted in that order will remain unchanged.

General Public Utilities Corporation, et al. (70–7525)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, and its subsidiary, General Portfolios Corporation, Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19801 ("GPC"), have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated November 2, 1988 (HCAR No. 24738), GPU was authorized to acquire all of the common stock of GPC and to make capital contributions to GPC consisting of (i) the common stock of Energy Initiatives, Incorporated ("EII") and (ii) $25 million which GPC was in turn to contribute to EII. The Commission reserved jurisdiction over GPU's request to contribute an additional $25 million to GPC.

By orders dated December 24, 1986 (HCAR No. 24278) and May 7, 1986 (HCAR No. 24089), GPU was authorized to acquire 7,866 shares of stock of Exel Limited, a Cayman Islands corporation for a purchase price of $1,180,000 ("Exel Shares") and 51,975 shares of stock of ACE Limited, a Cayman Islands corporation for a purchase price of $5,197,500 ("ACE Shares").

GPU now requests authority to make contributions to the capital of GPC consisting of the Exel Shares and the ACE Shares, which shares GPU acquired in 1986.

General Public Utilities Corporation (70–7607)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed an application-declaration with the Commission pursuant to sections 6(a), 7 9(a), 10 12(c) and 12(e) of the Act and Rules 42, 50(a)(5), 62 and 65 thereunder.

GPU proposes initially to issue, through December 31, 1998, pursuant to an exception from competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, and subsequently to reacquire, up to 20,000 shares of GPU common stock under a Restricted Stock Plan for Outside Directors ("Plan"). The common stock to be issued under the Plan will be either authorized and issued shares or reacquired shares held as treasury stock, and will be subject to certain restrictions. Under the Plan, members of

GPU's Board of Directors ("Board") who are outside directors ("Outside Directors") would be awarded shares of GPU common stock, in addition to the annual retainer and committee fees, as further compensation for their services as members of the Board. The Plan is to be administered by a committee ("Committee").

Shares of common stock awarded under the Plan will not be transferable prior to an Outside Director's termination of service because of: (i) Death or disability; (ii) failure to stand for reelection at the end of the term during which the Outside Director reaches age 70; (iii) resignation or failure to stand for reelection with the consent of GPU's Board; or (iv) failure to be reelected to the Board after being duly nominated. Shares of common stock held by an Outside Director who fails to satisfy such conditions will be subject to forfeiture by that Outside Director and reaquisition by GPU. GPU therefore seeks authorization to reacquire such shares of common stock that may be forfeited.

It is stated that 100 shares of GPU common stock, or a portion thereof, is to be awarded with respect to service by an Outside Director in 1989. Beginning in 1990, each Outside Director will receive an award in an amount to be determined by the Board only in accordance with the recommendations of the Committee.

GPU also proposes to solicit proxies from its stockholders for use at the 1989 Annual Meeting, scheduled to be held on May 3, 1989, during which GPU will request its shareholders to approve the Plan. It is anticipated that the related proxy materials will be mailed to GPU's shareholders on or about April 3, 1989. Subject to approval, the Plan would be effective as of January 1, 1989.

General Portfolios Corporation Energy Initiatives, Incorporated (70-7612)

General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, and Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey, 07054, each a subsidiary company of General Public Utilities Corporation, a registered holding company, have filed an application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

EII proposes to acquire, through one or more Delaware limited partnerships ("Partnerships"), a 50% ownership interest in three closely held California corporations ("Collectively, Energy Companies"), including two state institutions and a university. Each Energy Company is the lessee under a long-term lease of a natural gas-fired cogeneration facility which is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

In order to acquire its interest in the Energy Companies, EII proposes to organize one or more wholly owned Delaware subsidiary corporations ("EII Subs") which would be both the general partner and limited partners of the Partnerships. Alternatively, GPC may acquire one or more of such limited partnership interests. It is proposed that the Partnership acquire either all of the assets or all of the outstanding shares of common stock of the Energy Companies for a total purchase price not to exceed $22 million.

EII and GPC therefore propose to contribute to the Partnerships, either directly or indirectly through EII Subs, up to $11 million in exchange for which: (1) EII will acquire all of the outstanding shares of common stock of each EII Sub for $1,000; and (2) GPC and the EII Subs will acquire their general and limited partnership interests in the Partnerships. Alternatively, EII may lend the Partnerships a portion of the $11 million and the Partnerships would issue to EII their respective promissory notes, from time to time, with maturities not in excess of 30 years, at an interest rate of not less than that borne by U.S. Treasury Securities of comparable maturities, which would be repaid from the cash flows generated by operation of the projects.

EII expects that the rate of return of its equity investment in the Partnerships will not be lower than 12.38%, the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

In order to refinance the investment and the Partnership, the Partnership itself may issue debt with a maturity not in excess of 30 years from its date of issue, hearing interest at a rate not in excess of that borne by U.S. Treasury Securities of comparable maturities plus 350 basis points and with redemption provisions consistent with the Commission's Statement of Policy regarding first mortgage bonds. Such debt may be secured or unsecured and shall not be convertible into, or carry any right to purchase, any other securities of the issuer or any associate company of GPU.

The applicants-declarants have requested an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) with respect to the issuance of securities in connection with the refinancing of the investment and the Partnership.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3107 Filed 2-8-89; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-69]

Unfair Trade Practices; Rescheduled Public Hearing on Japanese Barriers to the Provision of Architectural, Engineering, and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of revised date and location of public hearing.

SUMMARY: On November 21, 1988, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974 with respect to Japanese barriers to the provision of architectural, engineering, and construction services, and related consulting services (53 FR 47897). On January 18, 1989, a notice was published in the **Federal Register** (54 FR 2033) announcing that a public hearing in this matter would be held February 14, 1989. The purpose of this notice is to change the original hearing date and location as published in 54 FR 2033. The public hearing on this matter is now scheduled for March 13, 1989, at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395-7271, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The International Engineering and Construction Industries Council has requested a public hearing on this matter, and the USTR believes such a hearing is an appropriate means of obtaining information to prepare for future consultations with the Government of Japan regarding this investigation.

The Section 301 Committee originally scheduled this hearing at 10 a.m. on February 14, 1989 (54 FR 2033). Because of scheduling conflicts, the hearing date and location have been revised as follows: the hearing will be conducted on March 13, 1989, at 9:00 a.m., in the amphitheater (second floor) at the

Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC, 20506.

Interested persons wishing to testify orally must provide a written request to do so by noon on March 3, 1989, to Dorothy Balaban, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. The request must conform with 15 CFR 2006.8 and provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of the presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony.

Persons presenting oral testimony must submit 20 copies of their written testimony, in English, by noon on March 6, 1989, to Ms. Balaban at the address listed above. Those persons who have already submitted such testimony need not resubmit it. Remarks at the meeting will be limited to 5 minutes. In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain written rebuttal comments filed by an interested person in accordance with 15 CFR 2006.8(c) by noon on March 17, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-3183 Filed 2-8-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, St. Lucie County International Airport, Ft. Pierce, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Naples Airport Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On June 20, 1988, the FAA determined that the noise exposure maps submitted by St. Lucie County Port and Airport Authority, under Part 150 were in compliance with applicable requirements. On December 12, 1988, the Administrator approved the St. Lucie County International Airport noise compatibility program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the St. Lucie County International Airport noise compatibility program is December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Airports Planning and Development Specialist, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for St. Lucie County International Airport, effective December 12, 1988.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The St. Lucie County Port and Airport Authority submitted to the FAA on March 31, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 7, 1986, through January 2, 1987. The St. Lucie County International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 20, 1988. Notice of this determination was published in the Federal Register on July 13, 1988.

The St. Lucie County International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a noise compatibility program as

described in section 104(b) of the Act. The FAA began its review of the program on June 20, 1988, and was required by a provision of the Act to approve of disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eighteen (18) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 12, 1988.

Outright approval was granted for fourteen (14) of the specific program elements. The approval action was for the following program elements:

Measure No. 1	Description	FAA action
1	Extension of Rwy 9/27.	Disapproved pending submission of additional information.
2	NAVAID Installation (ILS/MLS).	Disapproved for purpose of Part 150.
3	Deactivation of Rwy 18/36.	Do.
4	Deactivation of Rwy 4/22.	Do.
5	Noise Complaint Procedure.	Approved.
6	Program Review Revision.	Do.
7	Comprehensive Plan.	Do.
8	Zoning	Do.
9	Building Code	Do.
10	Site Design	Do.
11	Land Acquisition	Do.
12	Avigational Easement.	Do.
13	Development Rights.	Do.
14	Military Zones	Do.
15	Airport Advisory Committee.	Do.
16	Informational Materials.	Do.
17	Annual Workship	Do.
18	Evaluation of Noise Abatement Pgm.	Do.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 12, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Naples Airport Authority.

Issued in Orlando, Florida, of January 26, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89-3032 Filed 2-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 3, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0122

Form Number: 1118, Schedule I, Schedule J

Type of Review: Resubmission

Title: Computation of Foreign Tax Credit—Corporations

Description: Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 10,000

Estimated Burden Hours Per Response/ Recordkeeping:

	1118	Schedule I	Schedule J
Recordkeeping	71 hrs. 31 mins	8 hrs. 51 mins	89 hrs. 12 mins.
Learning about the law or the form	17 hrs. 13 mins	1 hr	1 hr. 5 min.
Preparing the form	21 hrs. 6 mins	1 hr. 11 mins	2 hrs. 35 mins.
Copying, assembling, and sending the form to IRS	32 mins	0	0

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 3,322,963 hours

Clearance Officer: Garrick Shear, (202) 535-4297, International Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-3048 Filed 2-8-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 5-89]

Treasury Bonds of 2019

Washington, February 2, 1989.

1. Invitations for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Bonds of 2019 (CUSIP No.

912810 EC 8), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2019, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 12:00 noon, Eastern Standard time, Thursday, February 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 8, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or

reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in *Treasury Direct* are not requried to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4 A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6 Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7 Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8 The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9 Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1 As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3 The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of February 15, 2019, CUSIP No. 912810 EC 8

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2019 due February 15, 2019, CUSIP No. 912803 AQ 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1992	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1986	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CF 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 8
Feb. 15, 2017	KL 3
Aug. 15, 2017	KN 9
Feb. 15, 2018	KQ 2
Aug. 15, 2018	KS 8
Feb. 15, 2019	KU 3

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	640,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	250,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	800,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	320,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 89-3172 Filed 2-7-89; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 4-89]

Treasury Notes of February 15, 1999, Series A-1999

Washington, February 2, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of February 15, 1999,

Series A–1999 (CUSIP No. 912827 XE 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Notes may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be eceived at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 8, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 7, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received with out deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97,500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was sumbitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Notes being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have a identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendment do not adversely affect existing rights of holders of the Notes. Public announcment of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 1999, Series A–1999, CUSIP No. 912827 XE 7.

The Principal Component is designated (Interest Rate) Treasury Principal (TRPN) Series A–1999 due February 15, 1999, CUSIP No. 912820 AR 8.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2

ATTACHMENT B.—MINIMUM FACE AMOUNT WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)	Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)	Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000.00	1,000.00	10.125	1,600,000.00	81,000.00	15.250	800,000.00	61,000.00
5.125	1,600,000.00	41,000.00	10.250	800,000.00	41,000.00	15.375	1,600,000.00	123,000.00
5.250	800,000.00	21,000.00	10.375	1,600,000.00	83,000.00	15.500	400,000.00	31,000.00
5.375	1,600,000.00	43,000.00	10.500	400,000.00	21,000.00	15.625	640,000.00	5,000.00
5.500	400,000.00	11,000.00	10.625	320,00.00	17,000.00	15.750	800,000.00	63,000.00
5.625	3,200,000.00	9,000.00	10.750	800,000.00	43,000.00	15.875	1,600,000.00	127,000.00
5.750	800,000.00	23,000.00	10.875	1,600,000.00	87,000.00	16.000	25,000.00	2,000.00
5.875	1,600,000.00	47,000.00	11.000	200,000.00	11,000.00	16.125	1,600,000.00	129,000.00
6.000	100,000.00	3,000.00	11.125	1,600,000.00	89,000.00	16.250	1,600,000.00	13,000.00
6.125	1,600,000.00	49,000.00	11.250	160,000.00	9,000.00	16.375	1,600,000.00	131,000.00
6.250	320,000.00	1,000.00	11.375	1,600,000.00	91,000.00	16.500	400,000.00	33,000.00
6.375	1,600,000.00	51,000.00	11.500	400,000.00	23,000.00	16.625	1,600,000.00	133,000.00
6.500	400,000.00	13,000.00	11.625	1,600,000.00	93,000.00	16.750	800,000.00	67,000.00
6.625	1,600,000.00	53,000.00	11.750	800,000.00	47,000.00	16.875	320,000.00	27,000.00
6.750	800,000.00	27,000.00	11.875	320,000.00	19,000.00	17.000	200,000.00	17,000.00
6.875	320,000.00	11,000.00	12.000	50,000.00	3,000.00	17.125	1,600,000.00	137,000.00
7.000	200,000.00	7,000.00	12.125	1,600,000.00	97,000.00	17.250	800,000.00	69,000.00
7.125	1,600,000.00	57,000.00	12.250	800,000.00	49,000.00	17.375	1,600,000.00	139,000.00
7.250	800,000.00	29,000.00	12.375	1,600,000.00	99,000.00	17.500	800,000.00	7,000.00
7.375	1,600,000.00	59,000.00	12.500	16,000.00	1,000.00	17.625	1,600,000.00	141,000.00
7.500	80,000.00	3,000.00	12.625	1,600,000.00	101,000.00	17.750	800,000.00	71,000.00
7.625	1,600,000.00	61,000.00	12.750	80,000.00	51,000.00	17.875	1,600,000.00	143,000.00
7.750	800,000.00	31,000.00	12.875	1,600,000.00	103,000.00	18.000	100,000.00	9,000.00
7.875	1,600,000.00	63,000.00	13.000	200,000.00	13,000.00	18.125	320,000.00	29,000.00
8.000	25,000.00	1,000.00	13.125	320,000.00	21,000.00	18.250	800,000.00	73,000.00
8.125	320,000.00	13,000.00	13.250	800,000.00	53,000.00	18.375	1,600,000.00	147,000.00
8.250	800,000.00	33,000.00	13.375	1,600,000.00	107,000.00	18.500	400,000.00	37,000.00
8.375	1,600,000.00	67,000.00	13.500	400,000.00	27,000.00	18.625	1,600,000.00	149,000.00
8.500	400,000.00	17,000.00	13.625	1,600,000.00	109,000.00	18.750	32,000.00	3,000.00
8.625	1,600,000.00	69,000.00	13.750	160,000.00	11,000.00	18.875	1,600,000.00	151,000.00
8.750	160,000.00	7,000.00	13.875	1,600,000.00	111,000.00	19.000	200,000.00	19,000.00
8.875	1,600,000.00	71,000.00	14.000	100,000.00	7,000.00	19.125	1,600,000.00	153,000.00
9.000	200,000.00	9,000.00	14.125	1,600,000.00	113,000.00	19.250	800,000.00	77,000.00
9.125	1,600,000.00	73,000.00	14.250	800,000.00	57,000.00	19.375	320,000.00	31,000.00
9.250	800,000.00	37,000.00	14.375	320,000.00	23,000.00	19.500	400,000.00	39,000.00
9.375	640,000.00	3,000.00	14.500	400,000.00	29,000.00	19.625	1,600,000.00	157,000.00
9.500	400,000.00	19,000.00	14.625	1,600,000.00	117,000.00	19.750	800,000.00	79,000.00
9.625	1,600,000.00	77,000.00	14.750	800,000.00	59,000.00	19.875	1,600,000.00	159,000.00
9.750	800,000.00	39,000.00	14.875	1,600,000.00	119,000.00	20.000	10,000.00	1,000.00
9.875	1,600,000.00	79,000.00	15.000	40,000.00	3,000.00	20.125	1,600,000.00	161,000.00
10.000	20,000.00	1,000.00	15.125	1,600,000.00	121,000.00	20.250	800,000.00	81,000.00

[FR Doc. 89-3173 Filed 2-7-89; 1:11 pm]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 3-89]

Treasury Notes of February 15, 1992, Series R-1992

Washington, February 2, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of February 15, 1992, Series R-1992 (CUSIP No. 912827 XD 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1989, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15

and August 15 through the date that the principal becomes payable. They will mature February 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the *Treasury Direct* Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 7, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 6, 1989, and received no later than Wednesday, February 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, February 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, February 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, February 15, 1989. When payment has

been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in *Treasury Direct* are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in *Treasury Direct* must be completed to show all the information required thereon, or the *Treasury Direct* account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-3174 Filed 2-7-89; 1:11 pm]

BILLING CODE 4810-40-M

Customs Service

Recordation of Trade Name; Tune Belt

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On October 19, 1988, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TUNE BELT" was published in the Federal Register (53 FR 41012). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than December 19, 1988. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "TUNE BELT" is recorded as the trade name used by Tune Belt, Inc., a corporation organized under the laws of the State of Ohio, located at 2601 Arbor Place, Cincinnati, Ohio 45209. The trade name is used in connection with the clothing, manufactured by Kama Corporation, LTD. in Taipei, Taiwan. "TUNE BELT," is a belt with a pocket made out of nylon lined Neoprene (wet suit material) used as a radio/cassette carrier).

DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5765).

Dated: February 3, 1989.

Thomas L. Lobrod,

Acting Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 89-3059 Filed 2-8-89; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Master Drawings from the National Gallery of Canada" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about March 5, 1989, to on or about May 21, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

R. Wallace Stuart,

Acting General Counsel.

Date: February 3, 1989.

[FR Doc. 89-3128 Filed 2-8-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program of limited grant support for non-profit U.S. institutions and organizations in the private sector which as described below promotes the long-term foreign policy objectives of the United States by promoting mutual understanding between its people and the people of other countries. The primary purpose of the program is to enhance the achievement of the United States' international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources.

Projects must include an international people-to-people component, have an educational or cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries. Subjects must be consistent with USIA themes and priorities and USIS post requirements.

The Office of Private Sector Programs, works with U.S. not-for-profit organizations on cooperative international group projects which introduce American and foreign participants to one another's traditions, arts, social and political structures, and international interests. The Office will accord priority status to worldwide projects involving leaders or potential leaders in their fields such as parliamentarians, jurists, journalists, development officials, public policy experts, and practicing artists in projects directly involving their art (with

exceptions noted below). Proposals are welcome involving any area of the world, with special attention given to excellent projects involving regions—such as Africa, the Near East, South and Southeast Asia—and countries which have participated less frequently in exchanges. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest. Priority consideration is given to projects that involve United States Information Agency posts in the development of the program and the selection of the participants.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Actual programs range from one to six weeks; the duration of the entire grant period does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs. Grants are not ordinarily given to support performing arts tours, film festivals, plastic arts exhibitions, research projects or professional training, youth or youth-related activities, or to fund publications. Student exchanges or projects which are scholarly or academic in purpose should be directed to USIA's Office of Academic Programs. Youth or youth-related projects should be directed to USIA's Office of International Youth Exchange.

The Office of Private Sector Programs will accept proposals from March 1, 1989, through May 30, 1989, for projects whose activities will begin between July 1, 1989, and December 31, 1989. Project proposals must be received at least four months in advance of the activity date and will be accepted only when they are in accord with Project Proposal Information Requirements (OMB #3118–0175). For proposed projects which begin after December 31, 1989, competition details will be announced in the **Federal Register** on or about June 15, 1989. Inquiries are welcome prior to submission of applications. The Office of Private Sector Programs reserves the right under compelling circumstances to consider applications outside of the context of the above-mentioned timeframe.

For further information, organizations should contact Dr. Raymond H. Harvey, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, Untied States Information Agency, 301 4th Street, SW., Washington, DC 20547, or call (202) 485–7348.

Dated: February 1, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89–3129 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) hereby announces a program of selective assistance and limited grant support to non-profit activities of United States' institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175 entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector organizations interested in working cooperatively with USIA on the following two projects are encouraged to apply.

Workshop on Textbook Writing/Editing for Jordanian Publishers and Educators

The Office of Private Sector Programs of the United States Information Agency (USIA) announces the availability of an Initiative Grant open to U.S. not-for-profit institutions to develop and administer a 3-week workshop on textbook writing/editing for Jordanian publishers, educators and Ministry of Education Officials. Possible venues for the traveling workshop are Washington, DC, Boston, Philadelphia, Albany and New York, New York. Ten Jordanian participants are to be selected to participate in the workshop by USIS officers at the American Embassy in Amman, Jordan. This international educational project is being initiated by USIA as a result of interest expressed by the Jordanian publishing industry and Ministry of Education officials in educational textbook writing, editing and publishing in the United States.

The time of the workshop is to be established by the organization awarded the grant for a mutually convenient three-week period between April 1989 and September 30, 1989. The workshop is to be developed and executed by a U.S. not-for-profit institution with expertise in the preparation and publication of educational textbooks. A major objective of the workshop is to assist the Jordanians in applying for copyrights to adapt basic chapters or core sections of U.S. textbooks in the fields of science, mathematics, geography, economics, political science and the environment for translation into Arabic in order to meet Jordanian educational needs. The Grantee Organization should possess the knowledge and expertise required to assist in the selection of U.S. texts and their adaptation into Arabic.

USIA is most interested in working with organizations showing evidence of innovative and cost-effective programming. Primary consideration is given to organizations which have institutional administrative support and/or the potential for obtaining private sector funding in addition to USIA financial support. Organizations must have the substantive expertise, logistical capability and administrative skills needed to develop and conduct the above-mentioned project successfully so that it will have a lasting impact on the participants.

Interested organizations should submit a request for complete application materials postmarked no later than fifteen days from the date of this notice to the address listed below. The Office of Private Sector Programs of USIA will then forward a set of materials containing guidelines for the preparation of proposals.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Grant Programs) United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 31, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89–3130 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) hereby announces a program of selective assistance and limited grant support to non-profit activities of United States' institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the

United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175 entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector organizations interested in working cooperatively with USIA on the following two projects are encouraged to develop and submit program proposals:

U.S. Study Tours for Middle Eastern Legislators

The Office of Private Sector Programs of the United States Information Agency will assist in supporting the development of two 3-week projects to introduce up to twenty new legislators from the Middle East to the concept of representational government and its application to the Federal Government system in the United States. Each project would have up to ten participants. One project would be conducted in Arabic; the other, in English. Grants to administer both projects are to be set by the grantee organization between April 1989 and September 30, 1989. The purposes and objectives of the projects are:

—To introduce new legislators to the organization, structure and functions of the executive, legislative and judicial branches of the U.S. Government;

—To provide new legislators with insight into the decision-making process in the evolution of U.S. foreign and domestic policies;

—To create understanding for the concept and practice of representational government as applied to the Federal Government system in the United States;

—To further international understanding of the values, institutions and practices of a democratic society through first-hand experience, observation, and exchange of ideas with U.S. legislators, judges, and scholars.

USIA is most interested in working with organizations showing evidence of innovative and cost-effective programming. Primary consideration will be given to organizations which have institutional and other private sector funding in addition to USIA support. Organizations must have the substantive expertise, logistical capability and administrative skills needed to develop and conduct the projects successfully so that they will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs of USIA will forward on request a set of materials containing guidelines for the preparation of proposals.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Grant Programs), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 31, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc 89–3131 Filed 2–8–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

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, February 14, 1989, 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.

DATE AND TIME: Thursday, February 16, 1989, 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.
Certification for Payment of 1988 Primary Matching Funds.
Legislative Recommendations.
Status of Presidential Audits.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-3170 Filed 2-7-89; 12:14 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 54, No. 26
Thursday, February 9, 1989

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.

Governmentwide Requirements for Drug-Free Workplace (Grants)

Correction

In rule document 89-2065 beginning on page 4947 in the issue of Tuesday, January 31, 1989, make the following corrections:

1. On page 4948, in the third column, beginning with the third complete paragraph, and on page 4949, in the first column, through the fourth complete paragraph, text was printed out of order. The text should have read as follows:

"Grantee" is defined as a person who applies for or receives a grant directly from a Federal agency. This definition clarifies the statutory definition of this term, which refers to "the department, division, or other unit of a person responsible for the performance under the grant." The agencies view the regulatory definition as avoiding confusion among the terms "grantee," "person" and "individual" that might otherwise occur.

At the same time, the use of "grantee" in this regulation is intended to be consistent with the statutory sense of the term. For example, in determining the level of organization at which a sanction should be imposed in case of a violation of the requirements of this subpart, the agencies intend, where appropriate, to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a

requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire grantee organization could be subject to sanctions.

As in the definition of "grant," the use of the word "directly" emphasizes that it is only a "prime grantee," and not "subgrantees," who are covered by requirements under this subpart. This is true even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work of the program.

Words like "State" and "person" are already defined in § ____.105, so definitions of these terms are not repeated in this section. "Individual" is defined in this section, however, to mean "a natural person." This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes. An individual who receives a grant directly from a Federal agency (e.g., the individual gets a Federal agency award and grant check made out in his or her name) is covered by this rule, and must make the certification provided for grantees who are individuals, even if another party (e.g., a university) has a purely administrative role in distributing the funds. The agencies intend that a "principal investigator" in a research or similar grant be viewed as an individual only if the grant is awarded directly to the investigator (as distinct from being awarded to a university or other organization).

The § ____.105 definition of "person," it should be pointed out, includes individuals. Since a "grantee" is a "person" who applies for or receives a grant, a grantee may be either an individual or an organization. When context requires, as in distinguishing between the certifications that individuals and organizations must submit, phrases like "grantees, other than individuals" and "grantees who are individuals" are used.

The definition of "Federal agency" or "agency" is taken from 5 U.S.C. 552(f) and is intended to cover a broad range of government entities. In various places in the regulation, "the agency" is used in the context of a particular grantor agency (e.g., § ____.630(a); "each grantee shall make the appropriate certification to the agency"). In such contexts, the term is not intended to mean Federal agencies in general.

2. On page 4957, in the second column, in the heading for Part 24, remove "(NONPROCUREMENT)".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Regulations of the Secretary of the Army (Panama Canal Employment System); Employment Policy

Correction

In rule document 89-1883 beginning on page 4018 in the issue of Friday, January 27, 1989, make the following corrections:

1. On page 4018, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 10th line, "of" should read "or".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the 2nd paragraph, in the 22nd line, "GA-17" should read "GS-17".

3. On page 4019, in the first column, in amendatory instruction 2, "Section 153.8" should read "Section 253.8".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 73

Standards of Conduct

Correction

In rule document 89-1125 beginning on page 5026 in the issue of Tuesday, January 31, 1989, make the following correction:

§ 73.50 [Corrected]

On page 5033, in the third column, in § 73.50, the section number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Special Education Programs

Invitation for Applications for New Awards under Certain Direct Grant Programs for Fiscal Year 1989

Correction

In notice document 89-1663 beginning on page 3949 in the issue of Thursday, January 26, 1989, make the following corrections:

1. On page 3952, in the table, in the eighth table-column, in the fourth entry, "36 months" should read "60 months".

2. On page 3966, in the second column, in the first line, above "Signature of Authorized Certifying Official", insert a line for a signature.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-105]

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Water Heaters

Correction

In proposed rule document 89-907 beginning on page 1890 in the issue of Tuesday, January 17, 1989, make the following corrections:

1. On page 1895, in the 1st column, in the 14th line, before "water" insert "a".

2. On page 1903, in the first column, in the sixth line, "adjusted" should read "adjust".

3. On the same page, in the second column, in the second complete paragraph, in the first line, after "simulated" insert "use test are to be made at flow rates of".

4. On page 1905, in the second column, in the second complete paragraph, in the equation, in the denominator, "ηK_r" should read "η_r".

5. On the same page, in the third column, in the fifth line and sixth lines, "1bm" should read "lbm".

6. On the same page, in the same column, in the third equation, in the numerator, before "T_{max}" insert an opening parenthesis.

7. On page 1906, in the second column, in the second equation, at the end of the numerator, insert a closing parenthesis.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0375]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 88-26988 beginning on page 47185 in the issue of Tuesday, November 22, 1988, make the following correction:

§ 178.1005 [Corrected]

On page 47186, in the second column, in § 178.1005(e)(1), in the first column of the table, in the sixth entry, "Polyethylene" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

Correction

In rule document 88-25583 beginning on page 44862 in the issue of Monday, November 7, 1988, make the following correction:

On page 44875, in the third column, in the Authority citation, in the fourth line, "438" should read "348".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Imported Merchandise Returned to Customs' Custody; Compliance Policy Guide; Revocation

Correction

In notice document 88-29628 appearing on page 52238 in the issue of Tuesday, December 27, 1988, make the following correction:

In the first column, under **SUMMARY**, in the fourth line, "7135.06" should read "7153.06".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Correction

In notice document 89-2058 beginning on page 4339 in the issue of Monday, January 30, 1989, make the following correction:

On page 4339, in the third column, the bold heading following the date line should have read "**INTERIOR OS-51**".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS Number: 1037-88]

Immigration User Fee, Conforming Amendments

Correction

In rule document 89-5 beginning on page 100 in the issue of Wednesday, January 4, 1989, make the following correction:

§ 235.3 [Corrected]

On page 101, in the third column, in § 235.3(f), in the 20th line, "Conference" should read "Conformance".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products

Correction

In rule document 88-30188 beginning on page 17 in the issue of Tuesday, January 3, 1989, make the following corrections:

1. On page 18, in the 3rd column of the table, in the 22nd entry, "399" should read "339".

2. On page 20, under **Part 33—Dust Collectors**, the application fee for "16. Certification evaluation" should be $100.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-32; Amdt. 39-6092]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250-B17; -C20, -C20R, and -C30 Series Engines

Correction

In rule document 89-1995 beginning on page 4262 in the issue of Monday, January 30, 1989, make the following correction:

§ 39.13 [Corrected]

On page 4263, in the second column, in § 39.13(d), in the first line, "upon" should read "Upon".

BILLING CODE 1505-01-D

federal register

Thursday
February 9, 1989

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Part 1080

Emergency Community Services Homeless Grant Program; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 1080

Emergency Community Services Homeless Grant Program

AGENCY: Family Support Administration (FSA), Office of Community Services (OCS), HHS.

ACTION: Final rules.

SUMMARY: OCS is issuing final regulations for the disbursement of funds for the Emergency Community Services Homeless Grant Program (EHP) established by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, as amended by Pub. L. 100–628). The regulations establish procedures that States, territories, Indian tribes, and other organizations must follow to apply for and use the funds appropriated for this program.

EFFECTIVE DATE: The effective date of these final rules is February 9, 1989.

FOR FURTHER INFORMATION CONTACT: The following individual can provide additional information on the regulations: Mary M. Evert, Director, Office of Community Services, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 252–5233.

SUPPLEMENTARY INFORMATION: The Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, signed July 22, 1987) established a number of programs to assist homeless persons, including the Emergency Community Services Homeless Grant Program (EHP) (Title VII, Subtitle D, Sections 751–754 and 762 of Pub. L. 100–77) (42 U.S.C. 11461–11464 and 11472). The McKinney Act has since been amended by Pub. L. 100–628 with respect to eligible uses of the EHP funds, among other things (Title VII, Subtitle A, Section 704 of Pub. L. 100–628, signed November 7, 1988). The EHP program is operated by the Office of Community Services (OCS) within the Family Support Administration (FSA) of HHS. The McKinney Act provides that the funds appropriated for the EHP program are to be distributed to States that receive funds under the Community Services Block Grant (CSBG) program (42 U.S.C. 9901 *et seq.)*, using the allocation formula that applies to the CSBG program. In addition, the Act sets aside EHP funds to be awarded directly to certain Indian tribes.

Interim final regulations to implement the EHP program were published in the **Federal Register** on June 22, 1988 (53 FR 23568), and a 30-day comment period was provided. We have made changes to the interim final regulations based on our evaluation of the comments received, our experience resulting from the initial implementation of the fiscal year 1988 EHP grants, and statutory changes made to the McKinney Act since publication of the interim final regulations. The regulations, revised as appropriate, are now being made final. We have kept them to a minimum, consistent with the Department's policy of allowing maximum flexibility to the States and localities in providing services to their citizens. The provisions of the regulations are discussed below, together with the comments that were received.

Justification for Dispensing With Notice of Proposed Rulemaking

The Administrative Procedure Act (APA) creates an exception to general notice and comment rulemaking procedures where the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to the public interest. In addition to changes made to the interim final rule as a result of public comment, this final rule contains provisions designed to implement amendments to the EHP program contained in the Stewart B. McKinney Homeless Assistance Amendments of 1988, Pub. L. 100–628, which was enacted into law on November 7, 1988. Section 1080.3 of the regulations includes a statutory clarification setting aside 0.5% of annual appropriations for the territories of American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands. Sections 1080.4 and 1080.5 have been changed to allow EHP funds to be used for the prevention of homelessness. Section 1080.5 has been revised to include an assurance that the State will make every effort to award funds within 60 days of receipt. We have incorporated these amendments without interpretation, and therefore believe notice of proposed rulemaking as to these new regulatory requirements is unnecessary. We have also made minor changes to the application procedures described in §§ 1080.5 and 1080.6 in order to insure that OCS is able to carry out its statutory responsibility to distribute EHP funds only on the basis of an approvable application. Finally, we have included in §§ 1080.5 and 1080.8 coordination of effort requirements designed to carry out Congress' intent that all levels of government and the private sector work together in attacking homelessness. As these changes clarify and complete the procedures set out in the interim final rule without changing the substance of the EHP program or the relationship between the Federal government and EHP grantees, we have concluded that these procedural changes are exempt from notice of proposed rulemaking requirements.

Analysis of Comments on and Changes to Interim Final Regulations

Many of the comments we received appear to be based on misconceptions that the EHP program is subject to all the statutory and regulatory provisions of the CSBG program, also administered by OCS. Although there are many similarities between the programs, the statutes setting them up are different in many respects. We have included specific language in these regulations in those cases where we intend the CSBG procedures to apply to EHP. In all other respects, the programs should be considered to be separate.

Income Eligibility Criteria

Several of the public comments received revolved around the issue of income guidelines for establishing an individual's eligibility for receiving assistance under this program. Comments suggested allowing those persons with incomes up to 125% of the official poverty line to participate in programs funded under EHP.

An income eligibility guideline was not included in the interim final regulations because we felt the definition of "homeless individual" contained in the McKinney Act was drawn tightly enough to ensure that assistance was provided only to those truly in need. We continue to believe this to be the case, and thus have not adopted this suggestion. We leave to the discretion of the States the authority to impose an income eligibility criterion, should they believe it to be necessary.

One comment also inquired as to whether benefits received under an EHP-funded program would be considered as income or resources for purposes of determining eligibility and benefit levels for other federally assisted programs such as AFDC and food stamps. The comment went on to suggest that receipt of EHP-funded benefits specifically be excluded from eligibility and benefit level calculations for other programs. We have not adopted this suggested change. We do not have statutory authority under the McKinney Act to exclude benefits provided under that Act from consideration as income or resources under any public assistance program. Determinations as to whether to exclude McKinney Act benefits must be made by the Federal and State authorities

responsible for administering each program, based on a review of the Federal statutory and regulatory provisions governing each program as well as the implementing policies of individual States.

Allocation of Funds

As a result of an amendment to the McKinney Act contained in Pub. L. 100–628, we have made a minor change to § 1080.3 of the interim final regulations to clarify that EHP funds will be allocated in accordance with the formula set forth in sections 674 (a) and (b) of the CSBG Act. Congress, intent in enacting this amendment was to set aside 0.5 percent of annual appropriations for the territories of American Samoa, Guam, Northern Mariana Islands, Republic of Palau, and Virgin Islands. These wording changes will not affect the allocation of funds, since we had already interpreted the McKinney Act in this fashion for fiscal years 1987 and 1988.

In addition, we have clarified the language of the regulations to specifically exclude implementation of subsection (c) of section 674 of the CSBG Act for the EHP program. Subsection (c), which provides for allocation of CSBG funds to certain Indian tribes, is not needed because § 1080.7 of the regulations implements a McKinney Act provision that sets aside not less than 1.5 percent of appropriations for federally recognized Indian tribes.

Homelessness Prevention Activities

Several comments suggested that the regulations allow the funding of activities to prevent homelessness, such as the payment of rent or mortgage payments to avoid eviction and foreclosure. We understand that it is often more cost-effective to prevent someone from becoming homeless, rather than waiting for them to be evicted and then trying to help them get utility deposits and pay two months' rent in advance. For Fiscal Years 1987 and 1988, however, we were limited to the McKinney Act's requirements that the funds be used only for those who were already homeless.

The McKinney Act has now been amended to allow a State to use up to 25 percent of its EHP allocation to fund homelessness prevention activities, under certain specified conditions (Pub. L. 100–628). We have amended §§ 1080.4(d) and 1080.5(b)(6) of the regulations to reflect this change in the law, which became effective for all activities funded after October 1, 1988, the beginning of fiscal year 1989 and the effective date of Pub. L. 100–628. The conference report and Senate floor debate on H.R. 4352, which later became Pub. L. 100–628, make clear that Congress intended this amendment to govern expenditures for any preventative activities funded after the beginning of fiscal year 1989. Accordingly, these regulations would allow fiscal years 1987 and 1988 funds to be used for this purpose after October 1, 1988, as well as funds appropriated for fiscal year 1989 and subsequent years. No EHP funds, whatever the year involved, may be used to cover prevention activities conducted prior to October 1, 1988.

State Application Procedures

We have revised § 1080.5 of the interim final regulations in several respects. First, we have clarified that changes to an approved State EHP application must be submitted to OCS for approval before they may be implemented. This differs from CSBG, where notice of changes is advisory, because of statutory differences. Also, we have clarified that the assurances required by § 1080.5 must be signed by the Governor or his/her designee.

Second, we have added three items to the list of assurances that must be included in a State's application. The first requires the State to make every effort to award the EHP funds to eligible organizations within 60 days of their receipt from the Federal government. Pub. L. 100–628, the McKinney Act amendments, requires the States to award these funds within 60 days of receipt, but provides that enforcement of the requirement is left solely to the discretion of the Secretary of HHS. The conference report on the amendments states that the provision is not intended to provide community action agencies with a right of action against States that do not comply with the disbursement requirement. Our experience with the EHP program over the last 2 fiscal years, as well as many years experience with the CSBG program, has shown that a strict 60-day obligation requirement is very difficult for the States to administer in many cases, and can be counterproductive if grant awards are rushed through without adequate review or controls. The regulation implements this provision of Pub. L. 100–628 by requiring States to certify that every effort will be made to meet the 60-day obligation provision.

The second new assurance implements a McKinney Act amendment to limit to 25 percent the amount of EHP funds that may be used in any fiscal year for the homelessness prevention activities authorized in § 1080.4(d).

The third new assurance requires the State to have mechanisms in place to assure coordination among the State and local agencies serving the homeless. This is to include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by section 401 of the McKinney Act. This carries out the McKinney Act intent that all levels of government and the private sector work together in attacking homelessness. We have also added a provision to § 1080.8 of the regulations requiring grantees to discuss coordination efforts in their annual report.

Finally, we have clarified our interpretation of agencies and organizations that may be funded by the State. The McKinney Act uses the term "community action agencies that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act * * * " to describe entities that are eligible to be funded under the EHP program. We have interpreted this language to mean all agencies and organizations that meet the definition of "eligible entity" included in section 673(1) of the CSBG Act (42 U.S.C. 9902(1)). This will make the EHP program more consistent with administration of the CSBG Act, and will allow for an updating of eligible organizations to reflect changes in State needs and population. Minor language changes have been included in the regulations to reflect this interpretation.

Funding of Alternative Organizations

The McKinney Act provides that if a State does not apply for or submit an approvable EHP application, the Secretary is to award the State's allocation directly to eligible organizations within the State. We have made some changes to § 1080.6 of the regulations to clarify that the alternative organizations to be funded must apply for the funds. Should any of the eligible organizations fail to submit an approvable application, the funds that would otherwise be allocated to them will be reapportioned to the remaining eligible organizations on a pro rata basis.

Building Acquisition and Construction

One comment received suggested that the regulations be amended to allow the use of EHP funds for the purchase and/or renovation of buildings to be used as shelters. We do not believe that such a provision is necessary. Neither the regulations nor the McKinney Act restricts the use of EHP funds for the acquisition, construction, or

rehabilitation of buildings for use in connection with homeless activities. There is such a statutory restriction on the use of CSBG funds for such purposes, but that restriction does not apply to the EHP program. Each State may decide if it wants to impose any restrictions in this area.

Section-by-Section Analysis

Section 1080.1 Scope

The regulations apply to the Emergency Community Services Homeless Grant Program.

Section 1080.2 Definitions

The regulations include a definition of "homeless individual" that is taken directly from the McKinney Act, and a definition of "Indian tribe" that is limited to federally-recognized tribes, as required by the McKinney Act. This differs from the CSBG program, which allows direct grants by OCS to both federally and state-recognized tribes.

"State" is defined to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. This definition is consistent with that used for the CSBG program.

Section 1080.3 Allocation of Funds

The regulations implement the McKinney Act requirement that the EHP funds be allocated to States that receive funds under the CSBG Act, using the allocation formula that applies to CSBG, as set out in subsections (a) and (b) of section 674 of Pub. L. 9735 (42 U.S.C. 9903(a)(1)). These sections provide that funds will go to the 50 States, as well as the District of Columbia and Puerto Rico. In addition, 0.5 percent of annual appropriations are set aside for the 5 territories of American Samoa, Guam, Northern Mariana Islands, Republic of Palau, and Virgin Islands. Section 1080.7 of the regulations implements a McKinney Act provision that sets aside not less than 1.5 percent of annual appropriations for federally-recognized Indian tribes. For this reason, the regulations specifically exclude implementation of subsection (c) of section 674 of the CSBG Act for the EHP program, since that subsection deals with funding for Indian tribes.

Section 1080.4 Eligible Use of Funds

As required by the McKinney Act as amended, the regulations state that grant recipients may use EHP funds only to: (a) Expand comprehensive services to homeless individuals to provide followup and long-term services to help them make the transition out of poverty; (b) provide assistance in obtaining social and maintenance services and income support services for homeless individuals; (c) promote private sector and other assistance to homeless individuals; and (d) after October 1, 1988, provide assistance under certain conditions to individuals who have received a notice of foreclosure, eviction, or termination of utility services, in order to prevent them from becoming homeless. To implement stated Congressional intent, this provision would allow fiscal year 1987 and 1988 funds to be used for this purpose after October 1, 1988, as well, in addition to funds appropriated for fiscal year 1989 and subsequent years. No EHP funds, whatever the year involved, may be used to cover prevention activities conducted prior to October 1, 1988. Section 1080.5(b)(6) has been added to the regulations to prohibit a State from using more than 25 percent of the amounts received to fund the homelessness prevention activities covered in item (d) above, as required by the McKinney Act amendments.

Section 1080.5 Application Procedures for States

Under the terms of the McKinney Act, a State must apply to OCS for the EHP funds. These regulations specify that State applications must be submitted at a time established by the Secretary. It is intended that the application deadline will be contained in a letter to each State from the Secretary. Any changes to the information required to be submitted by § 1080.5(b) after the application has been approved must be submitted to and approved by OCS before they are implemented.

Applications can be in any format, but must describe the agencies, organizations, and activities the State intends to support with the funds received. The application must also include several statutorily-required assurances, signed by the Governor or his/her designee. The State must certify that it will award all the funds to community action agencies and other entities eligible to receive funds under section 675(c)(2)(A) of the CSBG Act (42 U.S.C. 9904(c)(2)(A)), organizations serving migrant and seasonal farmworkers, and certain other organizations that received FY 1984 CSBG funds from a State under special waiver provisions included in Pub. L. 98–139. (There are about 40 "special waiver" organizations located in only 3 States—Colorado, Utah, and Wyoming). Not less than 90 percent of the amounts must go to eligible organizations that were providing services to meet the critically urgent needs of homeless individuals as of January 1, 1987. The funds may not be used to supplant or replace other homeless assistance programs administered by the State, or to defray State administrative expenses. The State must make every effort to award the funds to its subgrantees within 60 days of their receipt from the Federal government. Further, no more than 25 percent of the money received by a State may be used to fund activities to prevent homelessness under § 1080.4(d) of the regulations. Finally, the State is required to have mechanisms in place to assure coordination among the State and local agencies serving the homeless. This is to include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by Section 401 of the McKinney Act.

The McKinney Act uses the term "community action agencies that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act * * * " to describe entities that are eligible to be funded under the EHP program. We have interpreted this language to mean all agencies and organizations that meet the definition of "eligible entity" included in section 673(1) of the CSBG Act (42 U.S.C. 9902(1)). This will make the EHP program more consistent with administration of the CSBG Act, and will allow for an updating of eligible organizations to reflect changes in State needs and population.

Section 1080.6 Funding of Alternative Organizations

Under the McKinney Act, if a State fails to apply for its share of the available funds or does not submit an approvable application, the Secretary is to award the State's allocation directly to other organizations within the State. Only those organizations eligible for funding by the State under the EHP program (e.g., community action and other eligible agencies, organizations serving migrant and seasonal farmworkers, and "special waiver" recipient organizations) may receive funding under this section. These regulations provide that the Secretary will award all of the funds to eligible organizations in the State involved, in the same proportion as the State distributed its CSBG funds to those organizations for the previous fiscal year, subject to the Act's requirement that not less than 90 percent of the funds must be awarded to such organizations that were serving the homeless as of January 1, 1987. States generally update

their CSBG distribution formulas annually to account for shifts in needs and population. Using the State's most recent formula to distribute EHP funds will allow the Secretary to allocate funds to those areas the State has recently deemed most in need. An application will be required from those organizations that are funded under this section. If one or more of the organizations eligible to be funded under this section does not apply for or submit an approvable application, the amounts that would have been allocated to them will be reapportioned to the remaining eligible organizations on a pro rata basis.

Section 1080.7 Funding of Indian Tribes

Section 762 of the McKinney Act specifies that not less than 1.5 percent of any funds appropriated for EHP are to be set aside and distributed by OCS directly to Indian tribes. These regulations state that only those federally-recognized tribes that apply for and receive CSBG funds directly from the Office of Community Services in any fiscal year will be eligible to receive direct grants of EHP funds from OCS for that year. A minimum grant award amount is also established. Those tribes that would otherwise receive between $1 and $500 under the allocation formula would have that amount raised to $500. Those tribes that would receive between $501 and $999 will instead receive a $1000 award.

The regulations do not require Indian tribes to submit an EHP application because we believe that a separate application requirement would be too burdensome, given the small amount of funds involved. Eligible federally-recognized Indian tribes that apply for a CSBG direct grant under section 674(c) of the CSBG Act (42 U.S.C. 9903(c)) will be considered to have applied for an EHP grant. Acceptance of its CSBG application by OCS will constitute approval of an EHP grant for an Indian tribe.

Indian Funding Formula

The Indian set-aside funds will be allocated to eligible tribes on the basis of the size of the tribe's population living in poverty. The tribe's poverty population will be determined by multiplying its overall population by the rural poverty rate for Indians in the State in which the tribe is located. Each tribe's poverty population will then be compared to the total poverty population of all tribes funded under this section to determine its share of the funds, adjusted if necessary to reflect the minimum grant award. The regulations specify that the figures used to calculate the size of a tribe's poverty population will be those established by OCS for the purposes of making direct grant awards to Indian tribes for the CSBG program. Any changes made to those figures by OCS will also be applied to the EHP program.

As an example, if a tribe with a total population of 3,000 is located in a State where the Indian rural poverty rate is 50 percent, the tribe's poverty population will be 1500 (3,000×50%=1500). If 5 tribes with a total poverty population of 10,000 were funded, then one tribe with a poverty population of 1500 would receive 15 percent of the available funds (1500 divided by 10,000=15%). If the total EHP set-aside funds available were $20,000, this tribe would receive $3,000 ($20,000×15%=$3,000). If the allocation calculated under this formula came to less than the minimum grant amount of $500 or $1,000, the amount would be adjusted up to that amount, and the allocations for the other tribes would be adjusted down proportionately to accommodate it.

Section 1080.8 Reporting Requirements

These regulations require all EHP grant recipients to report annually to OCS on their implementation of the EHP program. The report is to indicate the types of activities funded, any efforts undertaken by the grantee and its subgrantees to coordinate homeless activities funded under the EHP program with other state and community homeless assistance activities, the number of individuals served, and any impediments to homeless individuals, use of the program or to their obtaining services or benefits under the program. The report may be in any format, but must be submitted within 6 months of the end of the period covered by the report (e.g., the report will be due by March 31 for the fiscal year which ended on September 30 of the previous year). We would strongly encourage grantees, however, to submit their reports by December 31 of each year, while the details of the program are still fresh. This information will allow HHS to fulfill its obligation under section 203(c) of the McKinney Act to report annually to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act.

Section 1080.9 Other Requirements

The McKinney Act is silent on a number of administrative details necessary to ensure that EHP funds are spent as intended by the law. We have determined that the best way to ensure that the intent of Congress is carried out is to make the EHP program subject to a few selected regulations that are currently applicable to the HHS block grant programs, including CSBG.

These regulations apply to EHP the payment regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart B, § 96.12, as amended). Those block grant regulations provide that the Secretary will make payments to the grantees at such times and in such amounts as are consistent with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205). Those regulations in essence are intended to limit the amount of time elapsing between a grantee's acquisition of federal funds and their expenditure, and mean that many awards may be disbursed in more than one payment, rather than in a lump sum, thus reducing federal interest costs.

The regulations make the HHS block grant regulations concerning the time period for obligation and expenditure of funds (45 U.S.C. Part 96, Subpart B, § 96.14) applicable to EHP. Those regulations provide that funds that a State has not obligated by the end of the fiscal year in which they were first allotted will remain available for obligation during the following fiscal year.

Also applying to EHP are the financial management and audit regulations applicable to the HHS block grant programs (45 U.S.C. Part 96, Subpart C, as amended). Those regulations require States to obligate and expend federal grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of their own funds. Those regulations also require States and tribes that receive over $100,000 in federal grant funds from all sources to conduct a single audit of all federal financial assistance under the terms of the Single Audit Act (Pub. L. 98-502). States and Indian tribes that receive between $25,000 and $100,000 in federal grants may either conduct a single audit or an audit that meets the statutory requirements of that program. Since the McKinney Act does not prescribe audit requirements for EHP, these grantees must also conduct a single audit. States or tribes that receive less than $25,000 in federal funds from all sources are not subject to federal audit requirements. The HHS block grant audit regulations specify reporting deadlines for audits, and lay out procedures for the repayment of funds found by the audit to have been spent improperly. The block grant regulations also identify the Regional Office of Investigations of the Department's

Office of Inspector General as the agency to which States and Indian tribes should report information relating to possible fraud or other offenses against the United States.

These regulations also specify that all EHP grants are subject to the enforcement regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart E, as amended). Those regulations establish procedures for accepting and responding to complaints that a recipient has improperly spent federal funds. They include the right to a hearing on the complaint, appeal rights, and repayment of funds.

Finally, the EHP regulations state that grant recipients are subject to the hearing procedures regulations applicable to the HHS block grant programs (45 CFR Part 96, Subpart F). Those regulations specify the procedures and time requirements for a hearing.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small nonprofit organizations, and small governmental entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements in a proposed or final rule. These regulations include two provisions that were originally published as a part of the interim final regulations published on June 22, 1988 (53 CFR Part 23568). The first of these provisions requires grant recipients to submit an annual report to OCS on their implementation of the EHP program and any impediments to homeless individuals' use of the program or to their obtaining services or benefits under the program. This information is essential so that HHS can fulfill its obligation under section 203(c) of the McKinney Act to report to Congress and the Interagency Council on the Homeless on the implementation and effectiveness of the programs funded by the Act. The second provision incorporates the McKinney Act requirement that States apply for the EHP funds on an annual basis. The Office of Community Services submitted information to the Office of Management and Budget requesting approval of the reporting and application requirements at the time the interim final regulations were published. On September 6, 1988, the Office of Management and Budget approved both these requirements for use through September 30, 1991 (OMB No. 0970–0088).

List of Subjects in 45 CFR Part 1080

Administrative practices and procedures, Community action programs, Grant programs—social, Homeless assistance.

For the reasons set forth in the preamble, Part 1080 of Title 45 of the Code of Federal Regulations is revised to read as follows:

PART 1080—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

Sec.

Authority: 42 U.S.C. 11302 (101 Stat. 485); 42 U.S.C. 11461–11464, 11472 (101 Stat. 532–533).

§ 1080.1 Scope.

This part applies to the Emergency Community Services Homeless Grant Program.

§ 1080.2 Definitions.

(a) "Homeless" or "homeless individual" includes:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(b) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians.

(c) "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

§ 1080.3 Allocation of funds.

From the amounts made available under the Emergency Community Services Homeless Grant Program, the Secretary shall make grants to States that administer programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*), after taking into account the amount set aside for Indian tribes in § 1080.7(a) of this chapter. Such grants shall be allocated to the States in accordance with the formula set forth in subsections (a) and (b) of section 674 of such Act (42 U.S.C. 9903 (a) and (b)). No funds shall be allocated under subsection (c) of section 674 of such Act (42 U.S.C. 9903(c)).

§ 1080.4 Eligible use of funds.

Amounts awarded under the Emergency Community Services Homeless Grant Program may be used only for the following purposes:

(a) Expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to help them make the transition out of poverty;

(b) Provision of assistance in obtaining social and maintenance services and income support services for homeless individuals;

(c) Promotion of private sector and other assistance to homeless individuals; and

(d) After October 1, 1988, provision of assistance to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if—

(1) The inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;

(2) The assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

§ 1080.5 Application procedures for States.

(a) Each State requesting funds under the Emergency Community Services Homeless Grant Program shall submit to the Office of Community Services an application for funds for each fiscal year, at a time established by the Secretary. Approval must be requested of and received from the Office of Community Services before a State may implement changes to the information requested by paragraph (b) of this section after an application has been approved.

(b) The application may be in any format, but must include a description of the agencies, organizations, and activities that the State intends to support with the amounts received. In addition, the application must include the following assurances, signed by the Governor or his/her designee:

(1) The State will award all of the amounts it receives to:

(i) Community action agencies and other organizations that are eligible to receive amounts under section 675(c)(2)(A) of the Community Services Block Grant Act (42 U.S.C. 9904(c)(2)(A));

(ii) Organizations serving migrant and seasonal farmworkers; and

(iii) Any organization to which a State, that applied for and received a waiver from the Secretary under Pub. L. 98–139, made a grant under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) for fiscal year 1984;

(2) Not less than 90 percent of the amounts received shall be awarded to agencies and organizations meeting the requirements of paragraph (b)(1) of this section that, as of January 1, 1987, were providing services to meet the critically urgent needs of homeless individuals;

(3) No amount received will be used to supplant other programs for homeless individuals administered by the State;

(4) No amount received will be used to defray State administrative costs;

(5) Every effort will be made to award the funds within 60 days of their receipt;

(6) Not more than 25 percent of the amounts received will be used for the purpose described in § 1080.4(d) of these regulations; and

(7) The State will have mechanisms in place to assure coordination among State and local agencies serving the homeless. This will include coordination at the State level with the agency responsible for developing the Comprehensive Homeless Assistance Plan required by section 401 of such Act (42 U.S.C. 11361).

§ 1080.6 Funding of alternative organizations.

(a) If a State does not apply for or submit an approvable application for a grant under the Emergency Community Services Homeless Grant Program, the Secretary shall use the amounts that would have been allocated to that State to make grants to agencies and organizations in the State that meet the requirements of § 1080.5(b) (1) and (2) of this chapter.

(b) The amounts allocated under this section in any fiscal year shall be awarded to eligible agencies and organizations in the same proportion as funds distributed to those agencies and organizations by the State for the previous fiscal year under the Community Services Block Grant Program (42 U.S.C. 9904(c)(2)(A)).

(c) Agencies and organizations eligible to be funded under this section shall submit an application meeting the requirements of §§ 1080.5(a) and 1080.5(b) (3), (4), (6), and (7) of this chapter, at a time specified by the Secretary. If such an agency or organization does not apply for or submit an approvable application under this section, the funds that would have been allocated to them shall be reallocated by the Secretary to the remaining eligible agencies and organizations on a pro rata basis.

§ 1080.7 Funding of Indian tribes.

(a) Not less than 1.5 percent of the funds provided in each fiscal year for the Emergency Community Services Homeless Grant Program shall be allocated by the Secretary directly to Indian tribes that have applied for and received a direct grant award under section 674(c) of the Community Services Block Grant Act (41 U.S.C. 9903(c)) for that fiscal year.

(b) An Indian tribe funded under this section is not required to submit an application for Emergency Community Services Homeless Grant Program funds. A tribe's application for a direct grant award under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)) that is submitted by September 1 for the succeeding fiscal year will be considered as an application for Emergency Community Services Homeless Grant Program funds for that fiscal year. Acceptance of the Community Services Block Grant application by the Office of Community Services will constitute approval of an award of funds under this section.

(c) Funds allocated under this section shall be allotted to an Indian tribe in an amount that bears the same ratio to all the funds allocated under this section as the tribe's poverty population bears to the total poverty population of all tribes funded under this section, except that no tribe shall receive an amount of less than:

(1) $500, for those tribes whose allocation under this section would otherwise be at least $1 but no more than $500; or

(2) $1000, for those tribes whose allocation under this section would otherwise be at least $501 but less than $1000.

(d) For purposes of this section, an Indian tribe's poverty population shall be calculated by multiplying the tribe's overall population by the Indian rural poverty rate for the State in which it is located, using the population and rural poverty rate figures established for the purposes of making direct grants under section 674(c) of the Community Services Block Grant Act (42 U.S.C. 9903(c)).

§ 1080.8 Reporting requirements.

Each recipient of funds under the Emergency Community Services Homeless Grant Program shall submit an annual report to the Secretary, within 6 months of the end of the period covered by the report, on the expenditure of funds and the implementation of the program for that fiscal year. The report is to state the types of activities funded, any efforts undertaken by the grantee and its subgrantees to coordinate homeless activities funded under this program with other homeless assistance activities in the State and communities,

the number of individuals served and any impediments, including statutory and regulatory restrictions to homeless individuals' use of the program and to their obtaining services or benefits under the program.

§ 1080.9 Other requirements.

All recipients of grants under the Emergency Community Services Homeless Grant Program shall be subject to the following regulations applicable to the block grant programs in the Department of Health and Human Services:

(a) 45 CFR Part 96, Subpart B, § 96.12—Grant Payment, concerning the timing and method of disbursing grant awards;

(b) 45 CFR Part 96, Subpart B, § 96.14—Time Period for Obligation and Expenditure of Grant Funds, as amended, concerning the availability of grant funds;

(c) 45 CFR Part 96, Subpart C—Financial Management, as amended, concerning financial management and audit requirements;

(d) 45 CFR Part 96, Subpart E—Enforcement, as amended, concerning enforcement and complaint procedures; and

(e) 45 CFR Part 96, Subpart F—Hearing Procedures, concerning hearing procedures.

Date: November 22, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

Date: January 26, 1989.

Don M. Newman,

Acting Secretary, Department of Health and Human Services.

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Thursday
February 9, 1989

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL: 3516-8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: Today's final action allows persons holding allowances to produce and import certain chlorofluorocarbons (CFCs) and halons to transfer those allowances subject to certain procedural requirements. EPA promulgated a rule on August 12, 1988 (53 FR 30566) that allocates these allowances as part of a regulatory system designed to protect stratospheric ozone. The purpose of this action is to promulgate the section of that regulatory system that permits transfers of allowances (40 CFR 82.12).

The regulation promulgated today requires any firm wishing to transfer allowances to submit a transfer claim to EPA and substantiate that it has the allowances it wishes to transfer. Depending on whether EPA's records confirm that the transferring firm has the allowances, the Agency will issue a notice of no objection to the transfer or a notice disallowing the transfer. In certain instances, EPA will issue a notice of no objection, but request further information from the transferor. In any event, the Agency will act within three working days of receiving a firm's complete transfer claim.

EPA is also considering whether to substitute for the transfer rule promulgated today a system based on certificates or coupons that would not require the Agency to determine whether the transferor has sufficient allowances. The Agency is requesting comments on this sytsem.

DATES: This final rule will take effect upon entry into force of the Montreal Protocol. The United States and other Parties to the Protocol will likely have 90 days prior notice of the date on which the Protocol will enter into force. When EPA learns of that date, it will publish a document in the **Federal Register** announcing the effective date of this rule. Written comments on the Coupon Tracking System must be submitted by March 15, 1989 to the location listed below.

ADDRESSES: Written comments should be sent to Docket A-88-27, Central Docket, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of the written comments be sent to David F. Lee at the address listed below.

FOR FURTHER INFORMATION CONTACT: David F. Lee, Division of Global Change, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation (ANR-445), EPA, 401 M Street SW., Washington DC 20460. Telephone (202) 475-7497.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 12, 1988, EPA issued its final rule (53 FR 30566) implementing the Montreal Protocol, an international treaty designed to limit the worldwide production and consumption of chloroflourocarbons (CFCs) and halons.

The rule requires CFC producers to reduce their production of CFC-11, -12, -113, -114, -115 ("controlled substances") by as much as 50 percent of 1986 levels over the next 10 years. The schedule of the phased reductions in CFC production is presented in the August 12 final rule (§ 82.7). In addition to these production limits, the rule requires reduction in CFC consumption, defined as production plus imports minus exports, according to the same schedule (§ 82.7).

The rule also limits the production and consumption of Halon 1301, 1211, and 2402, another set of ozone-depleting chemicals. Under the rule, production and consumption of these halons will be frozen at 1986 levels beginning in approximately 1992 (§ 82.8).

The Agency's August 12 final rule implements these limits by allotting production and consumption allowances to producers and importers (§§ 82.5 and 82.6). Producers must obtain both consumption and production allowances to manufacture controlled substances while importers need only consumption allowances to import. Under the August 12 final rule seven producers received production allowances and seventeen producers and importers received consumption allowances for these chemicals based on the 1986 production and trade data they submitted to the Agency (§§ 82.5 and 82.6).

To monitor compliance by industry with these production and consumption limits, EPA requires that producers and importers maintain records of their production and import activities and report quarterly their production and import levels (§ 82.13). EPA may also conduct compliance reviews and inspections. In addition, EPA requires exporters to report their export shipments for which they may receive additional consumption allowances (§§ 82.10, 82.11 and 82.13).

As EPA stated in the preambles to its proposed and final rules, the Agency intended that consumption, production, authorizations to convert potential production allowances and potential production allowances [1] be transferable to improve the efficiency of its regulatory system. With the addition of the transfer section promulgated today, the regulations permit producers and importers either to use their allowances to produce or import controlled substances, or to trade their allowances to other companies which could, in turn, produce or import the chemicals or trade the allowances.

In either case, the company must notify EPA of its activities. If a company produces or imports the controlled substances or trades the allowances needed to produce or import that company must report quarterly to EPA. This quarterly reporting requirement is specified in § 82.13 of the final rule.

EPA did not promulgate the transfer section with the rest of the final rule pending further review of that provision. EPA has completed this review and today issues § 82.12 which details the requirements for companies that intend to trade allowances. EPA has benefitted, in developing § 82.12, from comments submitted in response to the proposed rule published on December 14, 1987. In addition to these comments, EPA has consulted with industry trade groups and other government agencies in developing this section.

The section set forth today provides for prompt processing of transfer claims that will help the U.S. avoid exceeding the production and consumption limits set by the Montreal Protocol. Notification of an intended trade through a transfer claim will allow the Agency to review the availability of allowances for trading. Review of transfer claims will also provide a check on the validity of allowances and prevent possible counterfeiting of allowances and fraudulent trades. Further, a system of EPA review will reduce uncertainty that could otherwise discourage firms from trading.

EPA believes that only through a system of transfer claims can EPA track additional firms which were not allocated allowances initially but which

[1] (Companies receive potential production allowances conditions specified in § 82.9 of the August 14 final rule and can convert potential production allowances to production allowances when EPA grants an authorization under conditions specified in § 82.11.)

may enter the trading market to obtain allowances. Without notification of such trades EPA would be unable to monitor U.S. compliance with the Protocol and could not resolve future trades between the third party firm and another firm. When EPA evaluates compliance at the end of each control period, knowledge of these third party trades becomes important if companies which received traded allowances are found in noncompliance.

Finally, submission of transfer claims to EPA may prevent companies from inadvertently trading allowances they do not have. This is most likely to occur during the last quarter of the control period during which EPA is aware, through quarterly reports and compliance inspections, of the level or likely level of unexpected allowances available for trade. A review of reported allowances, including those traded, against EPA records would prevent inadvertent exceedances of production and consumption limits. EPA believes that it is during this period that trades are most likely to occur as companies alter production plans and import activities to ensure compliance with their production and consumption allowances.

II. Response to Comments

Comments to the December 14 proposed rule expressed concern that approval by EPA of trades may interfere with the free trade of allowances. Commenters believed that § 82.12, as proposed, provided EPA with the role of approving or disapproving the trades and of acting potentially as a third party within the trade negotiations. This was not EPA's intention. In response to this concern, EPA refers to "transfer claims" instead of "transfer requests" within the final § 82.12. This change is intended to clarify that EPA's role is to keep track of trades and to verify that allowances are sufficient. EPA, acting in a fashion similar to a commercial bank, will disallow transfers if the seller's account shows insufficient balances to effect the transfer.

EPA is also aware of industry's concern that the Agency will not review the transfer claim quickly and could, through delay, disrupt the supply of the chemicals to necessary markets. It is common practice for a company which cannot produce enough chemicals to fill orders to seek to obtain the chemical from another producer. In that situation a trade of allowances would occur. Producers were concerned that EPA may not be able to process the request for transfer quickly enough, thus hindering the supply of these chemicals to consumers. EPA believes that most transactions will involve sales or purchases of the chemicals themselves and not of allowances. Nonetheless, in response to this concern, EPA will respond to transfer claims within three working days of receipt of a complete claim by the Chief, Regulations and Analysis Branch, Global Change Division, the Office of Air and Radiation. Three working days are necessary given the uncertainty as to the number of claims that will be filed, the need to review and assess multiple reports or claims, and in some cases to evaluate apparent discrepancies. The Agency intends to take action in fewer than three days whenever possible.

Electronic Reporting

To expedite processing and review, EPA encourages firms to submit their transfer claims electronically. By sending reports electronically, firms would be able to avoid delays inherent in using the mail system and possible mis-direction of the request within the Agency. A firm reporting electronically may submit the transfer request through electronic mail, spread sheet, electronic facsimile or through a computer prompt system established by EPA. Although EPA has not mandated electronic reporting, the Agency believes that such a reporting system will provide for a more immediate response by EPA to the transfer claim and reduce the need to establish an extensive filing system by EPA and the firm for hard copy claims.

Although EPA encourages firms to report electronically, firms may submit transfer claims through the U.S. mail or a commercial carrier. Ordinarily, it may take one to two days for a letter to reach the Global Change Division, once the submission is delivered to the EPA headquarters. The three working day response time begins when a completed submission is received by the Chief of the Regulation and Analysis Branch, the Global Change Division, within the Office of Air and Radiation. Completeness is to be determined by the Chief of the Regulations and Analysis Branch. The Agency will develop a system to receive both electronic and hard copy submissions and outline procedures for submission by firms in a guidance document to be available before the beginning of the first control period.

III. Penalties

Companies submitting or using fraudulent transfer claims are subject to stringent penalties. Companies producing or importing based on fraudulent allowances obtained through a trade would be subject to a penalty under section 113(b) of the Clean Air Act of up to $25,000 per kilogram of controlled substances produced or consumed in excess of the legitimate number of allowances held by that company. Transferring allowances without submission of proper claim under § 82.12 constitutes a reporting violation on the part of the transferor subject to a maximum penalty of $25,000 per violation under section 113(b) of the Clean Air Act. Any person who knowingly misrepresents any required information under § 82.12 would upon conviction be subject to a maximum fine of $10,000 and/or imprisonment of not more than 6 months under section 113(c)(2) of the Clean Air Act. Selling or trading fraudulent allowances would expose the seller or trader to liability under 18 U.S.C. 1001, which prohibits supplying false information to the United States government. Maximum penalties under this section are $10,000 or five years imprisonment or both. In addition, such companies are guilty of mail fraud under 18 U.S.C. 1341 which carries a potential penalty of $1,000 per occurrence or five years imprisonment or both. Producers and importers which trade allowances and produce or import in excess of their remaining balance of allowances may be penalized for each kilogram in excess of the allowances they still hold. The maximum penalty for excess production or consumption is $25,000 per kilogram.

IV. Changes to the Proposed Rule

Section 82.12 of the December 14, 1987 proposed rule required companies intending to trade these allowances to submit a "transfer request" to EPA for approval. The proposed rule required that the transferring company submit the following information for review by the Agency: The identities and addresses of the transferor and the transferee; the names and telephone numbers of the contact persons; the type of right or allowances (i.e. production allowances, consumption allowances, or potential production allowances) or authorization being transferred; the group of controlled substances to which the rights are being transferred; the amount of the rights or authorization being transferred; the control period for which the rights or authorization are being transferred; and the amount of unexpended rights or allowances of the type and for the control period being transferred that the transferor holds as of the date of the request. The proposed rule stated that the Agency would review the current balances of the firm requesting the transfer or trade and issue a notice of transfer if a sufficient

balance of unexpended rights or allowances existed to cover the trade.

Section 82.12 of the final rule requires similar information from the company trading the allowances. This information is important for EPA to evaluate the trade and to contact company representatives if discrepancies occur. However, as previously discussed, EPA has modified the proposed section in some areas. The final rule refers to transfer "claims" rather than transfer "requests", thus emphasizing that EPA's role is limited to reviewing and determining if sufficient balances exist for a trade rather than as a third party actively involved in the approval of transfers between the companies.

EPA has revised subsection (b) to state that the Agency will determine whether its records indicate that the transferor possesses unexpended allowances or authorizations sufficient to cover the transfer claim. That subsection also provides that within three working days of receiving a complete transfer claim, the Agency will take action to notify the transferor and transferee that its records show (1) that the transferor has either sufficient or insufficient allowances or authorizations to cover the claim or (2) that its records are inadequate to make this determination.

Where EPA's records show that the transferor has insufficient allowances or authorizations to cover the transfer, or that the transferor has failed to respond to the Agency's request for information to determine the transferor's current balance, EPA's notice will disallow the transfer. Within ten working days of receiving a notice of disallowing the transfer, the transferor or transferee may appeal the disallowance to the Director of the Office of Atmospheric and Indoor Air Programs in the Office of Air and Radiation. If no appeal is taken, the disallowance will be final on that day.

Where EPA's records indicate that the transferor has sufficient allowances or authorizations to cover the transfer or if review of EPA's records shows that available information is insufficient to make a determination, EPA will issue a notice stating that EPA does not object to the transfer. When EPA issues a no objection notice, the transferor or transferee may proceed with the transfer. Transferees may not proceed to produce or consume in accordance with the transfer claim until EPA has had three working days to review the complete transfer claim. If EPA does not issue a notice within three working days, transferors and transferees may proceed to produce or consume in accordance with the transfer at their own risk. EPA's failure to object to the transfer does not represent a final determination that the transfer is valid, however. Accordingly, a no objection notice is not final agency action reviewable in court. See, *District of Columbia* v. *Schramm*, 631 F. 2d 854, 859–862 (DC Cir., 1980); *Save the Bay Inc.* v. *EPA*, 556 F. 2d 1282, 1290–1292 (5th Cir., 1977). By the same token, the failure to object would not bar a subsequent enforcement action if, for example, EPA later finds that the transaction was improper.

EPA may ask for additional information where the EPA has not received the quarterly report due under § 82.13 of this part or where the report has been received but appears to be inadequate. In addition, discrepancies may occur within quarterly reports, compliance reports, or trading claims filed by EPA. Where EPA receives a trading claim under such circumstances, EPA will issue a no objection claim but will request that the trading firms supply the requested information expeditiously. Failure to respond to requests may lead to disallowance of future transfer claims submitted by these firms.

EPA has also added subsection (c) which provides that if the Agency fails to respond to a transfer claim within three working days of receiving it, the transferor and transferee may proceed with the transfer. However, that subsection also states that the transferor and transferee would still be liable for any violations of the regulations of this part if EPA later determined that the transferor had insufficient allowances to cover the trade. In this respect, transfers completed before the Agency responded to the transfer claim would be treated like transfers to which the Agency issues a notice of no objection.

Finally, transferors and transferees should act prudently so as not to exceed available allowances or authorizations. If EPA ultimately finds that the transferor lacked sufficient allowances to cover the claim, the transferor and transferee will be held liable for any violation of the regulations that occur as a result of the improper transfer.

V. Coupon Tracking System

The Agency today is requesting comments on an approach to streamline further the trading requirements outlined in § 82.12 of the final rule. A coupon system would eliminate the need for trading companies to notify EPA of transfer claims when the trade occurs. Under a coupon system, EPA would provide coupons representing their full allotment of allowances to producers and importers. Each coupon would entitle the holder to produce or import a certain level of controlled substances. Once a specified quantity of controlled substance was produced or imported, then coupons representing that level of production and consumption would be submitted to EPA. These submissions would either occur when the production or consumption occurred or quarterly. EPA would continue to maintain production and import records and require quarterly reporting as outlined in § 82.13 of the final rule.

As part of a trading transaction, a company would physically transfer the coupons representing the traded allowances to the recipient company. Companies would not be required to notify the Agency of the trade immediately or require approval. Once the allowances were consumed by the recipient, the coupons would be sent to EPA or maintained on site for compliance inspections.

EPA believes that a coupon system may facilitate allowance trading among firms. However, several issues and concerns must be resolved. First, the issue of counterfeiting of coupons (e.g. where a recipient firm must be certain that it receives authentic coupons) must be examined. Another issue involves whether the Agency should monitor the activities of new firms which enter the market to receive and trade allowances. Absent counterfeiting problems, such monitoring may not be necessary. EPA is requesting comments on these issues as well as the general structure of the coupon tracking system.

Paperwork Reduction Act

The information collection requirements contained in this rule as well as all reporting and recordkeeping requirements contained in the final rule promulgated on August 12, 1988, 53 FR 30566, have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0170.

Reporting burden associated with the preparation and submittal of allowance transfer claims is estimated to be 2 hours per submittal (on average), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington,

DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (2060–0170), Washington, DC 20530, marked "Attention: Desk Officer for EPA."

Date: February 2, 1989.

Jack Moore,

Acting Administrator.

For the reasons set forth in the preamble, Title 40 Part 82 is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7157(b)

2. Part 82 is amended by adding § 82.12 to read as follows:

§ 82.12 Transfers of production and Consumption allowances.

Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorization to convert potential production allowances to production allowances, as follows:

(a) The transferor must submit to the administrator's designated representative a transfer claim setting forth the following:

(1) The identities and addresses of the transferor and the transferee;

(2) The name and telephone numbers of contact persons for the transferor and for the transferee;

(3) The type of allowances (i.e., consumption allowances, production allowances, or potential production allowance) or authorization being transferred;

(4) The group of controlled substances (i.e., Group I or Group II) to which the allowances or authorization being transferred pertains;

(5) The amount of allowances or authorization being transferred;

(6) The control period(s) for which the allowances or authorization are being transferred; and

(7) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this part as of the date the claim is submitted to EPA.

(b) The Administrator's designated representative wil determine whether the records maintained by EPA, taking into account any previous transfers and any production, imports or exports of controlled substances reported by the transferor or revealed by an EPA inspection, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim. Within three working days of receiving a complete transfer claim, the Administrator's designated representative will take action to notify the transferor and transferee as follows:

(1) If EPA's records show that the transferor has sufficient allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator's representative will issue a notice indicating that EPA does not object to the transfer. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

(2) If EPA's records show that the transferor has insufficient allowances or authorizations to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the administrator's designated representative will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(c) In the event that the Administrator's designated representative does not respond to a transfer claim within the three working days specified in paragraph (b) of this section, the transferor and transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient allowances or authorizations to cover the claims, the transferor and transferee will be held liable for any violations of the regulations of this part that occur as a result of, or in conjunction with, the improper transfer.

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