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OK Federal Register

Monday
April 4, 1983

Selected Subjects

Air Pollution Control

Environmental Protection Agency

Aviation Safety

Federal Aviation Administration

Campaign Funds

Federal Election Commission

Education

Veterans Administration

Excise Taxes

Internal Revenue Service

Fisheries

National Oceanic and Atmospheric Administration

Flood Insurance

Federal Emergency Management Agency

Motor Carriers

Federal Highway Administration

Prisoners

Parole Commission

Radio

Federal Communications Commission

Wine

Alcohol, Tobacco and Firearms Bureau



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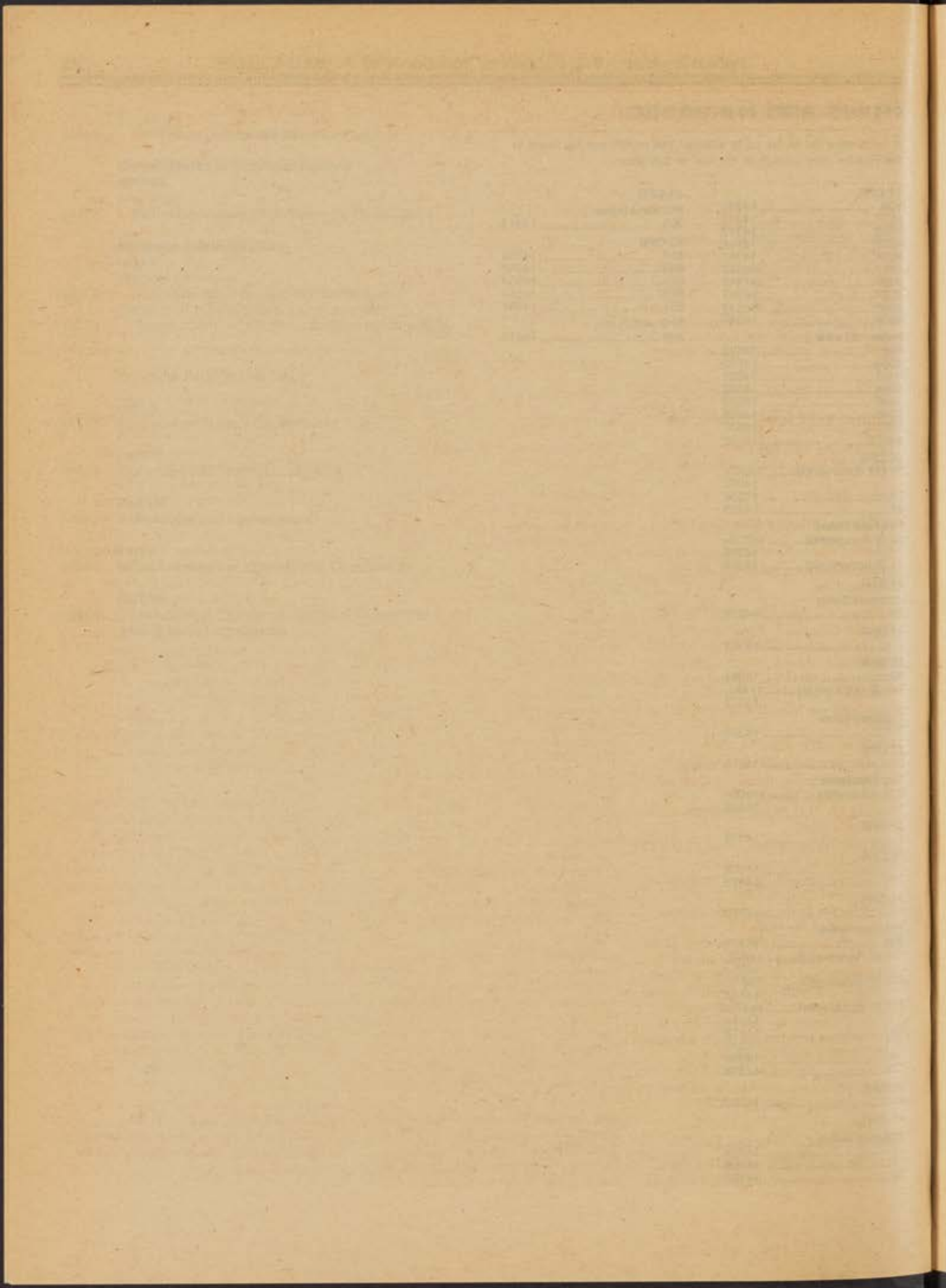
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Rules and Regulations

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

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038, and 9039

[Notice 1983-8]

Presidential Primary Matching Fund

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On February 4, 1983 [48 FR 5224], the Commission published the text of regulations which implement the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* The Commission announces that these regulations are effective as of April 14, 1983.

EFFECTIVE DATE: April 14, 1983.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: 26 U.S.C. 9039(c) requires that any rule or regulation proposed by the Commission to implement Chapter 96 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulation in question. The regulations made effective by this notice were transmitted to Congress on January 24, 1983. Thirty legislative days expired in the House and Senate as of March 23, 1983.

Announcement of Effective Date

11 CFR 106.2, 106.3, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038, and 9039, as

published at 48 FR 5224-5251, are effective as of April 14, 1983.

Dated: March 29, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 83-8636 Filed 4-1-83; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 83-ASW-11; Amdt. 39-4600]

Airworthiness Directives; Boeing Vertol Company Model 107-II and Kawasaki Heavy Industries, Ltd. Model KV107-II and KV107-IIA Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections and replacement as necessary of the No. 5 synchronizing shaft assembly on Boeing Vertol Model 107-II and Kawasaki Model KV107-II and KV107-IIA series helicopters. The inspection is needed to detect and correct fatigue cracks in the No. 5 synchronizing shaft which could result in failure of the shaft.

DATES: Effective April 4, 1983.

Compliance required within the next 50 hours' time in service after the effective date of this AD unless already accomplished for all No. 5 synchronizing shafts with more than 1200 hours' time in service.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, a Division of the Boeing Company, P.O. Box 18858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:

Murry Schoenberger, ANE-174, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202,

Valley Stream, New York 11581, Telephone No. (516) 791-7421.

SUPPLEMENTARY INFORMATION: There has been a fatigue failure in the shaft-to-adaptor rivet area of the No. 5 synchronizing shaft, P/N 107D3340-1, on a Boeing Vertol 107-II helicopter.

The failure occurred in a shaft which had improperly machined rivet holes at one end. It could not be determined under what circumstances the nonconforming rivet holes were machined. Also, feasible nondestructive tests to ascertain the presence or nonpresence of nonconforming rivet holes have not been found.

The total time on the part when failure occurred was 5343 hours, and it had been magnaflux inspected 1360 hours prior to the failure. Preliminary fatigue testing at Boeing Vertol indicates that the mean endurance limit of an improperly fabricated shaft is 3532 hours, compared to 5343 hours on the shaft whose failure caused the accident. It is concluded that there is sufficient justification for a 1200 hour initial inspection. The 2000-hour magnaflux inspection continues the normal overhaul time.

The 300-hour interim inspection can be conducted in the field and coincides with normal inspection periods for components in this area of the helicopter.

P/N 107D3340-1 and P/N 107D3140-1 are used on the Boeing Vertol Model 107-II and Kawasaki Heavy Industries KV107-II and KV107-IIA helicopters. Predecessor part 107D3140-1 is identical in the affected area to the synchronizing shaft, P/N 10700340-1, which failed. Since this condition is likely to exist or develop on other helicopters of the same type designs, an airworthiness directive is being issued which requires initial and repetitive inspections of the No. 5 synchronizing shaft and replacement as necessary on Boeing Vertol Model 107-II and Kawasaki Heavy Industries Model KV107-II and KV107-IIA helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Boeing Vertol Company and Kawasaki Heavy Industries, Ltd.: Applies to Boeing Vertol Model 107-II and Kawasaki Model KV107-11 and KV107-IIA helicopters certified in all categories equipped with No. 5 Synchronizing Shaft, P/N 107D3340-1 or 107D3140-1. Compliance is required as indicated on all No. 5 Synchronizing Shaft Assemblies P/N 107D3340-1 or 107D3140-1 with 1200 hours' or more total time in service.

To prevent failure of the steel synchronizing shaft due to improperly drilled rivet holes, accomplish the following:

A. Within 50 hours' time in service after the effective date of this AD (unless already accomplished within the past 250 hours' time in service) and every 300 hours' time in service thereafter, visually inspect the interior and exterior surfaces of the No. 5 Synchronizing Shaft Assembly P/N 107D3340-1 or 107D3140-1 for cracks, damage or defects in the area adjacent to the adapter-to-tube rivets at both ends, particularly at the inboard row of rivets. The visual inspection shall be either a lighted borescope inspection using at least 2X magnification or dye penetrant inspection methods combined with at least 2X visual magnification.

All paint on surfaces to be inspected must be removed prior to inspection.

B. Before the accumulation of 2000 hours' time in service, or before the accumulation of 2000 hours' time in service since last magnetic particle inspection, whichever is less, and at each 2000-hour interval thereafter, magnetic particle inspect the entire shaft assembly, P/N 107D3340-1 or 107D3140-1 in accordance with Boeing Vertol Overhaul Manual 107-5.

C. Replace any cracked or otherwise unserviceable part found during the inspections of Paragraphs A or B with serviceable parts prior to further flight.

D. An equivalent method of compliance with this AD may be used when approved by the Manager, New York Aircraft Certification Office, New England Region.

This amendment becomes effective April 4, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an

unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Fort Worth, Texas, on March 18, 1983.

C.R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 83-9621 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-25-AD; Amendment 39-4605]

Airworthiness Directives; British Aerospace, Aircraft Group, Model HP.137 Jetstream MK-1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace, Aircraft Group, Model HP.137 Jetstream MK-1 and Jetstream Series 200 airplanes which requires visual inspection of the rudder panel stiffness for damage and installation of additional panel stiffeners in the rudder assembly to preclude cracking of these surfaces. There have been reports of cracked rudder skin panel stiffeners. Propagation of these cracks could result in a broken section of the stiffener protruding from the opening in the bottom of the rudder and possible jamming. Installation of the additional rudder panel stiffeners and a fabric patch on the rudder rib in accordance with this AD will preclude a broken stiffener from causing a jammed rudder.

EFFECTIVE DATE: April 11, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: British Aerospace, Aircraft Group, Jetstream Service Bulletin (SB) No. 8/2, Revision No. 1, dated November 10, 1982, applicable to this AD may be obtained from British Aerospace Incorporated, 13850 McLearn Road, Dulles Industrial Aerospace Park, Herndon, Virginia 22070. A copy of this information is also contained in the Rules Docket, FAA, Office of the

Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone 816/374-6932.

SUPPLEMENTARY INFORMATION: Cases have been found of cracks occurring in the rudder skin panel stiffeners located above the second rib from the bottom of the rudder on British Aerospace, Aircraft Group, Model HP.137 Jetstream MK-1 and Series 200 airplanes. Although these cracks will not cause immediate deterioration of the structural strength of the rudder, a broken stiffener could protrude from the opening in the bottom of the rudder and cause the rudder to jam. British Aerospace, Aircraft Group, Scottish Division has issued Service Bulletin (SB) No. 8/2, Revision 1, dated November 10, 1982, requiring incorporation of British Aerospace Modification 5210. This modification adds increased stiffeners to the rudder assembly. As an interim measure, until Modification 5210 is incorporated, SB 8/2 provides for a visual inspection of the rudder skin panel stiffeners located above the second rib from the bottom and installation of a fabric patch to the undersurface of this rib. The patch will eliminate the possibility of a broken stiffener falling through the lightening hole in the rib and jamming the rudder. The United Kingdom Civil Aviation Authority (UKCAA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of British Aerospace, Aircraft Group,

Scottish Division, SB No. 8/2, Revision 1, dated November 10, 1982, and the mandatory classification of this SB by the UKCAA. Based on the foregoing, the FAA has determined that the condition addressed by this SB is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring modification of the rudder assemblies to preclude cracking of the skin panel stiffeners, and as an interim measure, a visual inspection of the rudder skin panel stiffeners and installation of a fabric patch below the second to bottom rib in accordance with Jetstream SB No. 8/2, revision 1, dated November 10, 1982, on British Aerospace, Aircraft Group, Scottish Division, Model HP.137 Jetstream MK-1 and Series 200 airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

British Aerospace, Aircraft Group, Scottish Division: Applies to Model HP.137 Jetstream MK-1 and Jetstream Series 200 airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible jamming of the rudder, accomplish the following:

(a) Within 100 hours time-in-service, after the effective date of this AD:

(1) Remove the access panel located between the two bottom ribs in the rudder. Using a light and mirror visually inspect the two rudder skin panel stiffeners for damage in accordance with British Aerospace, Aircraft Group, Jetstream Service Bulletin (SB) No. 8/2, Revision 1, dated November 10, 1982, hereinafter referred to as the SB. Ensure that any debris from damaged stiffeners is removed from the rudder.

(2) Fit a fabric patch (debris net) on the undersurface of Rib No. B and provide effective water drainage in accordance with the SB.

(b) Incorporate British Aerospace Modification 5210 to the rudder assembly as specified in SB No. 8/2, by December 31, 1985.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where this

Airworthiness Directive (AD) can be accomplished.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on April 11, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-8619 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR PART 39

[Docket No. 83-CE-28-AD; Amendment 39-4604]

Airworthiness Directives; Short Brothers & Harland Ltd., Model SC-7, Series 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Short Brothers & Harland Ltd., Model SC-7, Series 3 airplanes, which requires inspection of 26 separate connections in the flight control systems to preclude loss of primary control during flight.

EFFECTIVE DATE: April 11, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Shorts Service Bulletin No. 27-66 dated November 18, 1977, applicable to this AD may be obtained

from Short Brothers & Harland Ltd., Queens Island, Belfast 3, Northern Ireland (U.K.). A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, Foreign FAR-23 Section, ACE-109, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Short Brothers & Harland Ltd., has received at least one report of inflight disconnection of linkages in the aileron control system on its Model SC-7, Series 3 airplanes. A Part No. SC7-45-2297 Retaining Plate and a 1/8-inch diameter locking rivet failed, which permitted the connecting pin to work its way out of the connection. This condition could result in loss of primary control during flight. As a consequence, Short Brothers & Harland Ltd., issued Shorts Service Bulletin No. 27-66 dated November 18, 1977, which specifies inspection of both the aforementioned aileron control linkage connections and similar connections at 24 other sites in the airplane flight control systems. The United Kingdom who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under the United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the United Kingdom Civil Aviation Authority combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Shorts Service Bulletin No. 27-66 dated November 18, 1977, and the mandatory classification of this Service Bulletin by the United Kingdom Civil Aviation Authority.

Based on the foregoing, the FAA has determined that the condition addressed by this Service Bulletin is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring initial and repetitive inspections and, if necessary, the repair of 26 separate connections of linkages in the primary flight control systems on Short Brothers & Harland Ltd., Model SC-7, Series 3 airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Short Brothers & Harland Ltd.: Applies to Model SC-7 Series 3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude failure of the primary flight control systems, within the next 100 hours time-in-service after the effective date of this AD and at intervals not to exceed 500 hours time-in-service thereafter, accomplish the following:

(a) Visually inspect the control system linkage connections listed in paragraph (c) of this AD in accordance with Shorts Service Bulletin No. 27-88, dated November 18, 1977. Each connection typically consists of a clevis (control rod) and rod-end bearing joined by a pin as shown on Figure 1 of the Service Bulletin. Each end of the pin must be secured by a retaining plate bonded to the clevis and one end must have a locking rivet through the pin and clevis.

(b) If a retaining plate or locking rivet are found to be loose or detached from the clevis, prior to further flight, repair the connection in accordance with instructions in the Service Bulletin.

(c) The locations of the control system linkage connections to be inspected are as follows (refer to page 3 of the Service Bulletin):

(1) One location in each wing on the aileron control rod.

(2) Twenty-four locations in control rods along the upper fuselage between Stations 96 and 410.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these

inspections concurrent with other scheduled maintenance of the airplane.

(e) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on April 11, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-8618 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR PART 39

[Docket No. 83-CE-31-AD; Amendment 39-4606]

Airworthiness Directives; Short Brothers and Harland, Ltd., Model SC-7, Series 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Short Brothers and Harland, Ltd., Model SC-7, Series 3 airplanes which supersedes AD 80-09-01, Amendment 39-3754. The new AD requires modification of the ground/air lever mechanism to preclude failure. Service experience indicates the inspections required by AD 80-09-01 have not prevented these failures, in that one such failure and loss of Beta

mode operation (reverse thrust) on one engine occurred on an airplane inspected in accordance with AD 80-09-01. The modification prescribed by this new AD will increase the integrity and operational reliability of the power plant control system.

EFFECTIVE DATE: April 11, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Shorts Service Bulletin No. 76-58, Revision 1, dated December 4, 1980, applicable to this AD may be obtained from Short Brothers and Harland, Ltd., Queens Island, Belfast BT3 9DZ Northern Ireland (U.K.). A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium. Telephone 513.38.30; or Paul Cormaci, Manager, Foreign FAR 23 Section, ACE-109, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: AD 80-09-01, Amendment 39-3754 (45 FR 25053), applicable to Short Brothers Model SC-7, Series 3 airplanes was issued April 14, 1980, requiring a one-time inspection and reinstallation, if necessary, of the spring heel block attachment to the air/ground lever as a means of preventing a malfunction of the engine control system. Subsequently, Short Brothers and Harland, Ltd., received a report of an incident wherein the pilot of a Model SC-7, Series 3 airplane was unable to select Beta mode (reverse thrust) due to a malfunction in the air/ground lever mechanism. The manufacturer's investigations after the incident indicated that the inspections required by AD 80-09-01 were ineffective in preventing this type failure and that the design of the retaining pin locking arrangement was unsatisfactory. A modification was developed by the manufacturer to improve the system integrity and prevent jamming. This modification has been made available to operators of these airplanes in Shorts Service Bulletin No. 76-58, Revision 1, dated December 4, 1980. The United Kingdom Civil Aviation Authority who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the

affected airplanes. On airplanes operated under the United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the United Kingdom Civil Aviation Authority combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Shorts Service Bulletin No. 76-58, Revision 1, dated December 4, 1980, and the mandatory classification of this Service Bulletin by the United Kingdom Civil Aviation Authority.

Based on the foregoing, the FAA has determined that the condition addressed by this Service Bulletin is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, the FAA is superseding AD 80-09-01 with a new AD which requires modification of the ground/air lever mechanism to preclude its failure and, in turn, loss of Beta mode (reverse thrust) operation on Short Brothers and Harland, Ltd., Model SC-7, Series 3 airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Short Brothers and Harland, Ltd.: Applies to Model SC-7, Series 3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude malfunction of the ground/air lever mechanism which may prevent the power lever from entering the Beta mode, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(a) Modify the ground/air lever P/N SC-7-47-5254 in the engine control system in accordance with Shorts Service Bulletin No. 76-58, Revision 1, dated December 4, 1980.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment supersedes AD 80-09-01, Amendment 39-3754.

This amendment becomes effective on April 11, 1983.

Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-8620 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 83-ASW-12; Amdt. 39-4599]

Airworthiness Directive; Societe Nationale Industrielle Aerospatiale (SNIAS) Models AS350 and AS355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This adopts a new airworthiness directive (AD) which requires repetitive inspections, repair or replacement, as necessary, of the main rotor mast on Aerospatiale Models AS350 and AS355 series helicopters. The AD is needed to detect structural fatigue cracking of the main rotor mast which could result in complete failure of the

mast and consequent loss of control of the helicopter.

DATE: Effective April 8, 1983.

Compliance schedule:—As prescribed in body of AD.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service documents is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:

Chris Christie, Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30 or R.T. Weaver, Helicopter Policy and Procedures Staff, ASW-111, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1669, Fort Worth, Texas 76101, telephone number (817) 877-2548.

SUPPLEMENTARY INFORMATION: There have been reports of corrosion of main rotor masts and subsequent fatigue cracking on Aerospatiale Models AS350 and AS355 series helicopters which could result in complete failure of the mast and cause the loss of the helicopter. Two masts have been found with cracks (one was very extensive). One operator reported as many as 90 percent of removed masts were found to have corrosion. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the main rotor mast for corrosion and cracks and repair, as necessary.

Since a situation exists that requires the immediate adoption of the regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aircraft safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13), is amended by adding the following new Airworthiness Directive:

Aerospatiale (S.N.I.A.S.): Applies to Models AS350 and AS355 series helicopters, certificated in all categories.

Compliance is required as indicated.

To prevent possible failure of the main rotor mast, accomplish the following:

a. For helicopters which have 250 hours' or more total time in service on the main rotor mast on the effective date of this AD, inspect in accordance with paragraph d. within 50 hours' time in service, unless already accomplished.

b. For those helicopters which have less than 250 hours' total time in service on the main rotor mast on the effective date of this AD, inspect in accordance with paragraph d. before reaching 300 hours' time in service on the main rotor mast, unless already accomplished.

c. For those helicopters exhibiting a severe tracking defect, inspect in accordance with paragraph d. before further flight, unless already accomplished.

d. Remove the main rotor hub from the main rotor mast in accordance with the Model AS350 or AS355 Maintenance Manual, or FAA approved equivalent as appropriate.

(1) Visually inspect the upper main rotor mast areas above the swashplate for surface finish deterioration, corrosion, or cracks. Conduct the visual inspection on all accessible mast areas with special emphasis in the areas of the 12 flange bolt holes and in the radius between the mast flange and the mast cylindrical shaft. Use a 10 power glass in areas of suspected surface finish cracks.

(2) Conduct a magnetic particle or dye penetrant inspection of the flange radius of the mast area described in subparagraph (d)(1) from which the surface finish has deteriorated to the extent that unprotected metal is exposed (even by cracks in the finish).

e. Replace any cracked masts.

f. Rework corroded masts in accordance with Aerospatiale Telex Service Document Numbers 05.08 or 05.13, or FAA approved equivalent. Replace any masts corroded beyond the allowed rework.

g. Reinstall the main rotor hub in accordance with the appropriate Model AS350 or AS355 Maintenance Manual, or FAA approved equivalents, after completion of the inspection and rework of paragraphs d., e. and f.

h. Repeat the inspections required in paragraph d. at intervals not to exceed 300 hours' time in service from the last inspection.

i. Any equivalent method of compliance with this AD must be approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106 or by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium.

j. In accordance with FAR 21.197, flight is permitted to a base where the inspections required by this AD may be accomplished.

This amendment becomes effective April 8, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a).

1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption

"For Further Information Contact".

Issued in Fort Worth, Texas, on March 18, 1983.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 83-8622 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 69-CE-26-AD; Amdt. 39-4607]

Airworthiness Directives; Beech Model 99 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 69-24-2, Amendments 39-879, 39-1222 and 39-4240 applicable to Beech Model 99 series airplanes. It deletes airplane S/N U-132 and corrects kit and paragraph references in the applicability statement. These changes will eliminate possible field confusion when complying with the AD.

DATES: Effective Date: April 11, 1983.
Compliance: No compliance action is required by this amendment.

ADDRESSES: Information pertaining to this revision is contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Ross R. Spencer, Airframe Branch, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7005, FTS 752-7005.

SUPPLEMENTARY INFORMATION: To preclude an accident resulting from a

possible pitch trim runaway, the FAA issued Airworthiness Directive 69-24-2, Amendments 39-879, 39-1222, and 39-4240, applicable to Beech Model 99 series airplanes, which imposed limitations and required modification of pitch control systems on these airplanes. Subsequently, the FAA has determined that the applicability statement of the AD must be revised in the following respects: (1) Airplane S/N U-132 should be deleted, (2) Beech Kit 99-5015 should be identified as 99-5014 and (3) paragraph E should be paragraph C. Accordingly, action is taken herein to revise the applicability statement of AD 69-24-2 to read correctly.

Since this amendment corrects an administrative error and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and not in the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 69-24-2, Amendment 39-879, as revised by Amendments 39-1222 and 39-4240, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is further revised as follows:

Delete the existing applicability statement and add the following new applicability statement:

"Beech: Applies to all Beech 99 series (Serial Numbers U-1, thru U-49, U-51 thru U-131, U-133 thru U-145, and U-147) airplanes certificated in any category.

Exceptions: Airplanes on which the elevator control system has been modified in accordance with optional Beech Kit 99-5011 or Kit 99-5014 are required to comply with paragraph C only."

This amendment becomes effective April 11, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(a)); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation only involves a correction of an administrative error which has no adverse effect on any persons or airplanes. Therefore, I certify that this action: (1) is not a major rule under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

(FR Doc. 83-6006 Filed 4-1-83; 8:45 am)

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-03-AD; Amdt. 39-4609]

Airworthiness Directives; Canadair Model CL-600 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to all Canadair CL-600 airplanes which requires an inspection of the 8 gage wires from generators 1 and 2 and the auxiliary power unit (APU) for proper installation in conformance with factory specifications. This action is prompted by reports of wire overheating under heavy electrical load conditions. Overheated wires could result in a cabin fire.

EFFECTIVE DATE: April 13, 1983.

ADDRESS: The service information specified in this airworthiness directive may be obtained upon request to Canadair Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Canada PQ H3C3G9, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Canadian Department of Transport (DOT) has issued an AD which requires the inspection of all Canadair CL-600 airplanes to ensure the number 1 and 2 generators and the APU have the 8 gage wiring properly installed so that sufficient airspace exists between the wires and the sidewalls, equipment, etc. If the factory specifications for spacing are not followed, it is possible under heavy electrical loading conditions that overheating could occur which could damage the wiring, adjacent equipment, and cause a cabin fire. In order to prevent this from occurring, the DOT, which is the civil air authority of Canada, is requiring an inspection of the

generator and APU wiring to ensure the installation complies with type design.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires an inspection for proper wire installation.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Canadair: Applies to all Model CL-600 airplanes certificated in all categories. To prevent possible wire overheating, accomplish the following within the next 300 flight hours or within the next 3 calendar months after the effective date of this AD, whichever occurs first, if not already accomplished:

1. Inspect the installation of the 8 gage feeder wires from generators 1 and 2 and the APU for conformance with Canadair Drawings 600-58001 Note 17 or 600-58031 Note 14 and CL-600 Completion Centre Handbook Section 6 and correct if necessary.
2. Replacement of the 8 gage generator 1, generator 2, and APU feeder wires with 4 gage of the same type is an approved alternate means of compliance.
3. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Area Aircraft Certification Office, FAA, Northwest Mountain Region.
4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 13, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 6 of Executive Order 12291. It is impracticable for the agency to

follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on March 24, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

(FR Doc. 83-6007 Filed 4-1-83; 6:45 am)

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-42-AD; Amdt. 39-4615]

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN-2, BN-2A, BN-2B and BN-2T Islander Series and BN-2A MK III Trislander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman Ltd. BN-2, BN-2A, BN-2B and BN-2T Islander Series equipped with wing tip fuel tanks and BN-2A MK III Trislander Series airplanes. It requires visual inspection of the wing tip tank fuel transmitter floats for evidence of deterioration. The manufacturer and the FAA have received reports indicating that erosion of the wing tip tank fuel transmitter floats may occur under certain operating conditions. Visual inspection of the fuel transmitter floats will detect deterioration of the floats and prevent restriction of the fuel flow with a resultant loss of power.

DATES: Effective Date: April 11, 1983. Compliance: As prescribed in the body of the AD.

ADDRESSES: Pilatus Britten-Norman Ltd. Service Bulletin (SB) No. BN-2/SB.154, Issue 1, February 12, 1982, applicable to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Pilatus Britten-Norman has received reports indicating the wing tip tank fuel transmitter floats are susceptible to erosion damage in some operating environments. The one reported case of fuel tank transmitter float deterioration in the U.S. resulted in a clogged injector screen. As a result, Pilatus Britten-Norman Ltd. has issued SB No. BN-2/SB.154, Issue 1, dated February 12, 1982, which provides instructions for the visual inspection of the wing tip tank fuel transmitter floats for evidence of deterioration. The United Kingdom Civil Aviation Authority (UKCAA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified Pilatus Britten-Norman Ltd. SB No. BN-2/SB.154, Issue 1, dated February 12, 1982, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Pilatus Britten-Norman Ltd. SB No. BN-2/SB.154, Issue 1, dated February 12, 1982, and the mandatory classification of this SB by the UKCAA.

Based on the foregoing, the FAA has determined that the condition addressed by Pilatus Britten-Norman Ltd. SB No. BN-2/SB.154, Issue 1, dated February 2, 1982, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring visual inspection of the wing tip tank fuel transmitter floats for evidence of deterioration on Pilatus Britten-Norman Ltd. BN-2, BN-2A, BN-2B and BN-2T Islander Series equipped

with wing tip fuel tanks and BN-2A MK III Trislander Series airplanes in accordance with procedures set forth in the above-mentioned SB.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Pilatus Britten-Norman Ltd.: Applies to BN-2, BN-2A, BN-2B and BN-2T Islander Series equipped with wing tip fuel tanks and BN-2A MK III Trislander Series (all Serial Numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished. To detect erosion of the wing tip tank fuel transmitter floats, which could restrict fuel flow and result in the loss of power, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this Airworthiness Directive (AD) and thereafter at intervals not to exceed 100 hours time-in-service:

(1) Remove and visually inspect the wing tip tank fuel transmitter floats for evidence of cracking, fretting or erosion in accordance with the instructions provided in the "Inspection and Rectification" section of Pilatus Britten-Norman Service Bulletin (SB) No. BN-2/SB.154, Issue 1, dated February 12, 1982, (hereinafter referred to as the SB), or an FAA approved equivalent.

(2) If any fuel transmitter float is found with cracks, fretting, or erosion during the accomplishment of the visual inspection in accordance with paragraph (a)(1) of this AD, prior to further flight, replace the float with a serviceable unit of the same part number and continue the repetitive visual inspections in accordance with paragraph (a)(1) of this AD.

(3) If any fuel transmitter float is found with excessive erosion during accomplishment of the visual inspection in accordance with paragraph (a)(1) of this AD, prior to further flight, drain the affected tank and clean the filters, including also the fuel supply system, through the auxiliary pumps, to the engine together with all fuel filters enroute.

(4) Reinstall wing tip tank fuel transmitters in accordance with instructions provided in the "Inspection and Rectification" section of the SB.

(b) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified inspection intervals to allow them to be

accomplished concurrent with other scheduled maintenance on these airplanes.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where this Airworthiness Directive (AD) can be accomplished.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on April 11, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 24, 1983.

John E. Shaw,

Acting Director, Central Region.

(FR Doc. 83-6912 Filed 4-3-83; 8:45 am)

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-NM-122-AD; Amdt. 39-4610]

Airworthiness Directive; Rockwell International Sabreliner Models NA 265-65 (Serial Number 306-114) and NA 265-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new Airworthiness Directive (AD) which was previously made effective to all U.S. owners of certain Rockwell International Sabreliner airplanes by priority mail. The AD requires inspection, and subsequent repair, of a

cabin aisle pressure panel for fatigue cracks to preclude complete panel failure and sudden loss of cabin pressurization.

DATES: Effective April 13, 1983 as to all persons except those persons to whom it was made immediately effective by Emergency Airworthiness Directive T82-26-02 letter dated December 13, 1982, which is contained in this amendment. Compliance required before further flight after the effective date of this AD, unless already accomplished.

ADDRESSES: Sabreliner Service Bulletin 82-9, dated December 10, 1982, pertains to this matter. This bulletin may be obtained from Rockwell International, Sabreliner Division, 6161 Aviation Drive, St. Louis, Missouri 63134, telephone (314) 731-2260.

FOR FURTHER INFORMATION CONTACT: Marvin D. Beene, Airframe Branch, Wichita Aircraft Certification Office, FAA, Central Region, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 269-7005.

SUPPLEMENTARY INFORMATION: An inadvertent loss of cabin pressure was experienced on a Sabreliner Model NA 265-60 airplane, at approximately 31,000 feet altitude, wherein an interior pressure panel failed due to fatigue cracking. The airplane landed without further incident and was subsequently flown approximately 500 nautical miles for repair.

The critical panel is located vertically, above the floor, on the right side of the center aisle below and just aft of the galley. The panel separates the pressurized portion of the cabin from an unpressurized area on the bottom of the fuselage. Fatigue cracking of this interior panel appears to have initiated from repeated canning of the panel against the sharp edge of the attaching frame extrusions during cabin pressurization cycles. The crack had grown to approximately eight inches prior to complete failure of the panel.

Rockwell International has issued Sabreliner Service Bulletin 82-9 which specifies initial, and recurring, visual inspections of this panel area and instructions for subsequent replacement of the panel with a more rigid and higher strength material.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued December 13, 1982, to all known U.S. owners and operators of certain Rockwell International Sabreliner airplanes.

These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Rockwell International: Applies to the Models NA 265-65, Serial Number 306-114, and NA 265-60 series airplanes, serial numbers 306-1 through 306-141, except 306-114 and 306-136, certificated in any category.

Compliance required as indicated unless already accomplished. To prevent a possible inadvertent cabin pressure loss due to fatigue failure of an interior pressure panel, accomplish the following:

A. Prior to the next flight visually inspect the vertical floor panel, P/N 306-312005-3, in accordance with the instructions provided in Rockwell International Sabreliner Service Bulletin (SB) 82-9.

1. If a crack is detected, replace the panel in accordance with the instructions in SB 82-9, prior to the next flight except for ferry flight per item C., below.

2. If no cracks are detected, repeat the inspections after the next 50 and 100 flight hours and replace if required.

B. Within the next 150 flight hours replace the panel in accordance with SB 82-9. Installation of the new panel constitutes terminating action per this AD.

C. Issuance of a special flight permit, in accordance with FAR 21.197, is permitted for the purpose of moving the affected airplanes to a repair station provided that for airplanes with a detected panel crack, the maximum altitude for the ferry flight must not exceed 25,000 feet with a cabin pressure differential not to exceed 5.0 p.s.i.

D. Alternative means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

This amendment becomes effective April 13, 1983, to all persons except those persons to whom it was made immediately effective by Emergency AD T82-26-02 letter dated December 26, 1982, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the

agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption, "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on March 24, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-8908 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-29-AD; Amdt. 39-4613]

Airworthiness Directives; SIAI-Marchetti Models S205-20F and S205-20R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to SIAI-Marchetti Models S205-20F and S205-20R airplanes. It requires modification of the attachment of the butterfly valve to the shaft in the engine induction valve assembly. The manufacturer has received reports of damaged and lost spring pins that secure the butterfly valve to the shaft assembly which could cause loss of engine power. The modification procedure will prevent the loss or failure of the spring pins.

EFFECTIVE DATE: April 14, 1983.

Compliance: Within 100 hours time-in-service from the effective date of this AD.

ADDRESSES: SIAI-Marchetti Service Bulletin (SB) No. 205B55, dated December 11, 1981, applicable to this AD may be obtained from SIAI-Marchetti S.p.A., V-12070 via Indipendenza, 2, Z1018 Sesto Calende, Italy. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Telephone 513.38.30; or Mr. Larry Werth, Manager, Foreign FAR-23 Section, ACE-109, FAA, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: SIAI-Marchetti has received reports of damaged and lost spring pins that connect the butterfly valve to the shaft assembly of the engine induction valve assembly on Models S205-20F and S205-20R airplanes. Undetected damage and cracks of the spring pins could result in failure of the engine induction valve assembly. This could shut off control and selection of the alternate air which would cause a loss of engine power. As a result, SIAI-Marchetti has issued SB No. 205B55, dated December 11, 1981, which requires modification of the attachment of the butterfly valve to the shaft of the engine induction valve assembly. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of SIAI-Marchetti SB No. 205B55, dated December 11, 1981, and the mandatory classification of this SB by the RAI.

Based on the foregoing, the FAA has determined that the condition addressed by SIAI-Marchetti SB No. 205B55, dated December 11, 1981, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring modification of the attachment of the butterfly valve to the shaft of the engine induction valve assembly on SIAI-Marchetti Models S205-20F and S205-20R airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon

are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

SIAI-Marchetti.—Applies to Models S205-20F and S205-20R (Serial Numbers 222, 4-101, 4-102, 4-106, 4-172, 4-206, 4-241, 5-303, 003, 103, 106, 215, 218, 220, 221, 227, 237, 238, 345 thru 347, 349, 351, 355, 357, 359 thru 363, 366 thru 368, 375 thru 377, 4-107 thru 4-113, 4-115, 4-116, 4-133 thru 4-139, 4-141, 4-159 thru 4-163, 4-173, 4-174, 4-197 thru 4-202, 4-205, 4-208 thru 4-215, 4-236 thru 4-240, 4-242 thru 4-244, 4-248, 4-249, 4-251 thru 4-253, 4-255, 4-269 thru 4-271, 4-273, 4-274, 4-275, 4-276, 4-282, 5-302 and 06-001 thru 06-040) airplanes certificated in any category.

Compliance: Required as indicated unless already accomplished. To prevent loss or failure of the attachment that connects the butterfly valve to the shaft of the engine induction valve assembly, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(a) Modify the attachment of the butterfly valve (Part Number (P/N) 205-5-260-09) to the shaft (P/N 205-5-260-07) of the engine induction valve assembly (P/N 205-5-260-101 or P/N 205-5-260-01) in accordance with the "Instruction" section of SIAI-Marchetti Service Bulletin No. 205B55, dated December 11, 1981.

(b) Airplane may be flown in accordance with FAR 21.197 to a location where this Airworthiness Directive (AD) can be accomplished.

(c) An equivalent method of compliance with this AD if used must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on April 14, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is

subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 24, 1983.

John E. Shaw,
Acting Director, Central Region.

[FR Doc. 83-6610 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-34-AD; Amdt. 39-4612]

Airworthiness Directives; SIAI-Marchetti Models S205-18/F, S205-18/R, S205-20/F, S205-20/R, S205-22/R and all Models S208 and S208A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 75-17-23, Amendment 39-2328 (40 FR 33008), applicable to certain serial numbers on all SIAI-Marchetti Models S205 and S208 airplanes by expanding the AD applicability statement to include all serial numbers of Models S205, S208 and by adding all Model S208A airplanes and updating reference to the latest revision of the Service Bulletin. This will simplify the citation of affected airplanes by including all serial numbers of the affected models rather than listing specific serial numbers.

EFFECTIVE DATE: April 14, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESSES: SIAI-Marchetti, Service Bulletin (SB) No. 205B37C, dated October 7, 1977, applicable to this AD may be obtained from SIAI-Marchetti S.p.A., V-12070 via Indipendenza, 2, 21018 Sesto Calenda, Italy. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, Federal Aviation Administration, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The FAA published AD 75-17-23, Amendment 39-2328 (40 FR 33008), which required repetitive visual inspections of the internal wing rib brackets and, if necessary, replacement of cracked parts and associated washers on certain SIAI-Marchetti S205 and S208 series airplanes in accordance with SIAI-Marchetti Service Bulletin No. 205B37B, dated August 24, 1974. Subsequently, SIAI-Marchetti issued Service Bulletin No. 205B37C dated October 7, 1977, which extended the same inspections and replacement requirements of the previous Service Bulletin to all Models S205 and S208 airplanes and to add its S208A model airplanes. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified the actions recommended by the manufacturer in the current Service Bulletin No. 205B37C as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of SIAI-Marchetti, SB No. 205B37C, dated October 7, 1977, and the mandatory classification of this SB by the RAI. Based on the foregoing, the FAA has determined that the extension of the requirements of SIAI-Marchetti SB No. 205B37C, dated October 7, 1977, to all serial numbers on Models S205 and S208 and to its Model S208A airplanes, is necessary to assure that an unairworthy condition will not develop on products of this type design should they be imported and certificated for operation in the United States.

Therefore, AD 75-17-23 is being revised to include all serial numbers of Models S205 and S208 and by adding all Model S208A airplanes and by changing the reference of the SB from 205B37B to 205B37C.

Since this amendment makes changes to AD 75-17-23 which have no effect on United States operators, notice and public procedure hereon are unnecessary and not in the public

interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 75-17-23, Amendment 39-2328 (40 FR 33008), § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is revised as follows:

(1) Revise the applicability statement to read as follows:

"SIAI-Marchetti: Applies to Models S205-18F, S205-18R, S205-20F, S205-20R, S205-22R, S208 and S208A airplanes certificated in any category."

(2) In paragraph (a) of the AD delete "Service Bulletin No. 205B37B dated August 24, 1974" and insert "Service Bulletin No. 205B37C dated October 7, 1977."

(3) In paragraph (b)(2) of the AD delete "Service Bulletin No. 205B37B dated August 24, 1974" and insert "Service Bulletin No. 205B37C dated October 7, 1977."

This amendment becomes effective April 14, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation only involves an annual cost of \$70 on each airplane. In addition, this amendment only extends the requirements of existing AD 75-17-23, to include all serial numbers on Models S205 and S208 and to the Model S208A airplanes. There are no S208A airplanes and there are no airplanes of the other models that are not included in the applicability of AD 75-17-23 currently registered in the U.S. and no cost is imposed on any U.S. operator. Therefore, I certify that this action (1) is not a major rule under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and because of the cost and few airplanes involved owned by small entities, it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on March 24, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-6608 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-43-AD; Amdt. 39-4614]

Airworthiness Directives; Wytownia Sprzetu Komunikacyjnego, PZL-Mielec Model PZL M18 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Wytownia Sprzetu Komunikacyjnego, PZL MIELEC Model PZL M18 airplanes. It requires modification of the braking control lever and installation of a larger diameter brake pedal attaching bolt. The manufacturer has received several reports of cracking or failure of the brake pedal attaching bolt with resultant brake failure. The modification and bolt installation required by this AD will prevent brake attachment failure which could result in an accident upon landing or during ground operation of the airplane.

EFFECTIVE DATE: April 14, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESS: Mandatory Bulletin U/044/82 applicable to this AD may be obtained from Wytownia Sprzetu Komunikacyjnego, PZL-MIELEC, 39-301 Mielec, Poland. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The manufacturer has received several reports that fatigue cracks develop in brake pedal attaching bolts, Part Number (P/N) D52.300.03.1 on its PZL M18 airplanes. In one incident the bolt broke during taxiing, resulting in unsymmetrical braking. Failure of one or both bolts during landing or rollout could result in an accident. As a result, Wytownia Sprzetu Komunikacyjnego, PZL MIELEC has issued Mandatory Bulletin U/044/82 which provides for modification of the brake levers and installation of larger bolts (P/N D52.300.03.2). The Civil Aircraft Inspection Board (CACA) who has responsibility and authority to maintain

the continuing airworthiness of these airplanes in Poland, has classified this Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Polish registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CACA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Mandatory Bulletin No. U/044/82, and the mandatory classification of this mandatory Bulletin by the CACA.

Based on the foregoing, the FAA has determined that the condition addressed by Mandatory Bulletin No. U/044/82, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring modification of the brake levers and installation of larger bolts (P/N D52.300.03.2) on PZL M18 airplanes in accordance with procedures set forth in the above-mentioned Bulletin.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Wytownia Sprzetu Komunikacyjnego, Pzl Mielec.—Applies to Model PZL M18 (all Serial Numbers up through and including 12009-30) airplanes certificated in any category.

Compliance: Required within the next 100 landings, unless already accomplished.

To prevent brake failure which could result in an accident during landing or rollout, accomplish the following:

(a) Remove the left and right braking levers Part Number (P/N) D52.310.00.1 or D52.310.00.2 from the airplane and modify them in accordance with Wytownia Sprzetu

Komunikacyjnego Bulletin U/044/82, Sections III(1) through (5).

(b) Install the modified levers on the airplane with the new bolt P/N D52.300.03.2 and check for proper operation in accordance with Bulletin U/044/82, Sections III(6) and (7).

(c) Record compliance with this Airworthiness Directive (AD) in the aircraft maintenance log book.

(d) Operators who do not keep records of landings must substitute airplane hours time-in-service at the rate of 2 landings per hour time-in-service.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this Airworthiness Directive (AD) can be accomplished.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on April 14, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 24, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-6011 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 83-ASO-7]

Special Use Airspace; Correction to Restricted Area R-2915A Eglin AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a technical error in the description of an internal boundary of Restricted Area R-

2915A published in the Federal Register on April 1, 1984, (29 FR 4670) (Airspace Docket No. 63-SO-48).

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Boyd Archer, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 64-3126 (Airspace Docket No. 63-SO-48) was published on April 1, 1964, which left the south boundary of Restricted Area R-2915A open ended.

List of Subjects in 14 CFR Part 73

Restricted areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 64-3126, as published in the Federal Register on April 1, 1964, (29 FR 4670) is corrected as follows:

R-2915A Eglin AFB, FL [Amended]

Under "Boundaries," after the words "lat. 30°26'30"N., long. 86°51'30"W.," insert the words "lat. 30°26'30"N., long. 86°52'20"W.,"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C. on March 25, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-6015 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23585; Amdt., No. 1239]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the

close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending Part 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * Effective June 8, 1983

Toledo, OH—Toledo Express, VOR/DME

Rwy 34, Amdt. 4

Manitowoc, WI—Manitowoc County, VOR

Rwy 17, Amdt. 9

Manitowoc, WI—Manitowoc County, VOR

Rwy 35, Amdt. 8

* * * Effective May 12, 1983

Little Rock, AR—Adams Field, VOR Rwy 32,

Amdt. 17

Pine Bluff, AR—Grider Field, VOR Rwy 17,

Amdt. 18

Pine Bluff, AR—Grider Field, VOR/DME Rwy

35, Amdt. 9

Porterville, CA—Porterville Muni, VOR Rwy

30, Amdt. 3

Key West, FL—Key West Intl, VOR-B, Amdt.

5

Parson, KS—Tri-City, VOR Rwy 13, Amdt. 2

Estherville, IA—Estherville Muni, VOR Rwy

16, Amdt. 3

Estherville, IA—Estherville Muni, VOR Rwy

34, Amdt. 5

Princeton, ME—Princeton Muni, VOR Rwy

15, Amdt. 10

Taunton, MA—Taunton Muni, VOR-A,

Amdt. 6

Bowling Green—Bowling Green Muni, VOR/

DME-A, Amdt. 1

Kansas City, MO—Kansas City Intl, VOR

Rwy 27, Amdt. 11

Washington, MO—Washington Memorial,

VOR Rwy 16, Amdt. 1

Hastings, NE—Hastings Muni, VOR Rwy 4,

Amdt. 1

Ogallala, NE—Searle Field, VOR Rwy 8,

Amdt. 2

Ogallala, NE—Searle Field, VOR Rwy 26,

Amdt. 2

Manville, NJ—Kupper, VOR-A, Amdt. 3

Millersburg, OH—Holmes County, VOR-A,

Amdt. 4

Langhorne, PA—Buehl Field, VOR Rwy 8,

Amdt. 5

Washington, PA—Washington County, VOR-

A, Amdt. 2

Washington, PA—Washington County, VOR-B, Amdt. 2
 McAllen, TX—Miller Intl, VOR-A, Amdt. 11
 McAllen, TX—Miller Intl, VOR Rwy 13, Amdt. 12

*** Effective April 14, 1983

Laramie, WY—General Brees Field, VOR Rwy 12, Amdt. 2
 Laramie, WY—General Brees Field, VOR/DME Rwy 30, Amdt. 3

*** Effective March 21, 1983

Roanoke, VA—Roanoke Muni/Woodrum, VOR Rwy 33, Amdt. 4

*** Effective March 14, 1983

Ft. Leonard Wood, MO—Forney AAF, VOR Rwy 14, Amdt. 3
 Ft. Leonard Wood, MO—Forney AAF, VOR Rwy 32, Amdt. 3

*** Effective March 11, 1983

Panama City, FL—Panama City-Bay County, VOR or TACAN-A, Amdt. 11
 Panama City, FL—Panama City-Bay County, VOR or TACAN-Rwy 14, Amdt. 13
 Panama City, FL—Panama City-Bay County, VOR or TACAN Rwy 32, Amdt. 8
 LaCrosse, WI—LaCrosse Muni, VOR Rwy 13, Amdt. 22

NOTE.—The FAA published an amendment in Docket No. 23566, Amdt. No. 1238 to Part 97 of the Federal Aviation Regulations (Vol 48 FR No. 55 Page 11694; Dated March 21, 1983 under section 97.23 effective February 25, 1983 which is amended as follows:

Kremmling, CO—Kremmling, VOR/DME-A, Original. Change to read: Kremmling, CO—Kremmling, VOR/DME-A, Amdt. 1.

2. By amending Part 97.25 SDF-LOC-LDA SIAPs identified as follows:

*** Effective May 12, 1983

Crestview, FL—Bob Sikes, LOC Rwy 17, Original
 Marietta, GA—McCollum, LOC Rwy 27, Original
 Kansas City, MO—Kansas City Intl, LOC BC Rwy 27, Amdt. 9
 Reno, NV—Reno Cannon Intl, LOC-1 Rwy 16, Amdt. 1
 McAllen, TX—Miller Intl, LOC BC Rwy 31, Amdt. 4

*** Effective April 14, 1983

St. Marys, PA—St. Marys Muni, LOC/DME Rwy 38, Original

*** Effective March 14, 1983

Ft. Leonard Wood, MO—Forney AAF, LOC Rwy 14, Amdt. 4

3. By amending Part 97.27 NDB/ADF SIAPs identified as follows:

*** Effective June 9, 1983

Toledo, OH—Toledo Express, NDB Rwy 7, Amdt. 18

*** Effective May 12, 1983

Little Rock, AR—Adams Field, NDB Rwy 4, Amdt. 15
 Little Rock, AR—Adams Field, NDB Rwy 22, Amdt. 3

Ft. Myers, FL—Southwest Florida Regional, NDB Rwy 6, Original
 Atlantic, IA—Atlantic Muni, NDB Rwy 12, Amdt. 6

Parsons, KS—Tri-City, NDB Rwy 17, Amdt. 6
 Parsons, KS—Tri-City, NDB Rwy 35, Amdt. 3
 DeRidder, LA—Boulevard Parish, NDB Rwy 36, Original

Key West, FL—Key West Intl, NDB-A, Amdt. 9

Taunton, MA—Taunton Muni, NDB Rwy 30, Amdt. 3

Ogallala, NE—Searle Field, NDB Rwy 8, Amdt. 5

Ogallala, NE—Searle Field, NDB Rwy 28, Amdt. 4

Kenansville, NC—P. B. Raiford, NDB Rwy 22, Amdt. 2

Millersburg, OH—Holmes County, NDB Rwy 27, Amdt. 3

Perkasie, PA—Pennridge, NDB-A, Original
 Pittsburgh, PA—Allegheny County, NDB Rwy 28, Amdt. 21

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, NDB Rwy 17L, Amdt. 3

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, NDB Rwy 35R, Amdt. 3

McAllen, TX—Miller Intl, NDB Rwy 13, Amdt. 4

*** Effective March 14, 1983

Ft. Leonard Wood, MO—Forney AAF, NDB Rwy 32, Amdt. 3

Mountain View, MO—Mountain View, NDB Rwy 27, Amdt. 2

4. By amending Part 97.29 ILS-MLS SIAPs identified as follows:

*** Effective June 9, 1983

Toledo, OH—Toledo Express, ILS Rwy 7, Amdt. 18

Toledo, OH—Toledo Express, ILS Rwy 25, Amdt. 3

*** Effective May 12, 1983

Little Rock, AR—Adams Field, ILS Rwy 4, Amdt. 19

Little Rock, AR—Adams Field, ILS Rwy 22, Amdt. 5

Pine Bluff, AR—Grider Field, ILS Rwy 17, Amdt. 1

Burbank, CA—Burbank-Glendale-Pasadena, ILS Rwy 7, Amdt. 32

Ft. Myers, FL—Southwest Florida Regional, ILS Rwy 6, Original

Reno, NV—Reno Cannon Intl, ILS Rwy 16, Amdt. 3

Middletown, PA—Harrisburg Intl Arpt—Olmsted Fld, ILS Rwy 31, Amdt. 1

Pittsburgh, PA—Allegheny County, ILS Rwy 28, Amdt. 25

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS Rwy 17L, Amdt. 9

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS Rwy 17R, Amdt. 10

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS Rwy 31R, Amdt. 3

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS Rwy 35L, Amdt. 9

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, ILS Rwy 35R, Amdt. 9

McAllen, TX—Miller Intl, ILS Rwy 13, Amdt. 5

*** Effective March 17, 1983

Asheville, NC—Asheville Regional, ILS Rwy 16, Amdt. 2

5. By amending Part 97.31 RADAR SIAPs identified as follows:

*** Effective June 9, 1983

Toledo, OH—Toledo Express, RADAR-1, Amdt. 12

*** Effective May 12, 1983

Little Rock, AR—Adams Field, RADAR-1, Amdt. 12

West Memphis, AR—West Memphis Muni, RADAR-1, Amdt. 8

Ft. Myers, FL—Southwest Florida Regional, RADAR-1, Original

Key, West, FL—Key West Intl, RADAR-1, Original

6. By amending Part 97.33 RNAV SIAPs identified as follows:

*** Effective June 9, 1983

Toledo, OH—Toledo Express, RNAV Rwy 16, Amdt. 3

*** Effective May 12, 1983

Little Rock, AR—Adams Field, RNAV Rwy, 22, Amdt. 7

Little Rock, AR—Adams Field, RNAV Rwy 36, Amdt. 7

Parsons, KS—Tri-City, RNAV Rwy 17, Amdt. 3

Parsons, KS—Tri-City, RNAV Rwy 35, Amdt. 3

Lakeville, MN—Arlake Industrial Park, RNAV Rwy 29, Original

Minneapolis, MN—Anoka County—Blaine Arpt (Janes Field), RNAV Rwy 17, Original

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

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

Issued in Washington, D.C. on March 25, 1983.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

John M. Howard,
 Manager, Aircraft Programs Division.

[FR Doc. 83-0605 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

Minimum Charge for the Transportation of Liquids and Liquefiable Hydrocarbons

March 29, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Removal of regulation pursuant to court mandate.

SUMMARY: Order No. 449, 37 FR 2957 (Feb. 10, 1972) promulgated 18 CFR 2.71 regarding the minimum charge for the transportation of liquids and liquefiable hydrocarbons. The Court of Appeals for the District of Columbia vacated and remanded Order No. 449 in 1973, *Mobil Oil Corp. v. FPC*, 483 F. 2d 12389, as an improper attempt to establish rates under the Natural Gas Act for the transportation of liquids. Accordingly, § 2.71 will be removed from the Code of Federal Regulations.

EFFECTIVE DATE: March 29, 1983.

FOR FURTHER INFORMATION CONTACT: Robert C. Platt, Assistant Advisory Counsel, Office of the General Counsel, Room 8000, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8455.

SUPPLEMENTARY INFORMATION: Section 2.71 was promulgated by Federal Power Commission Order No. 449, *Mobil Oil Corp. v. FPC*, 483 F. 2d 1238 (D.C. Cir. 1973), set aside Order No. 449 as an improper attempt to establish rates under the Natural Gas Act for the transportation of liquids. *Mobil* also remanded Order No. 449 in regard to liquefiable hydrocarbons for further proceedings. As a result, 18 CFR 2.71 was rendered a legal nullity by the *Mobil* court and will be removed from the Code of Federal Regulations as set forth below.

Kenneth F. Plumb,
Secretary.

PART 2—[AMENDED]

1. The table of contents in Part 2 of Title 18 is amended by removing the entry for "§ 2.71 Charges applicable to the transportation of liquids, liquefiable hydrocarbons, etc., for others" in its entirety (and reserving the same for future use).

§ 2.71 [Reserved]

2. Part 2 of Title 18 is amended by removing § 2.71 in its entirety (and reserving the same for future use).

[FR Doc. 83-0509 Filed 4-1-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 145

[T.D. 7882]

Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to floor stocks credits or refunds and consumer credits or refunds with respect to excise taxes on certain tax-repealed articles. In addition, this document provides temporary regulations relating to the excise tax on the sale of heavy trucks. Changes in the applicable tax law were made by the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982). These regulations affect all manufacturers, producers, importers, dealers, retailers, and consumers of certain articles and will provide them with the guidance needed to comply with the law.

DATES: These regulations are effective on April 1, 1983. **Applicability:** The regulations relating to floor stocks credits or refunds for trucks, truck trailers, truck parts and accessories, and lubricating oil apply to articles sold to a dealer before January 7, 1983, and held by a dealer for sale on the first moment of January 7, 1983. The regulations relating to consumer credits or refunds for trucks and truck trailers apply to vehicles sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983. The regulations relating to the retail tax on heavy trucks are effective for sales made on and after April 1, 1983. The regulations relating to floor stock credits or refunds for tires apply to tires sold to a dealer before January 1, 1984, and held by a dealer for sale on the first moment of January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, D.C. 20224. (Attention: CC: LR:T) (202-566-4338) (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under Part 145 relating to floor stocks and consumer credits or refunds with respect to certain tax-repealed articles as provided in sections 522 and 523 of the Highway Revenue Act of 1982 (Act) (Pub. L. 97-424). In addition, this document contains temporary regulations relating to the retail tax on heavy trucks as provided in section 512 of the Act. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

In General

Section 4061(a)(1) of the Internal Revenue Code of 1954 (Code), which does not apply after March 31, 1983, imposed a 10 percent tax on the sale by a manufacturer, producer, or importer of truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and highway tractors used in combination with a trailer or semitrailer. Section 4061(a)(2) of the Code excluded from the 10 percent tax, truck bodies and chassis suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less and trailer and semitrailer chassis and bodies suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less. Section 512(a)(1) of the Act increased the threshold weight for exemption from tax to 33,000 pounds or less for truck chassis and bodies and 26,000 pounds or less for truck trailer and semitrailer chassis and bodies to be effective for articles sold on or after January 7, 1983. Sections 512(a)(2) and 512(b) of the Act converted the 10 percent manufacturer's tax into a 12 percent retail tax, imposed by new Code section 4051, effective April 1, 1983. However, articles that are taxable under the new retail tax and for which the 10 percent manufacturer's tax has been paid, are taxable at the rate of only 2 percent.

Prior to the Act there was a tax imposed under section 4061(b) of the Code upon parts and accessories for any of the articles enumerated in section 4061(a)(1) of the Code. Section 512(a)(2) of the Act repealed this tax effective for parts and accessories sold on or after January 7, 1983. New section 4051(b)(1) of the Code provides that where an owner, lessee, or operator installs parts and accessories on a vehicle taxable under the 12 percent retail tax and such installation occurs within 6 months after

the vehicle is placed in service, the tax will be imposed on the price of such part and accessory and its installation. In addition to the owner, operator, or lessee of the vehicle, the owner of the trade or business installing the part or accessory is liable for the tax. The tax does not apply if the part or accessory installed is a replacement part or accessory or if the aggregate price of the parts and accessories (and their installation) does not exceed \$200.

Treasury Decision 7753

This document revokes T.D. 7753, 46 FR 2998, January 13, 1981, which would have required a truck manufacturer to pay excise tax on truck parts purchased from a supplier if at the time of purchase the truck manufacturer does not intend to use the parts for one of the exempt purposes specified in section 4221 of the Code. T.D. 7753 was to be effective January 1, 1983, however, because of the repeal of the excise tax on truck parts by section 512 of the Act, T.D. 7753 is no longer necessary.

Floor Stocks and Consumer Credits or Refunds

Section 145.1-1 of the temporary regulations provides rules relating to floor stocks credits or refunds with respect to the excise tax on tax-repealed articles (*i.e.*, certain trucks, truck trailers, truck parts and accessories, and lubricating oil) which were held by a dealer for sale on the first moment of January 7, 1983.

Section 145.1-2 provides rules relating to consumer credits or refunds with respect to tax under section 4061(a)(1) on certain trucks and truck trailers which were sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983.

Section 145.1-3 provides rules for determining the amount of tax paid with respect to a tax-repealed article for purposes of claiming floor stocks credits or refunds and consumer credits or refunds.

Section 145.1-4 provides rules relating to the treatment of demonstrator vehicles as new vehicles held by a dealer for purposes of the floor stocks provisions or as new vehicles sold to consumers for purposes of the consumer refund provisions.

Section 145.1-5 provides rules relating to credits or refunds for manufacturers who paid tax on certain articles under section 4061(a)(1) of the Code by reason of section 4218(a) of the Code, relating to certain uses by the manufacturer treated as sales.

Section 145.1-6 provides rules in determining floor stocks and consumer

credits or refunds for leases and installment sales.

Section 145.1-7 provides rules with respect to floor stocks credits or refunds in the case of tires, inner tubes, and tread rubber on which a tax was imposed by section 4071(a) of the Code as in effect on December 31, 1983, and which will not be subject to a tax under section 4071(a) of the Code effective January 1, 1984. There is no floor stocks credits or refunds for those tires on which the tax was reduced on January 1, 1984.

Retail Sales Tax on Heavy Trucks

Sections 145.4051-1 and 145.4052-1 provide rules relating to the 12 percent tax on heavy trucks and trailers sold at retail imposed by section 4051(a)(1) of the Code. Furthermore, the regulations provide rules for the 12 percent tax on separate purchases of parts and accessories installed on heavy trucks and trailers under section 4051(a)(1) of the Code where such installation took place within six months after the truck or trailer was placed in service.

Section 145.4051-1(e) (1) and (2) provides rules for determining whether a vehicle is a tractor or a truck. The regulations contain a primary design test for determining taxability of the vehicle. In addition, the regulation explains the treatment of the sale of an incomplete chassis cab.

Section 145.4051-1(e)(3) provides that in determining the gross vehicle weight rating of a vehicle, the strength of the chassis frame and the axle capacity and placement must be taken into account. Spring, brake, rim and tire capacities are not determinative of the gross vehicle weight rating because of the flexibility in changing such parts on the vehicle. For example, a change from light to heavy duty springs results in a dramatic increase in the gross vehicle weight rating of a vehicle.

Section 145.4052-1(d)(2)(iii) defines the term "fair market value at retail of tires" as the lowest established price for which the vehicle retailer would sell tires in the ordinary course of trade. The regulations define the term "lowest established price."

Need for Temporary Regulations

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analysis

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that these temporary regulations are not subject to Executive Order 12291.

Drafting Information

The principal author of these regulations is Neil W. Zyskind of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 145

Extended due date for payment of certain fuel taxes, Floor stocks refunds, Floor stocks tax, Highway Revenue Act of 1982.

Adoption of Amendments to the Regulations

Title 26 CFR Parts 48 and 145 are amended as follows:

PART 48—[AMENDED]

§ 48.4221-2 [Amended]

Paragraph 1. Section 48.4221-2 is amended by removing the last sentence of paragraph (a)(1).

§ 48.4222(c)-1 [Amended]

Par. 2. Section 48.4222(c)-1 is amended by removing "(a) In general." and by deleting paragraph (b).

Par. 3. Part 145 is revised to read as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97-424)

Sec.

145.1-1 Credit or refund in respect of floor stocks of certain trucks, truck trailers, truck parts and accessories, and lubricating oil.

145.1-2 Credit or refund in respect of certain consumer purchases of trucks and truck trailers.

- 145.1-3 Methods of determining amount of tax paid on each article.
 145.1-4 Demonstrator vehicles.
 145.1-5 Credit or refund in respect of use by manufacturer.
 145.1-6 Leases and installment or conditional sales entered into before January 7, 1983.
 145.1-7 Credit or refund in respect of floor stocks of tires, inner tubes, and tread rubber.
 145.4051-1 Imposition of tax on trucks and trailers sold at retail.
 145.4052-1 Definitions and special rules.
 145.4061-1 Application to manufacturers tax.
 145.9000-1 Paperwork Reduction Act.

Authority: Sections 4051 (96 Stat. 2174, 26 U.S.C. 4051), 4052 (96 Stat. 2175, 26 U.S.C. 4052), 7805 (68A Stat. 917, 26 U.S.C. 7805), and sections 522 and 523 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2185, 2186).

§ 145.1-1 Credit or refund in respect of floor stocks of certain trucks, truck trailers, truck parts and accessories, and lubricating oil.

(a) *In general*—(1) *Credit or refund*. A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4061(a)(1), relating to trucks and truck trailers, section 4061(b), relating to truck parts and accessories, or section 4091, relating to lubricating oil, with respect to a tax-repealed article (as defined in paragraph (b)(2) of this section) which is held by a dealer as floor stocks (as defined in paragraph (b)(1) of this section) is entitled to a credit or refund of that tax to the extent and subject to the conditions provided by section 522(a) of the Highway Revenue Act of 1982 (Act) and this section. See paragraphs (b) (1) through (5) of this section for definitions.

(2) *Computation of the amount of floor stocks credits or refunds*. The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 522(a) of the Act may not exceed the amount of tax paid by the manufacturer on its sale of the article. For example, X, a dealer, has on hand as floor stocks inventory an article which had a manufacturer's price of \$10 on which the tax under section 4061(b) of 8 percent or \$.80 was paid, or a total cost to the dealer of \$10.80. The amount of floor stocks credit or refund which may be claimed by the manufacturer with respect to such article is the \$.80 tax paid on the manufacturer's sale of the article (8/108 of the tax included price of \$10.80).

For special provisions with respect to the determination of the tax paid by a manufacturer on an article, see § 145.1-3. No interest is allowable with respect to any amount of tax credited or refunded under section 522(a) of the Act.

In applying the floor stocks credit or refund provisions, the time the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 of the Internal Revenue Code does not apply.

(3) *Limitation*. (i) No credit or refund is allowable under section 522(a) of the Act for an amount paid as tax which may be credited or refunded under any provision of law other than section 522(a) of the Act.

(ii) The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of such article. A credit or refund will be allowed with respect to a price readjustment of an article on which a floor stocks credit or refund is allowed only if the amount of the floor stocks credit or refund is computed by taking into account such price readjustment as a reduction thereto (see paragraph (e) of § 145.1-3). The manufacturer shall keep readily available for inspection sufficient records to enable examining internal revenue officers to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a floor stocks credit or refund is claimed.

(iii) If a claim for credit or refund is made pursuant to section 6416 (relating in part to returned sales, sales for export or for exempt use, sales to States, etc.) with respect to a tax imposed by sections 4061(a)(1), 4061(b), or 4091, and if the claim is made with respect to articles sold by the claimant before January 7, 1983, the claim shall not be allowed unless the claimant can establish that the tax was imposed and that no refund or credit under section 522(a) of the Act was allowed with respect to the articles. See, however, paragraph (a)(3)(ii) of this section relating to price readjustments.

(4) *Other provisions applicable*. All provisions of law, including penalties, applicable with respect to the taxes imposed by sections 4061(a) (1), 4061 (b), and 4091 shall, insofar as applicable and not inconsistent with section 522(a) of the Act, apply in respect of the credits and refunds provided for in section 522(a) of the Act to the same extent as if the credits and refunds were overpayments of the taxes. For provisions relating to the imposition of the taxes, see Part 48 (Manufacturers and Retailers Excise Taxes) of this chapter. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal

holiday, see §§ 301.7502-1 and 301.7503-1 (Regulations on Procedure and Administration), respectively, of this chapter.

(b) *Definitions*. For purposes of this section—

(1) *Floor stocks*. The term "floor stocks" means a tax-repealed article which has been sold by the manufacturer and is held by a dealer on the first moment of January 7, 1983, and which is intended for sale by the dealer and has not been sold by the dealer prior to January 7, 1983, and except as provided in § 145.1-4, has not been used.

(2) *Tax-repealed article*. The term "tax-repealed article" means—

(i) Automobile truck chassis and bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less, for which a tax was imposed by section 4061(a)(1) on the sale before January 7, 1983;

(ii) Truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less, for which a tax was imposed by section 4061(a)(1) on the sale before January 7, 1983;

(iii) Parts and accessories for which a tax was imposed under section 406 (b)(1) on the sale before January 7, 1983; and

(iv) Lubricating oil for which a tax was imposed under section 4091 on the sale before January 7, 1983.

(3) *Tax paid*. A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

(4) *Dealer*. The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(5) *Held by a dealer*. An article is considered as "held by a dealer" if title thereto has passed to the dealer (whether or not delivery has been made) and if, for purposes of consumption, title to such article, or possession, or right to possession thereof has not at any time been transferred prior to January 7, 1983, to any person other than a dealer. The determination as to the time title passes or possession or right to possession is obtained for purposes of consumption shall be made under applicable local law. The term includes floor samples, demonstrators (see § 145.1-2(b)(2) for special rule under which a dealer is treated as the ultimate purchaser of a demonstrator), and articles undergoing repair (whether or not on the dealer's premises), if they are to be sold as new articles rather than as used articles. The term also includes articles purchased tax-paid by a manufacturer or a sales subsidiary and which on the inventory

date the manufacturer or a sales subsidiary is holding for resale as such, since with respect to such articles the manufacturer or a sales subsidiary is a dealer.

(c) *Participation of dealers.* No amount of credit or refund under section 522(a) of the Act may be claimed by a manufacturer ("claimant") with respect to articles held by a dealer as floor stocks unless—

(1) The amount claimed is based on a request submitted by the dealer and received by the claimant or its authorized agent before July 1, 1983;

(2) The amount claimed is paid by the claimant to the dealer, or the dealer's written consent to allowance of the credit or refund has been received by the claimant, on or before October 1, 1983. See paragraph (e)(2) of this section for a sample written consent; and

(3) The request by the dealer is supported by an inventory statement signed by the dealer or by the dealer's authorized representative. The statement shall declare it is made under penalties of perjury and shall set forth the following information:

(i) The name and address of the dealer and of the claimant (except, if unknown to the dealer, the name and address of the claimant may be inserted by any person in the chain of distribution);

(ii) The identification numbers of the articles, such as their serial, stock, model, type, or class numbers, or some other suitable means of identification;

(iii) A brief description of the articles, such as their common names or designations;

(iv) The quantities of the articles held by the dealer as floor stocks;

(v) The gross vehicle weight rating of the vehicle, if applicable, unless such rating is indicated in the serial number of the article as shown on the inventory statement;

(vi) The employer's identification number of the dealer;

(vii) A statement that no other request with respect to any article included in such inventory statement has been made; and

(viii) Such other information or computations as requested by the manufacturer.

A dealer may submit his request either directly to the claimant or through another dealer in the chain of distribution. Where a dealer addresses his request to the person whom, from markings on the article, the dealer presumes to be the claimant, the request may be treated as made to the actual claimant if the actual claimant accepts the dealer's request. Payment may be

made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. Where a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. Where a dealer authorizes the claimant to pay him through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the claimant's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting such account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made, at the dealer's option (with the concurrence of the claimant), in merchandise. The date on which any act described in this paragraph (c) is performed by an agent or representative on behalf of a claimant or dealer shall be deemed to be the date on which the act is performed by the principal. For provisions relating to the record of dealer's inventories to be kept by the claimant, see paragraph (e)(1) of this section. For provisions permitting a dealer to include an article, with respect to which the dealer is eligible for reimbursement as a consumer of trucks and trailers, in its floor stocks inventory, see § 145.1-2(d).

(d) *Procedure for claiming credit or refund—(1) In general.* Each claim for credit or refund under section 522(a) of the Act shall be filed by the manufacturer, before October 1, 1983, in the manner and subject to the conditions stated in the Act, this section, and § 301.6402-2 of the Regulations on Procedure and Administration. Either credit or refund, or a combination thereof, may be claimed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed unless a statement, signed by the claimant, is submitted in support of the claim for credit or refund. The statement shall describe in general terms the articles covered by the claims, shall set forth the method of computation of the amount claimed (including a description of the procedure used), and shall state that—

(i) The claimant paid the tax for which the credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before July 1, 1983;

(iii) The total amount claimed either was paid by the claimant to the dealers or the claimant received the written

consent of the dealers to the allowance of the amount claimed;

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence (including inventories and written consents) required by paragraph (e)(1) of this section;

(v) No other claim for credit or refund under section 522(a) of the Act has been or will be made by the claimant with respect to any amount covered by the claim; and

(vi) The amount and date of filing of each previous or concurrent claim for credit or refund under section 522(a) of the Act and whether or not any future claims are expected to be filed.

A claim for refund may be filed before the dealer has been reimbursed or the consent is obtained under paragraph (d)(2)(iii) of this section, however, in such a case, no refund will be made to the claimant unless the dealer is reimbursed or the dealer's consent is received on or before October 1, 1983, and a statement to that effect is submitted to support the claim on or before October 1, 1983. No credit may be claimed if the dealer has not been reimbursed or the dealer's consent has not been obtained on or before October 1, 1983. Since the credit must be claimed before October 1, 1983, the credit may not be taken on Form 720 if it is filed after September 30, 1983.

(e) *Supporting evidence to be retained in the manufacturer's record—(1) In general.* Every person filing a claim for credit or refund under section 522(a) of the Act must retain the dealers' inventory statements required by paragraph (c)(3) of this section to the extent that the articles in the inventory statements are covered by the claim. In addition, the claimant must retain separate records of such articles held by each dealer showing—

(i) The name and address of the dealer;

(ii) The quantities of each article held by the dealer as floor stocks;

(iii) The amount of tax considered as paid with respect to each article held by the dealer;

(iv) The total amount of reimbursement due the dealer;

(v) The date on which the claimant received a request (described in paragraph (c) of this section) from the dealer, unless payment is made to the dealer before July 1, 1983; and

(vi) The date and amount of each payment to a dealer or the date of the receipt of written consent by the claimant from a dealer.

In addition, the claimant must retain any such written consent as part of his records.

(2) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer. However, the following is an example of an acceptable consent statement by a dealer:

Consent Statement of Dealer

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit or refund with respect to floor stocks under section 522(a) of the Highway Revenue Act of 1982.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by section 4061(b) of the Internal Revenue Code of 1954 with respect to [parts and accessories] in my inventory on the first moment of January 7, 1983, that are eligible for such credit or refund.

(Name) _____
By _____

(Signature of Officer) _____
(Title) _____
(Date) _____

(f) *Special rules where the presumed manufacturer is the agent of the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name or other identification, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer filing a claim for floor stocks credit or refund with respect to such articles. If such a procedure is followed, the claim filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer. If by reason of the provisions of paragraph (k)(3) of § 145.1-3 tax paid by the first manufacturer is included in the "total tax" of the second manufacturer, for purposes of determining the amount of tax paid on a particular article, the tax paid by the first manufacturer on articles included in floor stocks in respect of which requests are addressed by dealers to the second manufacturer shall be that proportion of the tax paid with respect to all such floor stocks which—

(1) The tax paid by the first manufacturer on articles sold by the second manufacturer during the second manufacturer's representative period bears to

(2) The total of
(i) The amount described in paragraph (f)(1) of this section, and

(ii) The amount of total tax paid by the second manufacturer for the

representative period, determined without regard to the provisions of paragraph (k)(3) of § 145.1-3.

If the second manufacturer makes its computation of tax paid on a particular article on the basis of a product line (see paragraphs (g) and (h)(2) of § 145.1-3), the computation under the preceding sentence shall be made on the basis of tax paid on a product line.

§ 145.1-2 Credit or refund in respect of certain consumer purchases of trucks and truck trailers.

(a) *Credit or refund—(1) In general.* A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4061(a)(1) with respect to a tax-repealed article (as defined in paragraphs (b)(2)(i) and (ii) of § 145.1-1) which was sold to an ultimate purchaser after December 2, 1982, and before January 7, 1983, is entitled to a credit or refund for the tax paid to the extent and subject to the conditions provided by section 522(b) of the Highway Revenue Act of 1982 (Act) and by this section.

(2) *Computation of the amount of consumer purchase credit or refund.* The amount of credit or refund which may be claimed by the manufacturer under section 522(b) of the Act may not exceed the tax paid by the manufacturer on its sale of the article. No interest is allowable with respect to any amount of tax credited or refunded under section 522(b) of the Act. In applying the consumer purchase credit or refund provisions, the time the manufacturer paid the tax with respect to the sale of the article is not relevant. Thus, the period of limitations provided in section 6511 of the Code does not apply.

(3) *Limitation.* No credit or refund is allowable under section 522(b) of the Act for an amount paid as tax which may be credited or refunded under any provision of law other than section 522(b) of the Act.

(4) *Relationship between credit or refund for consumer purchases and credit or refund for price readjustments.* The principles of § 145.1-1(a)(3), relating to the relationship between credits or refunds for floor stocks and credits or refunds for price readjustments, apply to credits or refunds for consumer purchases and price readjustments.

(5) *Other provisions applicable.* All provisions of law, including penalties, applicable with respect to the tax imposed by section 4061(a)(1) shall, insofar as applicable and not inconsistent with section 522(b) of the Act, apply in respect of the credits and refunds provided for in section 522(b) of the Act to the same extent as if the credits and refunds were overpayments

of the tax. For provisions relating to the imposition of the taxes, see Part 48 (Manufacturers and Retailers Excise Taxes) of this chapter. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or legal holiday, see respectively §§ 301.7502-1, and 301.7503-1 (Regulations on Procedure and Administration), of this chapter.

(b) *Definitions.* For purposes of this section—

(1) *Sale.* A sale of a tax-repealed article to an ultimate purchaser takes place when either title, possession, or the right to possession passes to the purchaser, as determined under local law.

(2) *Ultimate purchaser.* The term "ultimate purchaser" means a consumer of a new tax-repealed article. The term includes a dealer with respect to a demonstrator (unless sold or held for sale as a new article) or any other articles owned by the dealer and used in the dealer's business and a lessor with respect to leased articles, with the exception of a lease by a manufacturer which is covered under leases in § 145.1-6(a).

(3) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

(c) *Procedure for claiming credit or refund—(1) In general.* Each claim for credit or refund under section 522(b) of the Act shall be filed by the manufacturer ("claimant") before October 1, 1983, in the manner and subject to the conditions stated in the Act, in this section, and in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed.

(2) *Conditions.* No amount of credit or refund under section 522(b) of the Act may be claimed unless—

(i) The claim is filed by the claimant before October 1, 1983;

(ii) The claim is based upon information submitted to the claimant before July 1, 1983, by the persons who sold the articles covered by the claim to the ultimate purchasers of the articles;

(iii) On or before October 1, 1983, the ultimate purchasers of the articles are reimbursed for the tax paid; and

(iv) The requirements of paragraphs (c) (3) and (4) of this section are satisfied.

Reimbursement to the ultimate purchaser for the tax paid may be made either in cash or by check, provided it is made as a separate payment. A

reduction or discount in the price for which the article is sold or a credit to the ultimate purchaser's account will not qualify as reimbursement. Nothing in this section precludes a payment to an ultimate purchaser in an amount larger than the excise tax reduction, to effect a greater price reduction, but any credit or refund to the manufacturer will be limited to the amount of the tax reduction.

(3) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under section 522(b) of the Act unless a statement, signed by the claimant, is submitted in support of the claim for credit or refund. The statement shall describe in general terms the articles covered by the claim, shall set forth the method of computation of the amount claimed (including a description of the procedure used), and shall state that—

(i) The claimant paid the tax for which the credit or refund is claimed;

(ii) The claim is based on information submitted to the claimant before July 1, 1983, by the persons who sold the articles covered by the claim to the ultimate purchasers;

(iii) The ultimate purchasers of the articles have been reimbursed for the total amount claimed;

(iv) The claimant has in his or her possession and available for inspection by internal revenue officers the evidence required by paragraph (c)(4) of this section;

(v) No other claim for credit or refund under section 522(b) of the Act has been or will be made by the claimant with respect to any amount covered by the claim; and

(vi) The amount and date of filing of each previous or concurrent claim for credit or refund under section 522(b) of the Act and whether or not any future claims are expected to be filed.

A claim for refund may be filed before the ultimate purchaser has been reimbursed under paragraph (c)(2)

(iii) of this section, however, in such a case, no refund will be made to the claimant unless the ultimate purchaser is reimbursed on or before October 1, 1983, and a statement to that effect is submitted to support the claim on or before October 1, 1983. No credit may be claimed if the ultimate purchaser has not been reimbursed before the claim is filed. In addition, since the credit must be claimed before October 1, 1983, the credit may not be taken on Form 720 if it is filed after September 30, 1983.

(4) *Supporting evidence to be retained in the manufacturer's records.* Every manufacturer filing a claim for credit or refund under section 522(b) of the Act

must retain a record of each article covered by the claim showing—

(i) The name and address of the ultimate purchaser of the article;

(ii) The name and address of the dealer or other person from whom the ultimate purchaser purchased the article;

(iii) The date of sale to the ultimate purchaser;

(iv) The number of the invoice or sales slip on which the sale to the ultimate purchaser was recorded, except in the case of a reimbursement to the ultimate purchaser made directly by the manufacturer or in the case of a dealer who does not use numbered invoices in the ordinary course of his business,

(v) The serial or identification number of the tax-repealed article, and

(vi) The date and amount of the reimbursement. If reimbursement to the ultimate purchaser is made in cash directly by the manufacturer, or if reimbursement is made either in cash or by check by a person other than the manufacturer, the manufacturer must retain in his records a receipt or statement or a copy thereof signed by the ultimate purchaser setting forth the date and amount of the reimbursement. If reimbursement to the ultimate purchaser is made by check directly from the manufacturer, the manufacturer must retain the cancelled check in his records. In addition to the evidence which must be retained in the records of the manufacturer, if reimbursement is made in cash to the ultimate purchaser by a person other than the manufacturer, that person must also retain in his records a receipt or statement or a copy thereof signed by the ultimate purchaser setting forth the date and amount of reimbursement. If reimbursement is made by the check of a person other than the manufacturer, that person should retain the cancelled check in his records.

(d) *Treatment as floor stocks if a dealer is the consumer.* If a dealer is eligible for reimbursement as the ultimate purchaser of a tax-repealed article, the dealer may, with the consent of the manufacturer, choose to include the article in the dealer's floor stocks inventory rather than request separate reimbursement under the provisions of this section. If the article is included in the floor stocks inventory of the dealer, the provisions of § 145.1-1 apply with respect to that article except that the records required to be retained by the manufacturer under § 145.1-1(e)(2) shall also indicate the date on which the article was sold to the dealer.

§ 145.1-3 Methods of determining amount of tax paid on each article.

(a) *General rule.* For purposes of the credits or refunds described in §§ 145.1-1, 145.1-2, and 145.1-7, (relating, respectively, to credits or refunds for floor stock and for certain sales made to ultimate purchasers) the tax paid on each article must be separately computed except that the special procedures set forth in this section may be used in making such computation provided such method, under the circumstances, is reasonable. The methods described in paragraphs (g) and (h) of this section will generally not be considered reasonable for trucks and truck trailers and semitrailers other than items deductible in computing the tax such as tires and delivery expenses. Any combination of the procedures set forth in this section may be used or any other method which the manufacturer can demonstrate is reasonable. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used.

(c) *Section 4216(a) exclusions.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(a) for transportation, delivery, insurance, installation, etc., for a reasonable category of articles during a representative period may be used.

(d) *Section 4216(e) exclusions.* For the purpose of determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(e) for local advertising charges for a reasonable category of articles during a representative period may be used.

(e) *Price readjustments.* In determining the price on which the tax paid is to be computed there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim for credit or refund under section 6416(b). Other price readjustments which have been, or are reasonably expected to be made with respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article. Price readjustments which cannot be attributed to specific articles as of the first moment of January 7, 1983 (as, for example, a price-readjustment of a flat dollar amount which is made to

dealers who meet a sales quota) may be taken into account on the basis of an average of such adjustments (computed over a representative period) for a reasonable category of articles. On the other hand, price readjustments related to specific items (as, for example, an automatic rebate of a specified percentage of the price of each unit sold to a dealer) may not be averaged, and in such a case only the actual price readjustment attributable to a particular article may be taken into account in computing the tax on that article. Where, because of the facts in a case, a price readjustment can be attributed to specific articles for purposes of consumer refunds but cannot be attributed to specific articles for purposes of floor stocks credit or refund (as, for example, in the case of a price readjustment made with respect to truck chassis sold by a dealer to a fleet operator), such price readjustment may be averaged for purposes of both consumer credits or refunds and floor stocks credit or refund.

(f) *Section 6416(c) credits.* The average of the credits authorized by section 6416(c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. Such credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(g) *Product line method.* Where a manufacturer computes its tax on the basis of product lines and its records are maintained by product lines, the manufacturer may determine the amount of tax paid on a particular article by dividing the total tax paid for a representative period in respect of the product line which includes the article by the total number of articles in the product line sold tax-paid during the representative period (reduced by the number of articles in the product line which were returned to the manufacturer during the representative period). The resulting tax shall be rounded to the nearest tenth of one cent.

(h) *Manufacturer's tax rate method.* (1) Where a manufacturer has an established price list for all articles sold by it, the manufacturer may determine the amount of tax paid on a particular article by multiplying (i) the price of such article on the established price list, by (ii) the average rate of tax paid (hereinafter referred to as the "manufacturer's tax rate") by it based on the prices (on such established price list) of all articles sold by it tax-paid during a representative period. The manufacturer's tax rate is computed by dividing the total tax paid in respect of all articles sold during the

representative period by the total of the prices, computed by multiplying the number of each item sold by the price for such item on one particular established price list (herein referred to in this section as "the established price list"), for all articles sold tax-paid during the representative period (reduced by the prices on the established price list of such articles returned to the manufacturer during the representative period). It is immaterial whether the established price list is a price list used at some time during the representative period, or at some later date, but only one such price list may be used and, once chosen by the manufacturer, it must be used both in computing the manufacturer's tax rate and the prices of the floor stocks to which such tax rate is to be applied. The manufacturer's tax rate shall be computed to the nearest thousandth of a percent.

(2) Where a manufacturer sells more than one product line and its records are sufficient to permit the computation of a separate manufacturer's tax rate for one or more of such product lines, it may use a separate manufacturer's tax rate for each of such product lines.

(i) *Representative period.* For purposes of applying the averaging provisions of this section, a period will be considered representative if—

(1) It covers at least four consecutive calendar quarters ending within a period of six calendar months immediately preceding January 7, 1983, or any other period of time which the taxpayer can demonstrate constitutes a representative period for the particular category, and

(2) The number of articles in the category involved sold by the manufacturer during such period either equals or exceeds the number of articles in such category to which the averaged amount is to be applied, or can be demonstrated by the taxpayer to be a representative quantity.

(j) *Reasonable category.* For purposes of this section, examples of a "reasonable category of articles" are articles which are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging the section 4216(a) exclusions, another example of a "reasonable category of articles" is articles which are shipped in the same container. Where a manufacturer sells articles bearing its own trademark and also sells articles as private brands, separate computations shall be made under this section.

(k) *Total tax paid.* (1) Where a manufacturer computes the tax paid on a particular article by the method set forth in paragraph (h)(1) of this section,

the term "total tax paid" means the tax reported on the manufacturer's excise tax returns for the representative period, reduced by the amount of all credits claimed on those returns and further reduced by the amount of any refunds claimed and not disallowed in respect of the representative period.

(2) Where a manufacturer computes the tax paid on a particular article by one of the methods set forth in paragraph (g) or (h)(2) of this section, the term "total tax paid" means the tax in respect of the product line which was reported on the manufacturer's excise tax returns for the representative period, reduced by the amount of all credits claimed in respect of the product line on those returns and further reduced by the amount of any refunds claimed in respect of the product line for the representative period and not disallowed.

(3) Where a second manufacturer sells articles manufactured by a first manufacturer—

(i) The second manufacturer shall include such articles in the computations described in paragraphs (g) and (h) of this section, and

(ii) The total tax described in paragraphs (k) (1) and (2) of this section of the second manufacturer also includes the tax paid by the first manufacturer (determined by this section in respect of the first manufacturer's representative period) on such articles sold by the second manufacturer during its representative period, if the first manufacturer is willing to obtain a credit or refund of such tax to the extent it has been paid by the first manufacturer in respect of floor stocks held by dealers and agrees to the second manufacturer acting as its agent in receiving requests from dealers in the matter.

For purposes of determining which of the articles of the first manufacturer were sold by the second manufacturer during the representative period, a first-in, first-out method may be used.

(l) *Limitation upon use of averaging in case of consumer purchases.* The averaging methods provided under this section are not permitted unless the manufacturer demonstrates that the refunds made to consumers are not less than the aggregate of the taxes that had been passed on to consumers on account of consumer purchases made after December 2, 1982, and before January 7, 1983. For this purpose, the aggregate taxes passed on to consumers shall be deemed not to include tax paid with respect to an article sold to a person who, after diligent effort, cannot be located in order to make reimbursement.

A manufacturer shall be considered to have made a diligent effort to locate a purchaser if, prior to October 1, 1983, he has mailed two separate notifications to the purchaser's last known address to inform the purchaser of his or her right to receive reimbursement of the tax and each such notification has either not been returned, or has been returned without a forwarding address. However, if such notifications are not sent to the purchaser, a manufacturer may nevertheless establish that, based upon the facts and circumstances of the particular case, a diligent effort has been made to make reimbursement to a purchaser. A manufacturer, who chooses to employ an averaging method permitted by this section and is unable to locate all purchasers who are eligible to receive reimbursement, shall retain in his records for inspection by examining internal revenue officers evidence of his effort to locate any purchaser to whom reimbursement has not been made on or before October 1, 1983.

§ 145.1-4 Demonstrator vehicles.

(a) *In general.* The floor stocks and consumer purchase refunds and credits provided under §§ 145.1-1 and 145.1-2, for tax-repealed articles for which a tax was imposed under section 4061(a)(1), are available only in the case of "new" vehicles which are held by a dealer for sale on the first moment of January 7, 1983, or are sold to an ultimate purchaser during the applicable period prescribed in § 145.1-2(a)(1). Under this section, certain "demonstrator" vehicles may be considered to be new vehicles. For purposes of this section, a demonstrator vehicle is a vehicle used by a dealer or its employees for a period of time and then sold. For purposes of §§ 145.1-1 and 145.1-2, a demonstrator vehicle will be considered to be a new vehicle if, on the first moment of January 7, 1983, (in the case of floor stocks) or on the date sold to the ultimate purchaser (if that date is earlier) it was covered by the manufacturer's warranty and more than 50 percent of the time and mileage under the warranty was then unexpired.

(b) *Definitions.* For purposes of this section—

(1) The terms "floor stocks," "tax-repealed article," and "held by a dealer," have the same meaning as is provided for such terms by paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), and (b)(5) of § 145.1-1.

(2) The term "ultimate purchaser" has the same meaning as is provided for that term by § 145.1-2(b)(2).

(c) *Extension of manufacturer's warranty.* For purposes of determining if more than 50 percent of the time and mileage under a warranty is unexpired

under paragraph (a) of this section the total time and mileage provided under the manufacturer's warranty shall only include the original time and mileage warranty.

(d) *Resale of vehicle.* In no case will the resale of a vehicle to an ultimate purchaser be considered to be a sale of a new vehicle. A vehicle held for resale by a dealer on the first moment of January 7, 1983, will not be considered a new vehicle for purposes of the floor stocks credit or refund provisions. For example, a retail sale of a vehicle, made after an earlier sale to an ultimate purchaser, is not considered to be a sale of a new article, even though more than 50 percent of the time and mileage provided under the manufacturer's warranty may be unexpired on the date the vehicle is sold. For purposes of this paragraph (d), the term "resale" does not include the first sale at retail of an article unless the manufacturer has previously used the article in a manner whereby such use is considered a sale under section 4218. See § 145.1-5 for rules relating to certain uses by a manufacturer.

(e) *Treatment of dealer as ultimate purchaser of a vehicle.* If a demonstrator vehicle does not qualify for treatment as a new vehicle under the provisions of paragraph (a) of this section on the first moment of January 7, 1983, in the case of floor stocks, or, if earlier, on the date sold to an ultimate purchaser, the dealer is considered to be the consumer of such vehicle and is eligible for reimbursement of the excise tax as a consumer, provided the dealer purchased the vehicle during the applicable period prescribed in § 145.1-2(a)(1).

§ 145.1-5 Credit or refund in respect of use by manufacturer.

Where, under the provisions of section 4218(a), a manufacturer, producer, or importer paid a tax on an article under section 4061(a) (as in effect on January 6, 1983) and such tax was imposed on such article after December 2, 1982, on account of its use of a tax-repealed article (as defined by § 145.1-1(b)(2)(i) and (ii)), such tax is deemed to be an overpayment of tax under section 522(c) of the Highway Revenue Act of 1982. Thus, the manufacturer, producer, or importer is entitled to a refund or credit of the tax paid with respect to any such article first used by such person after December 2, 1982, and before January 7, 1983. Claim for credit or refund of any tax deemed to be an overpayment of tax under section 522(c) of the Highway Revenue Act of 1982 and this section must be made in accordance with the provisions of § 301.6402-2 of the regulations.

§ 145.1-6 Leases and installment or conditional sales entered into before January 7, 1983.

(a) *In general.* For purposes of Part 145 if a tax-repealed article is sold by a manufacturer in a taxable transaction entered into before January 7, 1983, under a contract for the sale of an article where it is provided that the price shall be paid by installment, payments made before January 7, 1983, with respect to the article sold are treated as payments made with respect to an article purchased on or after the date, unless the vendor establishes that the amount of payments made or payable on or after the date, with respect to such article, has been reduced by an amount equal to the aggregate amount of the tax applicable with respect to the remaining payments. If the vendor does not establish that the payments have been so reduced, they will be treated as payments made in respect of an article sold on or after January 7, 1983. Similar rules shall apply where a lease is treated as a sale under section 4217(a).

(b) *Methods of reimbursement and records to be retained.* The requirement that the payments made on and after January 7, 1983, must be reduced by the amount of the tax reduction will be met if the manufacturer reimburses its purchaser or lessee in cash by the amount of such tax, makes a reduction for the tax in the amounts due as remaining payments, or reduces one or more of the remaining payments by the aggregate amount of such tax. A manufacturer shall retain in its records for inspection by internal revenue examining officers sufficient evidence of the reimbursement or the reimbursement obligation. Until such time as the reimbursement is made or is a binding obligation of the manufacturer under applicable local law and is made known to its purchaser or lessee, the manufacturer shall continue to report the payments and pay the tax (which, except for the amendment made by sections 522 (a) and (b) of the Highway Revenue Act of 1982, would be due) with respect to the payments made after January 6, 1983.

§ 145.1-7 Credit or refund in respect of floor stocks of tires, inner tubes, and tread rubber.

(a) *In general.* A manufacturer, producer, or importer (manufacturer) who has paid a tax imposed under section 4071(a) (relating to tires, inner tubes, and tread rubber) with respect to a tax-repealed article (as defined in paragraph (b)(2) of this section) which is held by a dealer as floor stocks (as

defined in paragraph (b)(1) of this section) is entitled to a credit or refund of that tax to the extent and subject to the conditions provided by sections 522(a) and 523(b) of the Highway Revenue Act of 1982 (Act) and this section.

(b) *Definitions*—(1) *Floor stocks*. The term "floor stocks" means a tax-repealed article which has been sold by the manufacturer and is held by a dealer on the first moment of January 1, 1984, and which is intended for sale by the dealer and has not been sold by the dealer prior to January 1, 1984, and has not been used.

(2) *Tax-repealed article*. The term "tax-repealed article" means tires, inner tubes, and tread rubber on which a tax was imposed by section 4071(a) on the sale before January 1, 1984. However, the term does not include tires that are of a type subject to tax under section 4071(a) on and after January 1, 1984.

(c) *Other provisions applicable*. Except to the extent inconsistent with this section, the principles of §§ 145.1-1, 145.1-3, 145.1-5, and 145.1-6 shall apply to this section. In applying such sections to this section, "1984" shall be substituted for "1983" each time it appears in such sections.

§ 145.4051-1 Imposition of tax on heavy trucks and trailers sold at retail.

(a) *Imposition of tax*—(1) *In general*. Section 4051(a)(1) imposes a tax on the first retail sale (as defined in § 145.4052-1(a)) of the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof):

- (i) Automobile truck chassis and bodies;
- (ii) Truck trailer and semitrailer chassis and bodies; and
- (iii) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. A sale of an automobile truck, truck trailer or semitrailer, shall be considered to be a sale of a chassis and of a body enumerated in this paragraph (a)(1).

(2) *Special rule applicable to chassis and bodies*. A chassis or body enumerated in paragraph (a)(1) of this section is taxable under section 4051(a)(1) only if such chassis or body is sold for use as a component part of a highway vehicle (as defined in paragraph (d) of § 48.4061(a)-1 (Regulations on Manufacturers and Retailers Excise Taxes)), which is an automobile truck, truck trailer or semitrailer, or a tractor of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. Furthermore, a chassis or body which is not enumerated in paragraph (a)(1) of this

section is not taxable under section 4051(a)(1) even though such chassis or body is used as a component part of a highway vehicle (e.g., a chassis or body of a passenger automobile). See paragraphs (e)(1) and (e)(2) of this section for the definitions of a tractor and truck. See paragraphs (e)(1) through (5) of § 145.4052-1 for other provisions applicable to this section. See paragraph (f) of this section, relating to tax-free sales of non-highway vehicles.

(3) *Parts or accessories sold on or in connection with chassis, bodies, etc.* The tax applies in respect of parts or accessories sold on or in connection with or with the sale of the vehicles specified in section 4051(a)(1). Thus, for example, if at the time the article is sold by the retailer, the part or accessory has been ordered from the retailer, the part or accessory will be considered as sold in connection with and with the sale of the vehicle. The tax applies in such a case whether or not the parts or accessories are billed separately by the retailer. If a taxable chassis, body, or tractor is sold by the retailer, without parts or accessories which are considered equipment essential for the operation or appearance of the taxable article, the sale of such parts or accessories by the retailer to the purchaser of the taxable article will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the taxable article even though they are shipped separately, at the same time or on a different date. For example, if a retailer sells to any person a chassis and the bumpers for such chassis, or sells a taxable tractor and the fifth wheel and attachments, the tax applies to such parts or accessories regardless of the method of billing or the time at which the shipments were made. Parts and accessories that are spares or replacements are not subject to tax.

(4) *Exclusions*. No tax is imposed by section 4051(a)(1) on the sale of automobile truck chassis and bodies, suitable for use with a vehicle with a gross vehicle weight of 33,000 pounds or less, or truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less. For purposes of this paragraph (a)(4) the term "suitable for use" means practical and commercial fitness for such use. A chassis or body possesses practical fitness for use with a vehicle if it performs its intended function up to a generally acceptable standard of efficiency with the vehicle, and a chassis or body possesses commercial fitness for use with a vehicle if it is generally available for use with the

vehicle at a price that is reasonably competitive with other articles that may be used for the same purpose. Thus, a truck chassis which is suitable for use with a vehicle having a gross vehicle weight of 33,000 pounds or less, is not subject to the tax imposed by section 4051(a)(1) regardless of the body actually mounted thereon. A truck trailer or semitrailer chassis suitable for use with a vehicle having a gross vehicle weight of 26,000 pounds or less, is not subject to tax regardless of the body actually mounted thereon. Where an exempt body is mounted on a taxable chassis, or a taxable body is mounted on an exempt chassis, the taxable chassis or body, as the case may be, nevertheless remains subject to such tax, if the resulting vehicle is a highway vehicle as defined in § 48.4061(a)-1.

(b) *Rate of tax*. With respect to the articles enumerated in paragraph (a)(1) of this section, the rate of tax imposed by section 4051(a)(1) is 12 percent of the price for which the article is sold on or after April 1, 1983. See paragraph (d) of this section relating to vehicles on which a 10 percent tax was imposed under section 4061(a)(1).

(c) *Separate purchase of truck or trailer and parts and accessories therefor*—(1) *In general*. If the owner, lessee, or operator of any vehicle, which contains an article taxable under paragraph (a)(1) of this section, installs (or causes to be installed) any part or accessory on such vehicle, and such installation is not later than 6 months after the date such vehicle (as it contains such article) was first placed in service, section 4051(b)(1) imposes a tax on such installation equal to 12 percent of the price of such part or accessory and its installation. For purposes of the tax imposed by section 4051(b)(1) and this paragraph (c)(1) the term "parts and accessories" does not include those parts and accessories which were previously exempt from tax under sections 4061(b)(1) and (2) as in effect prior to January 7, 1983. Thus, for example, articles of general use are exempt from tax. See § 48.4061(b)-2 (b). See paragraphs (d)(1) through (4) of § 145.4052-1 for determination of price.

(2) *Placed in service*. For purposes of paragraph (c)(1) of this section, a vehicle shall be considered placed in service on the date on which the owner of the vehicle took actual possession of the vehicle. This date can be established by the delivery ticket signed by the owner or other comparable document indicating delivery to and acceptance by the owner.

(3) *Exceptions.* The tax imposed by section 4051(b)(1) and paragraph (c)(1) of this section shall not apply if—

(i) The part or accessory installed is a replacement part or accessory, or

(ii) The aggregate price of the parts and accessories (and their installation) described in paragraph (c)(1) of this section with respect to any vehicle does not exceed \$200.

For purposes of paragraph (c)(3)(i) of this section, a part is a replacement part, regardless of when it is ordered, if its use with a vehicle is as a replacement for a part on such vehicle. For purposes of paragraph (c)(3)(ii) of this section, the term "aggregate price of parts and accessories (and their installation)" refers to all purchases and installation charges, not including replacement parts and accessories, made with respect to a vehicle within the 6 month period provided for in paragraph (c)(1) of this section. If the aggregate price of parts and accessories (and their installation) during the 6 month period exceeds \$200, the tax imposed under section 4051(b)(1) and paragraph (c)(1) of this section shall apply to the cost of all parts and accessories (and their installation) during such period. For example, a vehicle is purchased and placed in service on July 1, 1983. On August 1, 1983, the owner purchases and has installed parts and accessories at a cost of \$150. On September 1, 1983, the owner purchases and has installed parts and accessories at a cost of \$300. On September 1, 1983 a tax of \$54 will be imposed (12 percent $\times$ \$450). Any costs of additional parts and accessories installed with respect to the vehicle before January 1, 1984 (and the cost of installation) will also be subject to the 12 percent tax.

(d) *Transitional rule.* In the case of an article taxable under paragraph (a)(1) of this section, on which a tax was imposed under section 4061(a)(1), the rate of tax set forth in paragraph (b) shall be applied by substituting "2 percent" for "12 percent." For example, if a manufacturer sells a tractor to a dealer on February 1, 1983, for \$20,000 (which includes the Federal excise tax), for which a 10 percent tax was paid, and the dealer sells the tractor on April 10, 1983 for \$25,000, a tax of 2 percent will be imposed on the \$25,000 sales price. See paragraphs (d) (1) through (4) of § 145.4052-1 relating to determination of price.

(e) *Definitions.* For purposes of this section—

(1) *Tractor.* (i) The term "tractor" means a highway vehicle primarily designed to tow a vehicle, such as a trailer or semitrailer, but does not carry

cargo on the same chassis as the engine. A vehicle equipped with air brakes and/or towing package will be presumed to be primarily designed as a tractor.

(ii) An incomplete chassis cab shall be treated as a tractor if it is equipped with one or more of the following:

(A) A device for supplying pressure from the chassis cab to the brake system (air or hydraulic) of the towed vehicle;

(B) A mechanism for protecting the chassis cab brake system from the effects of a loss of pressure in the brake system of the towed vehicle;

(C) A control linking the brake system of the chassis to the brake system of the towed vehicle;

(D) A control in the cab for operating the towed vehicle's brakes independently of the chassis cab's brakes; or

(E) Any other equipment designed to make it suitable for use as a tractor.

An incomplete chassis cab which is not equipped with any of the devices set forth in paragraphs (e)(1)(ii) (A) through (E) of this section shall be treated as a truck if the purchaser certifies in writing that the vehicle will not be equipped for use as a tractor.

(2) *Truck.* The term "truck" refers to a highway vehicle that is primarily designed to transport its load on the same chassis as the engine even if it is also equipped to tow a vehicle, such as a trailer or semitrailer.

(3) *Gross vehicle weight.* (i) For purposes of this section the term "gross vehicle weight" means the maximum total weight of a loaded vehicle. Except as otherwise provided in paragraphs (e)(3) (ii) through (v) of this section, such maximum total weight shall be the gross vehicle weight rating of the article as specified by the manufacturer or established by the seller of the completed article, unless the Commissioner finds that such rating is unreasonable in light of the facts and circumstances in a particular case.

(ii) A seller must specify or establish a weight rating for each chassis, body, or vehicle sold on or after April 1, 1983 if such article requires no additional manufacture other than (A) the addition of readily attachable articles, such as tire or rim assemblies or minor accessories, (B) the performance of minor finishing operations, such as painting, or (C) in the case of a chassis, the addition of a body. If an article is specially equipped to the purchaser's specifications, such specifications may be used to establish the gross vehicle weight of the article.

(iii) A seller shall maintain a record of the gross vehicle weight rating of each truck, trailer and semitrailer sold and

excluded from the tax imposed by section 4051(a)(1) by reason of sections 4051(a) (2), (3) and paragraphs (e)(3) (i) through (v) of this section. For this purpose, a record of the serial number of each such article shall be treated as a record of the gross vehicle weight rating of the article if such rating is indicated by the serial number.

(iv) If (A) the seller's rating indicated in a label or identifying device affixed to an article, (B) the rating set forth in the sales invoice or warranty agreement, and (C) the advertised rating for that article (or two or more identical articles) are inconsistent, the highest of such ratings will be considered to be the seller's gross vehicle weight rating specified or established for purposes of the tax imposed by section 4051(a)(1).

(v) The seller's gross vehicle weight rating must take into account, among other things, the strength of the chassis frame and the axle capacity and placement. The Commissioner may exclude from the gross vehicle weight rating any readily attachable parts to the extent the Commissioner finds that the use of such parts in computing the gross vehicle weight rating is unreasonable.

(f) *Tax-free sales.* Tax-free sales under section 4051 and this section may be made only if the persons who are eligible to sell or purchase articles free of tax imposed by section 4051, have satisfied the provisions of section 4222 and the regulations thereunder, relating to registration. With respect to tax-free sales of a chassis or body for use as a component of a vehicle other than a highway vehicle, similar provisions to paragraphs (e)(2) (ii), (iii), and (iv) of § 48.4061(a)-1 shall apply.

(g) *Effective date.* The provisions of this section shall be effective for articles sold on or after April 1, 1983.

§ 145.4052-1 Special rules and definitions.

(a) *First retail sale.* The term "first retail sale," means the first sale of an article after manufacture, production, or importation to a purchaser who intends to use the article. A sale to a purchaser who intends to resell it or lease it long-term is not a first retail sale. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as first retail sales if the purchaser is not engaged in the business of reselling such articles and acquires them for the purpose of using them rather than reselling them. If the first retail sale is an installment sale, or other form of sale under which the sales price is paid in installments, the tax arises at the time of the sale and is computed on the sales price and is not

deferred by reason of the fact that the sales price is paid in installments.

(b) *Long-term lease treated as first retail sale*—(1) *In general.* For purposes of this section and § 145.4051-1, the first long-term leasing of an article shall be considered the first retail sale of the article. A long-term lease includes a lease for more than half the useful life of the article (taking into account options to renew and extensions), or a lease, regardless of its term, with an option to purchase at less than fair market value. Useful life for purposes of the preceding sentence is the useful life of the article in the lessor's trade or business as determined under section 167.

(2) *Computation of tax.* When a long-term lease is treated as the first retail sale under paragraph (b)(1) of this section, the liability is incurred at the time the lease is made and not at the time each lease payment is received. The total tax shall be computed on a constructive sales price established by the Commissioner as if such article were sold at retail on the date the lease is made.

(c) *Use treated as sale*—(1) *In general.* If any person uses an article taxable under section 4051(a)(1) before the first retail sale of such article then such person shall be liable for tax under section 4051(a)(1) in the same manner as if such article were sold at retail. Furthermore, if a person purchases a vehicle for which no tax was imposed under section 4051(a)(1) and thereafter converts such vehicle into an article which would have been taxable under section 4051(a)(1) and uses it, such person shall be liable for the tax as if such article were sold at retail by such person unless such article is thereafter sold for resale. For example, a truck having a gross vehicle weight rating of 24,000 pounds is sold at retail. The purchaser adds a lift axle, thereby increasing the gross vehicle weight rating to 34,000 pounds. If the purchaser thereafter uses the vehicle the purchaser shall be liable for the tax as if such article were sold at retail.

(2) *Exemption for use in further manufacture.* The tax on the use of an article to which paragraph (c)(1) of this section applies shall not apply to use of the article by such person as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by the same user.

(3) *Time of application of tax.* In the case of taxable use of an article by the seller, the tax attaches at the time such use begins. It tax applies by reason of the sale of an article on or in connection with, or with the sale of another article,

the tax attaches at the time of the sale of such other article.

(4) *Events subsequent to taxable use of article.* Liability for tax incurred on the use of an article is not extinguished or reduced because of any subsequent sale or lease of the article even if such sale or lease would have been exempt if the article had been sold or leased prior to use. If a seller of an article incurs liability for tax on his or her use of an article, and thereafter sells or leases the article in a transaction which otherwise would be subject to tax, liability for tax is not incurred on such sale or lease.

(5) *Computation of tax.* (i) Except as provided in paragraph (c)(5)(ii) of this section, the tax liability incurred on the use of an article shall be computed on the price at which such or similar articles are generally sold in the ordinary course of trade by retailers.

(ii) If the seller of an article regularly sells such articles at retail in arm's length transactions, tax liability on its use of any such article shall be computed on its lowest established retail price for such articles in effect at the time of the taxable use. In establishing such price, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1) as in effect at the time the tax liability on the use of the article is incurred. If the seller of an article does not regularly sell such articles at retail in arm's length transactions, a constructive price on which the tax shall be computed will be determined by the Commissioner. This price will be established after considering the selling practices and price structures of sellers of similar articles.

(d) *Determination of price*—(1) *In general.* The price for which an article is sold includes the total consideration paid for the article whether that consideration is paid in money, services, or other forms. In addition, there shall be included any charge incident to placing the article in condition ready for use. Similar rules to section 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply. For example, charges for transportation, delivery, insurance, and installation (other than installation charges to which section 4051(b) applies), and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale shall be excluded from the price in computing the tax.

(2) *Items excluded from price.* There shall be excluded from the price—

(i) The amount of tax imposed under sections 4051(a)(1) and (b)(1);

(ii) If stated as a separate charge, the amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee; and

(iii) The fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base). For purposes of this paragraph (d)(2)(iii), fair market value at retail shall be determined by the lowest established price for which the vehicle retailer would sell such tires at retail in the ordinary course of trade. The lowest established price is the lowest price for which the vehicle retailer sells, or offers to sell, a single tire to an independent purchaser who would not ordinarily be expected to buy more than one. If the vehicle retailer has no lowest established price the Commissioner will accept any price provided, under the facts and circumstances, such price is not unreasonable. A price will not be considered unreasonable if it is no more than an amount equal to 50 percent of the manufacturer's suggested retail price.

(3) *Trade-ins.* If, in connection with the sale of an article subject to the tax imposed under section 4051(a)(1) or (b)(1) on the price for which sold, a vendor receives from its vendee another article in exchange, the tax on the vendor's sale shall be computed on the basis of the full price of the article sold, unreduced by any amount allowed for the article received from the vendee. For example, where a vehicle costing \$20,000 is purchased for \$16,000 cash plus a used vehicle valued at \$4,000, tax is \$2,400 (12 percent x \$20,000).

(4) *Sales not at arm's length.* For purposes of § 145.4051-1 and this section, a sale is considered to be made under circumstances otherwise than at "arm's length" if—

(i) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(ii) The sale is made pursuant to special arrangements between a seller and a purchaser.

In the case of an article sold otherwise than at arm's length, and sold at less than the fair market price, the tax imposed under section 4051(a)(1) or (b)(1) shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Commissioner. Once such a price has been determined, no further adjustment of such price shall be made.

(e) *Other rules made applicable.* For purposes of § 145.4051-1 and this section, rules similar to the following provisions shall apply:

(1) Section 48.0-2, relating to general definitions and attachment of tax;

(2) Paragraphs (a) (2) and (3) of § 48.4061 (a)-1;

(3) The exemptions provided by sections 4063 (a) and (d) and the regulations thereunder;

(4) Section 4216(f) and the regulations thereunder, relating to the incorporation of used components; and

(5) Section 4221 and the regulations thereunder, relating to certain tax-free sales.

(f) *Effective date.* The provisions of this section shall be effective for articles sold on or after April 1, 1983.

§ 145.4061-1 Application to manufacturers tax.

The provisions of §§ 145.4051-1(e) (1) and (2), relating to the definition of tractors and trucks, shall apply to section 4061(a)(1) for sales made on or after January 7, 1983. However, an incomplete chassis cab will be treated as a truck chassis for sales made on or after January 7, 1983, and before April 1, 1983. For purposes of section 4061, gross vehicle weight shall be determined under §§ 48.4061(a)-1(f)(3) (i) through (iv) for sales made on or after January 7, 1983, and before April 1, 1983.

§ 145.9000-1 Paperwork Reduction Act.

The regulations in this part (to the extent required) have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507). Regulations §§ 145.1-1 through 145.1-7, 145.4051-1, 145.4052-1 and 145.4061-1 were assigned by OMB the Control number 1545-0745.

This Treasury decision is issued under the authority contained in sections 4051, 4052, 4061 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2174, 2175 and 2173; 68A Stat. 917; 26 U.S.C. 4051, 4052, 4061, and 7805) and sections 522 of 523 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2185, 2186.)

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: March 28, 1983.

John E. Chapoton,
Assistant Secretary of the Treasury.

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26 CFR Part 145

[T.D. 7883]

Floor Stocks Tax on Gasoline Held for Sale on April 1, 1983

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations with respect to the floor stocks tax on gasoline held for sale by dealers on April 1, 1983. Changes to the applicable tax law were made by the Highway Revenue Act of 1982. These regulations will affect dealers who hold gasoline for sale on April 1, 1983, and will provide them with guidance needed to comply with the law.

DATE: These regulations apply to gasoline held for sale on April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3288), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the floor stocks tax on gasoline held for sale on April 1, 1983, which is imposed by section 521 of the Highway Revenue Act of 1982 (Pub. L. 97-424, 96 Stat. 2097).

The regulations explain the application of the floor stocks tax to gasoline held for sale on April 1, 1983. Dealers are required to make an inventory of the gasoline they hold for sale on April 1 and to keep records of the inventory. In determining the amount of gasoline subject to tax, gasoline below the mouth of the draw pipe may be excluded as provided in § 145.2-2(c). In general, 200 gallons may be excluded for a tank with a capacity of less than 10,000 gallons, and 400 gallons may be excluded for a tank with a capacity of 10,000 or more gallons. Gasoline purchased tax free and held by a dealer who is also a producer or importer is not subject to the floor stocks tax. Under the regulations, the floor stocks tax must be paid by May 16, 1983. A return of the tax must be filed on Form 720. The due date for the return is May 16, 1983. In the case of dealers not otherwise required to file Form 720, Dealers not otherwise required to file Form 720 should mark "FINAL" on their Form 720. In the case of all other dealers, the due date for filing is the date prescribed by the instructions on

the Form 720 for the quarter ending June 30, 1983. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that these temporary regulations are not subject to Executive Order 12291.

Drafting Information

The principal author of this regulation is Cynthia L. Clark of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 145

Extended due date for payment of certain fuel taxes, Floor stocks refunds, Floor stocks tax, Highway Revenue Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 145 is amended as follows:

PART 145—[AMENDED]

Paragraph 1. There is added in the appropriate place the following new sections:

§ 145.2-1 Scope of floor stocks tax on gasoline.

A floor stocks tax under section 521 of the Highway Revenue Act of 1982 is imposed on gasoline that is held at the first moment of April 1, 1983, by a dealer for sale. For this purpose, gasoline is regarded as held by a dealer if title to the gasoline has passed to the dealer (whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to such gasoline or

possession or right to possession thereof has not at any time been transferred prior to April 1, 1983, to any person other than a dealer. The determination as to the time title passes or possession is obtained for purposes of consumption shall be made under applicable local law.

§ 145.2-2 Application of the floor stocks tax on gasoline.

(a) *Rate of tax.* In general, the floor stocks tax on gasoline is computed at the rate of 5 cents per gallon. However, for gasoline that is described in section 4081(c)(1) (relating to gasoline mixed with alcohol) the tax is computed at the rate of 4 cents per gallon.

(b) *Definition of gasoline.* For purposes of § 145.2-1, the term "gasoline" has the meaning prescribed in section 4082(b), except as provided in paragraph (c) of this section (relating to dead storage).

(c) *Dead storage.* In determining the amount of gasoline held on April 1 for purposes of § 145.2-1, the dealer may exclude the amount of gasoline in dead storage (*i.e.*, the amount of gasoline that will not be pumped out of the storage tank because the gasoline is below the mouth of the draw pipe). For this purpose, a dealer may assume that the amount of gasoline in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more. In the alternative, a dealer may choose to compute the amount of gasoline in dead storage by using the manufacturer's conversion table for the tank and the number of inches between the bottom of the tank and the mouth of the draw pipe. If, however, the dealer uses the conversion table method to compute the amount of gasoline in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be assumed to be 8 inches, unless the dealer establishes otherwise.

(d) *Definition of dealer.* For purposes of § 145.2-1, the term "dealer" means a wholesaler, jobber, distributor, or retailer. The tax applies to gasoline held by a dealer who is also the producer (as defined by section 4082(a)) or importer of the gasoline, to the extent the gasoline so held is tax-paid gasoline. However, the floor stocks tax on gasoline does not apply to gasoline held by any person for the person's own use rather than for sale.

§ 145.2-3 Inventory.

Every dealer liable for the floor stocks tax on gasoline shall prepare an inventory of gasoline held for sale at the first moment of April 1, 1983. Dealers

holding gasoline subject to the tax at more than one location shall prepare a separate inventory, in duplicate, for each such location. One copy of the separate inventory shall be retained at the location and one copy shall be kept at the principal place of business of the dealer. Each inventory shall show the name of the dealer, the location of the particular premises for which the inventory is made, the address shown on the dealer's tax return, and the total number of gallons of gasoline held at the particular location that are subject to the floor stocks tax on gasoline. The inventory shall not be filed with the return but shall be retained by the taxpayer.

§ 145.2-4 Requirements with respect to return.

(a) *Form.* Every person liable for the floor stocks tax on gasoline shall make a return of the tax on Form 720.

(b) *Time and place for filing return.* The return shall be filed with the Service Center indicated by the instructions for the Form 720. The return must be filed on or before May 16, 1983, and must be marked "FINAL," in the case of dealers not otherwise required to file Form 720. In the case of all other dealers, the return must be filed on or before the date prescribed by the instructions for the Form 720 for the quarter ending June 30, 1983. For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503-1. For provisions relating to additions to the tax in case of failure to file a return within the prescribed time, see section 6651 and § 301.6651.

(c) *Time and place for paying tax.* The tax is due and payable without assessment or notice on or before May 16, 1983. If a dealer is not required to make a deposit of any tax using Federal Tax Deposit Form 504 for the quarter ending June 30, 1983, the dealer shall pay the tax by check or money order. The dealer must write the dealer's taxpayer identification number and "Form 720 Second Quarter 1983, Floor Stocks Tax on Gasoline, IRS No. 65" on the check or money order. The check or money order must be sent, together with the Form 720, to the Service Center described in paragraph (b) of this section. All other dealers shall pay the tax by making a deposit of the tax, together with Form 504, on or before May 16, 1983, at an authorized depository or the Federal Reserve Bank serving the dealer's area. See the

applicable sections of Part 301 of this chapter (Regulations on Procedure and Administration) for provisions relating to interest on underpayments, additions to tax, and penalties.

§ 145.2-5 Credit or refund.

Any person who has paid a floor stocks tax on gasoline may be entitled, subject to the provisions of section 6416 and § 301.6402-2, to a credit or refund of the tax for any of the reasons specified in section 6416. Thus, credit or refund may be claimed, subject to the conditions provided in section 6416(a) and the provisions of § 301.6402-2, where gasoline is used or sold for use for any of the purposes specified—

(a) In section 6416(b)(2)(A), relating to exportation;

(b) In section 6416(b)(2)(B), relating to supplies for vessels or aircraft;

(c) In section 6416(b)(2)(C), relating to exclusive use of a state or local government;

(d) In section 6416(b)(2)(D), relating to exclusive use of a nonprofit educational organization; or

(e) In section 6416(b)(2)(H), relating to use of gasoline in the production of special fuels. Claims for refund under this section are to be filed on Form 843. Any person entitled to claim a refund of tax under this section may, in lieu of claiming refund, claim credit for the tax on any return of tax under chapter 32 that the person subsequently files.

§ 145.2-6 Records.

(a) *Inventories.* Every person liable for the floor stocks tax on gasoline shall maintain records of the separate inventories required by § 145.2-3.

(b) *Copies of returns and other relevant papers and material.* Every person liable for the floor stocks tax on gasoline shall keep a duplicate copy of the return, together with other relevant papers and material.

(c) *Records of claimants.* Any person claiming a refund or credit of the tax shall keep a complete and detailed record with respect to the claim.

(d) *Place and period for keeping records.* All records required by this section shall be kept, by the person required to keep them, at a convenient and safe location within the United States that is accessible to internal revenue officers. The records shall at all times be available for inspection by such officers. If the person has a principal place of business in the United States, the records shall be kept at that place of business. Records required by paragraphs (a) and (b) of this section shall be maintained for a period of at least 3 years after the date the tax

becomes due or the date the tax is paid, whichever is later. Records required by paragraph (c) of this section (including any record required by paragraph (a) or (b) that relates to a claim) shall be maintained for a period of at least 3 years after the claim is filed.

§ 145.9000-1 [Amended]

Par. 2. Section 145.9000-1 is amended by adding at the end the following new sentence:

"Regulation § 145.2-1 through 145.2-6 were assigned by OMB the control number 1545-0744.

(Sec. 521 of the Highway Revenue Act of 1982 (96 Stat. 2097) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805))

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 28, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

(FR Doc. 83-8435 Filed 3-30-83; 3:24 pm)

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-126; Reference Notice No. 436]

Yakima Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes an American viticultural area in Yakima and Benton Counties, Washington known as "Yakima Valley." The establishment of viticultural areas and the use of viticultural area names in wine labeling and advertising will allow wineries to designate the specific grape-growing area where their wines originate, and will help consumers to identify the wines they purchase.

DATE: This final rule is effective on May 4, 1983.

FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

Title 27 CFR, Part 4 provides for the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Sections 9.11 and 4.25a(e)(1), of Title 27,

CFR, define an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Approved American viticultural areas are listed in 27 CFR Part 9.

Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned by the Yakima Valley Appellation Committee to establish the first viticultural area in the State of Washington. The area petitioned for is a valley centered around the Yakima River in south central Washington. The Yakima Valley is nearly 75 miles long and 22 miles wide at its widest point and contains approximately 1040 square miles.

In response to their petition, ATF published a notice of proposed rulemaking, Notice No. 436, in the *Federal Register* on November 24, 1982 [47 FR 53051] proposing the establishment of the Yakima Valley viticultural area.

Supporting Evidence

The Yakima Valley Appellation Committee, an association of Yakima Valley grape-growers and Yakima Valley and Washington State wineries, gave the following evidence for the establishment of the Yakima Valley viticultural area in their petition.

Name. The name Yakima Valley was well established. Yakima is the name of the Yakima Nation, a loose confederacy of Indian tribes which once controlled a vast portion of eastern Washington. This name was given to the city, valley and river. Yakima Valley is also used on U.S.G.S. maps to designate the valley surrounding the Yakima River.

Although Yakima Valley has only recently become recognized as a wine producing region, it has been known as an important agricultural region since the early 1900's when river water was first used to irrigate the valley. Yakima Valley has achieved special fame for apples, soft fruits and hops. The petitioner submitted numerous newspaper articles and other literature which use the term Yakima Valley to describe the area, especially as a grape-growing region.

History of viticulture. Island Belle grapes were introduced into the Yakima Valley in the early 1900s. Later, Concord grapes became the dominant grape throughout Washington State. Concord grapes were not, however, made into wine but were processed at grape juice plants at Grandview and Prosser in the Yakima Valley, and at Yakima.

After repeal of Prohibition, William Bridgman, a Sunnyside farmer and grapegrower, determined that the Yakima Valley was better suited for wine growing than central France. He imported Vinifera grapes and established a winery and vineyard at Sunnyside where he grew varieties such as Johannisberg Riesling and Cabernet. By 1937 Washington State could count 42 wineries, the largest of which was in the Yakima Valley. Nevertheless, Concord grapes continued to be dominant, and few local wines of distinction were produced. Many grapes were shipped out of state for processing, and Washington State wineries did not concentrate on producing premium varietal wines.

In the 1950's, Dr. Lloyd Woodburne, a professor at the University of Washington in Seattle, began to produce home wines made from Washington State grapes. Other members of the University faculty joined him and in 1961 they incorporated and planted five acres of Pinot Noir and other Vinifera grapes at Sunnyside adjacent to Bridgman's vineyard. Their group eventually became Associated Vineyards which released their first wines to the public in 1968. With demand for their Yakima Valley wines growing, they planted 20 more acres at Sunnyside, including Cabernet, Pinot Noir, Riesling, Gewurztraminer, Semillon, and Chardonnay.

During the 1970's, additional acreage of Vinifera grapes were planted throughout Yakima Valley. Today there are approximately 23,400 acres of grapes in the valley. This includes 3500 acres of Vinifera varieties, with the remainder being Concord, White Diamond, and Island Belle. Grapes are planted in nearly every location in the valley where irrigation is available, although the majority of the Vinifera grapes are planted on the south facing slopes of the Rattlesnake Hills, Red Mountain, Snipes Mountain, Ahtanum Ridge, and on the steeper north banks of the Yakima River. There are six bonded wineries in the Yakima Valley and the term Yakima Valley has been used since 1967 as an appellation of origin for wines made from Yakima Valley grapes.

Topography. Topography distinguishes Yakima Valley from surrounding areas.

Eastern Washington is characterized by a series of east to west basaltic uplifts which occurred millions of years ago, and which created a number of large and small valleys with distinct north/south boundaries and slopes.

Yakima Valley is one of these valleys bounded on the north and south by four

basaltic uplifts. Ahtanum Ridge and the Rattlesnake Hills comprise the northern boundary separating the Yakima Valley from Ahtanum Valley and Moxie Valley. The Toppenish Ridge and Horse Heaven Hills form the southern boundary. Yakima Valley's eastern boundary is formed by Rattlesnake Mountain, Red Mountain and Badger Mountain, all of which serve to separate it from the Columbia Basin. The foothills of the Cascade Mountain Range define the western boundary.

The western portion of the Yakima Valley is a vast expanse of flat land, while the eastern portion is composed of gently sloping land north of the Yakima River. The valley itself is drained by the Yakima River which enters the valley on the north at Union Gap, and flows in a southeasterly direction exiting the valley at a gap between Rattlesnake Mountain and Red Mountain.

Climate. The climate of Yakima Valley is a distinguishing factor of the viticultural area. In general, the mountains to the west experience significantly cooler temperatures while Yakima Valley is not as warm as areas to the north and east.

Within Yakima Valley, the climate averages Region II on the scale developed by Winkler and Amerine of the University of California to measure degree days. Eight stations average 2641 degree days with individual readings of 2207 at Toppenish, 2436 at Prosser, 2665 at Sunnyside, and the highest reading, 3048 degree days at Wapato.

The mountain areas to the west experience a much cooler climate; Rimrock Dam averages 1150 degree days, Goldendale 1779, and Status Pass 1334 degree days. These mountainous areas are classified as Region I.

The area to the north following the Yakima River is slightly cooler than the Yakima Valley. Ellensburg experiences 1932 degree days, Yakima 2314, Naches Heights 2330, and Moxie 2574 degree days.

In contrast to these cooler areas, the areas northeast, east and southeast of Yakima Valley experience a significantly hotter climate, and may be characterized as Region III. Individual degree day readings include 3231 at Hanford, 3720 at Priest Rapids Dam, 3890 at Richland, 3094 at Kennewick, and 3201 at McNary Dam.

Rainfall in Yakima Valley is sparse. Eight reporting stations within the viticultural area average only 8.11 inches of precipitation per year with a range of 5.88 inches at Toppenish to 12.41 inches at Fort Simcoe. The mean average growing season (28 degree base) for four stations in Yakima Valley is 190

days, ranging from 184 days at White Swan to 196 days at Benton City.

Soils. There are at least 13 different soil associations within the Yakima Valley viticultural area; however, most vineyards are planted in just two associations. The Warden-Shano Association is found on the slopes of the valley. These soils are silt-loam throughout and are deep to moderately deep over basalt bedrock. The Scootenay-Starbuck Association is found predominately along the Yakima River. These soils are silt-loam, and are shallow to very deep over gravel or basalt bedrock, being formed in old alluviums.

Boundaries. The boundaries of the Yakima Valley viticultural area are the mountain ranges surrounding the valley. The boundary follows the crest of the Ahtanum Ridge and the Rattlesnake Hills on the north, crosses the top of Rattlesnake Mountain, Red Mountain, and Badger Mountain on the east, and follows the 1,000 foot contour line of the House Heaven Hills and the crest of the Toppenish Ridge on the south. The western boundary is composed of the lower foothills of the Cascade Mountains. Specific boundaries are described in the regulatory language in § 9.69.

No Comments Received

The notice of proposed rulemaking, Notice No. 436, contained a 45 day comment period. No comments were received during the comment period. Based on the evidence contained in the petition for the viticultural area, ATF is adopting the Yakima Valley viticultural area as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This rule allows the petitioner and other persons to use an appellation of origin, "Yakima Valley" on wine labels and in wine advertising. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of 100 million dollars or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.69. As amended, the table of sections reads as follows:

• • • • •

Subpart C—Approved American Viticultural Areas

• • • • •
§ 9.69 Yakima Valley.
• • • • •

Par. 2. Subpart C is amended by adding § 9.69 which reads as follows:

§ 9.69 Yakima Valley.

(a) *Name.* The name of the viticultural area described in this section is "Yakima Valley."

(b) *Approved Maps.* The approved maps for determining the boundary of the Yakima Valley viticultural area are two U.S.G.S. maps. They are entitled: (1) "Walla Walla, Washington," scaled 1:250,000, edition of 1953, limited revision 1963; and

(2) "Yakima, Washington," scaled 1:250,000, edition of 1958, revised 1971.

(c) *Boundaries.* The Yakima Valley viticultural area is located in Benton and Yakima Counties, Washington. The beginning point is found on the

"Yakima, Washington," U.S.G.S. map at the Wapato Dam located on the Yakima River.

(1) Then east following the crest of the Rattlesnake Hills across Elephant Mountain, Zillah Peak, High Top (elevation 3031 feet), and an unnamed mountain (elevation 3629 feet) to the Bennett Ranch;

(2) Then due east approximately 0.2 mile to the boundary of the Hanford Atomic Energy Commission Works;

(3) Then southeast following the boundary of the Hanford AEC Works along the Rattlesnake Hills to the Yakima River;

(4) Then southeast across the top of Red Mountain to the peak of Badger Mountain;

(5) Then due south for approximately 4.9 miles to the 1000 foot contour line immediately south of the Burlington Northern Railroad (indicated on map as the Northern Pacific Railroad);

(6) Then west following the 1000 foot contour line to its intersection with U.S. Highway 97 immediately west of Hembre Mountain;

(7) Then west following the Toppenish Ridge, across an unnamed mountain (elevation 2172 feet), an unnamed mountain (elevation 2363 feet), to the peak of Toppenish Mountain (elevation 3609 feet);

(8) Then northwest in straight line for approximately 9.3 miles to the lookout tower at Fort Simcoe Historical State Park;

(9) Then north in a straight line for approximately 11.7 miles to an unnamed peak, (elevation 3372 feet); and

(10) Then east following Ahtanum Ridge, crossing unnamed peaks of 2037 feet elevation, 2511 feet elevation, 2141 feet elevation, to the Wapato Dam at the point of beginning.

Signed: March 7, 1983.

Stephen E. Higgins,
Acting Director.

Approved: March 23, 1983.

Daniel Q. Bates,
Deputy Assistant Secretary (Operations)

[FR Doc. 83-0633 Filed 4-1-83; 8:45 am]

BILLING CODE 4810-31-M

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission has exercised its statutory rule-making authority with respect to the qualifications of representatives at parole hearings (lawyers and non-lawyers alike). The final rule which appears below (a) Permits hearing examiners to bar a representative from participating in a hearing if "good cause" justifies such action; (b) provides for disqualification of a representative for up to a five-year period upon a formal finding of specific misconduct; and (c) disqualifies all former Federal criminal justice employees from becoming representatives for hire for one year after leaving Federal employment. This rule is designed to permit the Parole Commission to maintain the orderliness and integrity of its parole hearings, and to foreclose the possibility that a representative could exploit the fact of recent Federal employment in a criminal justice capacity when representing individuals before the U.S. Parole Commission.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION:

Background

The background of this rule was explained in the notice of proposed rule-making which was published at 47 Federal Register 54982 (Tuesday, December 7, 1982).

Modifications to the Proposed Rule

(1) The final rule includes a more precise description of what the Commission means by "good cause" in the provision which empowers an examiner panel to bar from a hearing a representative whose presence or conduct would be incompatible with the integrity or orderliness of the hearing. The Commission's intent in this respect is to discourage only the kind of conduct which deliberately disrupts and impedes the hearing from pursuing its lawful course. It is not the Commission's intention to impose any more rigid restrictions upon sincere representative efforts than would normally be encountered in a court of law concerned with maintaining orderliness and decorum. The Commission has also made clear, by providing examples, that the examiner panel may also preclude representation in advance of a hearing by persons who are obviously not fit to provide adequate representation. This

would include a fellow prisoner who has created such a disciplinary problem that he is confined in segregation at the time of the hearing, and would also include any proposed representative subject to a conflict of interest. For example, the Commission has encountered situations in which the parole applicant has been provided with free legal representation by a criminal organization, usually by prearranged contract. Such a representative is beholden to an employer whose criminally-oriented interests may will conflict with the parole applicant's presumed interest in returning to a law-abiding life. A prisoner has no right to the fulfillment of such a contract. See *Wood v. Georgia*, 101 S.Ct. 1097 (1981). (Of course, conflicts of interest may also occur among codefendants and among fellow prisoners for other reasons.)

(2) The Commission has further elucidated, by example, the type of misconduct which would justify a hearing leading to the disqualification of a representative from appearing before the Commission for up to a five-year period. (The disqualification would include not only personal appearances but written submissions prepared by the representative as well.) The example given is that of repetitive or deliberate provision of false information to the Commission. Although the Commission could not spell out in advance every possible kind of flagrant wrongdoing which might demonstrate "a clear lack of personal integrity or fitness to practice before the Commission," it believes that the warning is fair because it is aimed only at such obviously wrong practices as taking fees from prisoners for the performance of representative duties (such as filing appeals) which are negligently or deliberately not performed. See, e.g., *Koden v. United States Department of Justice*, 564 F.2d 228 (7th Cir. 1977), in which the Department of Justice suspended an attorney from practicing before the Immigration and Naturalization Service upon a finding that the attorney had taken fees without performing services and had solicited clients in a manner contrary to rule.

(3) With respect to the one-year prohibition on representation of any kind before the Parole Commission by a former Federal criminal justice employee, the Commission has made two changes from the proposal. First, such a person may be employed by any organization representing prisoners before the Parole Commission, not just law firms, so long as he performs no "representational act" before the Commission. (The Commission uses the

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[3P0401]

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Delinquents

AGENCY: Parole Commission, Justice.

term "representational act" in the same sense that it is used at 18 U.S.C. § 207.)

Second, the Commission has included a prohibition against prisoners and parolees hiring themselves out as representatives before the Commission, a provision which reinforces existing restrictions. This would permit a parolee who is working for an established service organization (e.g., the NAACP) to continue in that capacity, provided that the parolee does not at any time act at the hire of individual clients.

Public Comment

The Commission received three letters or other missives from law firms, one letter from a legal services group, one letter from a prison case manager, and one letter from an associate warden. A number of comments were directed to the need for the improvements noted above, and need not be discussed further.

Criticism included the suggestion that the Commission could not properly discipline the conduct of attorneys practicing before it, but should defer to the state bar associations. The Commission has rejected this proposal, not only because it could not always expect reasonably prompt action by state bar associations, but also because maintaining the orderliness and integrity of agency proceedings is clearly a proper function for the agency itself. See, e.g., *Touche Ross and Company v. Securities and Exchange Commission*, 609 F.2d 570 (2d Cir. 1979). We note also that when the ABA House of Delegates adopted a resolution in August, 1980, perceiving dangers in the exercise of disciplinary jurisdiction by administrative agencies over lawyers, the resolution specifically exempted the " * * * authority immediately necessary to maintain order in or the integrity of proceedings pending before them." That is precisely the limit of the instant rule. Lawyers criticizing the proposal suggested that the hearing examiners (who are not lawyers themselves) would be arbitrary and lacking understanding of the attorney's role in providing zealous representation for his client. We think this criticism not well founded. Examiners have no interest in disrupting their own hearing schedules by overly severe rulings on the conduct of representatives before them, and they understand perfectly well the function of an attorney in an agency fact-finding proceeding.

Another major criticism was that the one-year prohibition on former employees is not based on demonstrated abuses and makes unfair assumptions about the integrity of both former and present employees. The critics also

correctly pointed out that inmates will soon learn that ex-employees have absolutely no "inside track" with the agency. However, preventing a public perception that the system is open to abuse is also an important factor. The Commission believes that, in order to maintain public confidence in the parole system, it must prevent even the possibility of abuse. If the public assumes that a controversial parole was due in some measure to the exercise of influence by a representative who only a short time before was a criminal justice system official (raising the possibility that the representative had begun acting on the prisoner's behalf even before termination of employment), damage will have been done notwithstanding the total absence of any actual wrongdoing. In short, the Commission has a duty to maintain the strictest public appearance of fairness and justice, as well as the actual fact.

Finally, a comment was made that the proposal did not seem to provide for an appeal from an examiner panel decision to bar a representative from a particular hearing. The Commission reaffirmed that a good cause finding is subject to review. Moreover, under existing rules, all hearing panel actions are subject to review and reversal (28 CFR 2.24) and a procedural violation may be argued on appeal (28 CFR 2.25).

Implementation of the Final Rule

This rule is being put into effect on a prospective basis only. That is, all present Federal criminal justice system employees who leave Government service on or after June 1, 1983, will be subject to the one-year prohibition on representing any person before the U.S. Parole Commission. The disciplinary provisions of paragraphs (a) and (b) will also go into effect on that date, except that a finding of unfitness to appear before the Parole Commission may thereafter be based upon unethical behavior or other persuasive circumstances arising before the effective date.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

PART 2—[AMENDED]

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR Part 2 is expanded by adding a new § 2.61 as follows:

§ 2.61 Qualifications of representatives.

(a) A prisoner or parolee may select any person to appear as his or her representative in any proceeding, and

any representative will be deemed qualified unless specifically disqualified under paragraphs (b) or (c) of this section. However, an examiner or examiner panel may bar an otherwise qualified representative from participating in a particular hearing, provided good cause for such action is found and stated in the record (e.g., willfully disruptive conduct during the hearing by repeated interruption or use of abusive language). In certain situations, good cause may be found in advance of the hearing (e.g., that the proposed representative is a prisoner in disciplinary segregation whose presence at the hearing would pose a risk to security, or has a personal interest in the case which appears to conflict with that of the parole applicant).

(b) The Commission may disqualify any representative from appearing before it for up to a five-year period if, following a hearing, the Commission finds that the representative has engaged in any conduct which demonstrates a clear lack of personal integrity or fitness to practice before the Commission (including, but not limited to, deliberate or repetitive provision of false information to the Commission, or solicitation of clients on the strength of purported personal influence with U.S. Parole Commissioners or staff).

(c)(1) In addition to the prohibitions contained in 18 U.S.C. 207, no former employee of any Federal criminal justice agency (in either the Executive or Judicial Branch of the Government) shall be qualified to act as a representative for hire in any case before the Commission for one year following termination of Federal employment. However, such persons may be employed by, or perform consulting services for, a private firm or other organization providing representation before the agency, to the extent that such employment or service does not include the performance of any representational act before the Commission.

(2) No prisoner or parolee may serve as a representative before the Commission, at the hire of individual clients, in any case.

Note.—I certify 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.

Dated: March 18, 1983.

Benjamin F. Baer,
Chairman, Parole Commission.

[FR Doc. 83-6664 Filed 4-1-83; 6:45 am]

BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Amendments

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared on pages 58245 to 58251 of the Federal Register of Thursday, December 30, 1982 (47 FR 58245 to 58251). One correction concerns § 17.60 Outpatient medical services for eligible persons. Section 17.60(j) describes the home health services allowable to veterans. Paragraph (j)(2) of that section describes the home health services available to veterans being treated for a nonservice-connected disability and the stipulations for the services that are available. There are four stipulations listed as paragraphs (j)(2) (i)-(iv), however subdivision (iv) was inadvertently omitted from the final rule document. The other correction is made to § 17.54(a) because a closing phrase that appears after paragraph (a)(2) of that section should correctly appear after paragraph (a)(3).

FOR FURTHER INFORMATION CONTACT: Anthony Ranciato, Medical Administration Specialist, Department of Medicine and Surgery (136F), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420, (202) 389-3785.

Dated: March 30, 1983.

Nancy C. McCoy,

Assistant Director for Administrative Issues Review.

The following corrections are made in FR Doc. 82-35210 appearing on pages 58245 to 58251 of the issue of December 30, 1982:

PART 17—[CORRECTED]

1. In § 17.54, the phrase that appears after paragraph (a)(2)(ii), "who are not otherwise eligible . . . (CHAMPUS) and—" and the authority cite following it, should appear after the authority cite following paragraph (a)(3) so that paragraphs (a) (2) and (3) read as follows:

§ 17.54 Medical care for survivors and dependents of certain veterans.

(a) Medical care may be provided for—

- (2) The surviving spouse or child of a veteran who—
 - (i) Died as a result of a service-connected disability, or
 - (ii) At the time of death has a total disability, permanent in nature resulting

from a service-connected disability and—

(3) The surviving spouse or child of a person who died in the active military, naval or air service in the line of duty and not due to such person's own misconduct—(38 U.S.C. 613(a), as amended by Pub. L. 96-151, sec. 205(a)(1))

who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10, United States Code (CHAMPUS) and—(38 U.S.C. 613 added by Pub. L. 93-82, sec. 103(b), amended by Pub. L. 94-581, sec. 104)

2. In § 17.60(j)(2), paragraph (iv) which was omitted is added so that § 17.60(j)(2) reads as follows:

§ 17.60 Outpatient medical services for eligible persons.

(j) Home health services.

(2) Will not exceed \$800 for veterans being treated for a nonservice-connected disability and then only to (i) Veterans receiving authorized post-hospital care under the authority of § 17.60(f); (ii) Veterans rated at 50 percent or more service-connected; (iii) Veterans of the Mexican Border Period or World War I; and (iv) Those in receipt of aid and attendance or housebound benefits. (38 U.S.C. 612(f); Pub. L. 93-82, sec. 101(c); Pub. L. 94-581, secs. 101(2), 103(7))

[FR Doc. 83-8572 Filed 4-1-83; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Veterans' Benefits; Courses Taken by Nonmatriculated Students

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: This regulation states how the VA (Veterans Administration) will determine whether a degree-seeking student, who has not matriculated, is in a program of education. The law states that a veteran or eligible person must be in a program of education before he or she can receive educational assistance allowance from the VA. This will better acquaint the public with the standards the VA will use to implement the provision of law.

EFFECTIVE DATE: March 14, 1983.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service,

Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 29267 through 29269 of the Federal Register of July 6, 1982, there was published notice of intent to amend part 21 to state VA policy toward nonmatriculated students.

Interested people were given 30 days in which to submit comments, suggestions or objections regarding the proposal. The Veterans Administration received one letter objecting to the proposal from a college official.

This letter stated that to require veterans to be formally admitted as degree-seeking students would defeat the purpose of open-admissions programs.

The VA does not wish to adversely affect students attending open-admissions colleges if they are in a program of education. However, the agency does not have the authority to pay educational assistance allowance to veterans who are not in a program of education. To eliminate this requirement would permit some veterans who are not in programs of education to receive educational assistance allowance. Consequently, the agency is not changing the regulation to meet the objection.

As a result of internal analysis the final regulation contains some minor differences from the proposed regulation.

The VA has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than \$100 million. It will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation therefore is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that only a small percentage of educational institutions which are small entities as defined in the RFA do not already have rules which are as strict or stricter than

those contained in § 21.4252(1)(1). Furthermore, the VA is not aware of any educational institutions which are small entities that will be affected by § 21.4252(1)(2). The VA does not think that it is likely that small entities will begin offering these courses in the foreseeable future.

The governmental jurisdictions supporting the public colleges which have programs affected by § 21.4252(1)(3) are not small entities as defined by the RFA.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

The Catalog of Federal Domestic assistance numbers for the programs affected by this regulation are 64.111, 64.117, and 64.120.

Approved: March 14, 1983.

By direction of the Administrator,

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration amends 38 CFR Part 21 to read as follows:

In § 21.4252, paragraph (1) is added as follows:

§ 21.4252 Courses precluded.

(1) *Courses taken by a nonmatriculated student who is pursuing a degree.* The provisions of this paragraph apply to veterans and eligible persons who are pursuing a degree, but who have not matriculated. The Veterans Administration considers a student to have matriculated when he or she has been formally admitted to a college or university as a degree-seeking student.

(1) Some colleges or universities admit students provisionally, pending receipt of test results or transcripts. The Veterans Administration may approve such a veteran's or eligible person's enrollment in a course or subject only if the veteran or eligible person matriculates during the first two terms, quarters or semesters following his or her admission.

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at that college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student.

If the student is not required to matriculate during the portion of the program offered at the first college or university, the Veterans Administration may approve an enrollment in a course or subject that is part of that portion of the program only if the college or university granting the degree certifies, concurrently with the student's enrollment in the first portion of the program, that—

(i) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university.

(ii) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program.

(iii) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted.

(iv) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an Associate's degree may be given at a public, 2-year college while the remainder may be offered at a public, 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional division study at the 2-year college, the Veterans Administration may approve an enrollment in a course offered in the program at the 2-year college only if the college or university granting the baccalaureate degree certifies that—

(i) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree.

(ii) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(iii) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(4) Except as provided in paragraph (1), (2), and (3) of this section, the Veterans Administration will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person—

(i) Is pursuing a degree, and

(ii) Is not matriculated.

(5) Nothing in this paragraph shall prevent a State approving agency from

including more restrictive matriculation requirements in its approval criteria. (38 U.S.C. 1652)

[FR Doc. 83-8571 Filed 4-1-83; 8:45 am]

BILLING CODE 8330-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2313-2]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This rulemaking changes the air quality attainment designation relative to the total suspended particulate (TSP) National Ambient Air Quality Standards (NAAQS) for Butler County, Ohio. Specifically, the City of Middletown will be designated nonattainment for the secondary NAAQS and the remainder of the county will be designated attainment. This redesignation is based on available monitoring and modeling data.

DATE: This action will be effective on May 31, 1983 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the EPA, Region V, address above or call (312) 885-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added Section 107(d) to the Clean Air Act (the Act). This section directed each State to submit to the Administrator of

EPA a list of the NAAQS attainment status for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the Federal Register on March 3, 1978 (43 FR 8982), and made necessary amendments in the Federal Register on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On March 3, 1978 and October 5, 1978 (43 FR 9022, 43 FR 46011) EPA designated Butler County as follows:

City of Middletown—Primary Nonattainment

Cities of Monroe, Trenton, New Miami, Fairfield, and that portion of the City of Hamilton within Fairfield Township and also the Townships of Madison, Lemon, St. Clair, Liberty, Fairfield and Union—Secondary Nonattainment

Remainder of the County—Attainment

On October 14, 1982, the Ohio Environmental Protection Agency (OEPA) requested that the City of Middletown be redesignated to secondary nonattainment and the remainder of the county designated attainment. To support this request, the OEPA submitted monitoring data collected from the eight State monitors in Butler County from January 1980 to September 1982. EPA may redesignate an area from primary nonattainment to either secondary nonattainment or attainment if all available data including eight consecutive quarters of the most recent quality assured, representative data show no violation of the appropriate NAAQS.

EPA reviewed the available monitoring data. Violations of the secondary NAAQS for TSP were recorded at the Hookfield Airport Site #2 and the Brentwood Avenue Site in 1980, 1981 and 1982. The requested secondary nonattainment area includes the area around these monitors. No violations of the NAAQS for TSP were recorded for the remainder of Butler County between January 1980 and September 1982.

In addition, EPA reviewed the modeling analysis performed by the State as part of its Part D State Implementation Plan for Butler County. The modeling shows two "hot spot" areas: one around ARMCO Steel's Hamilton Works and the other around ARMCO's Middletown Works. The Hamilton "hot spot" is eliminated with the recent permanent shutdown of the dominant source in this area. Modeling performed for the recent ARMCO SIP revision (46 FR 19468) indicates that

maximum impacts around the Middletown Works occur near the Brentwood Avenue Site. This "hot spot", as well as the general area around the plant, are adequately covered by the existing monitors. Thus, the modeling demonstrates that the monitoring data are representative of the higher expected TSP concentrations in Butler County. EPA, therefore, is proposing to approve the redesignation request.

Since EPA views this action as a noncontroversial rulemaking, it is today changing the Section 107 attainment designation of Butler County without prior proposal. This action will be effective May 31, 1983. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, then this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: March 14, 1983.

John W. Hernandez, Jr.,
Acting Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

Section 81.336 of Part 81 of Chapter 1, Title 40, Code of Federal Regulations is amended. In the table for "Ohio—TSP" the entry for Butler County should be revised to read as follows:

§ 81.36 Ohio.

OHIO—TSP

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
City of Middletown		X		
The Remainder of Butler County				X

[FR Doc. 83-7349 Filed 4-1-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6504]

Suspension of Community Eligibility Under the National Flood Insurance Program; Alabama et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has

adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as

amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal

financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood Insurance, Flood plains.

PART 64—[AMENDED]

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

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date
Alabama: Etowah	Gadsden, city of	010080C	Apr. 12, 1976, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 15, 1979, May 28, 1976, and Mar. 8, 1974.	Apr. 4, 1983.
Connecticut: Litchfield	Torrington, city of	095081B	June 30, 1970, emergency; May 19, 1972, regular; Apr. 4, 1983, suspended.	Mar. 5, 1976, July 1, 1974, and May 19, 1972.	Do.
Iowa: Union	Creston, city of	190264B	Oct. 18, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Jan. 2, 1976 and June 28, 1974.	Do.
Shelby	Harlan, city of	190248B	Aug. 27, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Jan. 9, 1976 and June 28, 1974.	Do.
Mills	Pacific Junction, city of	190206A	Dec. 23, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 28, 1974.	Do.
Kansas: McPherson	Unincorporated areas	200214B	Aug. 30, 1976, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 28, 1988.	Do.
Louisiana: Bossier Parish	Bossier City, city of	220330C	Feb. 14, 1975, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 28, 1974, Dec. 12, 1975, and June 5, 1979.	Do.
Vermilion and Iberia	Delcambre, town of	220223B	July 1, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Oct. 7, 1980 and Apr. 5, 1974.	Do.
St. Tammany Parish	Mandeville, town of	220202C	Mar. 12, 1974, emergency; Sept. 28, 1979, regular; Apr. 4, 1983, suspended.	Sept. 28, 1979, Oct. 1, 1976, and June 28, 1974.	Do.
Maryland: Cecil	Unincorporated areas	240019A	June 15, 1973, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	July 18, 1975.	Do.
New Hampshire: Hillsborough	Hancock, town of	330089B	Apr. 25, 1975, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Nov. 5, 1976 and May 31, 1974.	Do.
New York: Suffolk	Asharoken, village of	365333C	Sept. 11, 1970, emergency; Aug. 20, 1971, regular; Apr. 4, 1983, suspended.	Oct. 10, 1975, July 1, 1974, and Aug. 20, 1971.	Do.
Louisiana: Vermilion Parish	Erath, town of	220224B	June 26, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Feb. 20, 1979 and Mar. 8, 1974.	Do.
New York: Onondaga	Cicero, town of	360572C	May 23, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	July 16, 1976, Dec. 31, 1976, and Nov. 1, 1974.	Do.
Nassau	Glen Cove, city of	360465	Aug. 16, 1974, emergency; Mar. 1, 1978, regular; Apr. 4, 1983, suspended.	Mar. 1, 1978.	Do.
Greene	Jewett, town of	361114B	May 13, 1980, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Dec. 23, 1977 and Jan. 17, 1974.	Do.
Pennsylvania: York	Manheim, township of	422224B	Apr. 21, 1975, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Apr. 18, 1980 and Dec. 27, 1974.	Do.
Texas: Galveston	Clear Lake Shores, city of	485461C	July 31, 1970, emergency; Oct. 23, 1970, regular; Apr. 4, 1983, suspended.	Apr. 18, 1975 and Oct. 23, 1970.	Do.
Do.	Hitchcock, city of	485479D	June 19, 1970, emergency; Nov. 30, 1970, regular; Apr. 4, 1983, suspended.	Oct. 31, 1975, July 1, 1974, and Nov. 17, 1970.	Do.
Vermont: Franklin	Highgate, town of	500055B	Jan. 27, 1976, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Aug. 13, 1976 and May 31, 1974.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date ¹
Virginia:					
Tazewell	Cedar Bluff, town of	510162A	Nov. 29, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 25, 1976 and May 10, 1974	Do.
Do	Richlands, town of	510563A	Dec. 5, 1974, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	June 18, 1976	Do.
West Virginia:					
Ohio	Unincorporated areas	540149B	Dec. 2, 1975, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Oct. 2, 1981 and Nov. 29, 1974	Do.
Wetzel	do	540207A	Jan. 16, 1976, emergency; Apr. 4, 1983, regular; Apr. 4, 1983, suspended.	Dec. 20, 1974	Do.
Texas: Orange	Pine Forest, town of	480697A	July 3, 1974, emergency; Feb. 16, 1983, regular; Apr. 4, 1983, suspended.	Dec. 13, 1974	Do.
Tennessee: Gibson	Bradford, city of	470057B	Aug. 10, 1977, emergency; Feb. 16, 1983, regular; Apr. 4, 1983, suspended.	June 21, 1974 and Apr. 23, 1976	Do.
Wisconsin: Walworth	Whitewater, city of	550200B	Mar. 27, 1975, emergency; June 1, 1982, regular; Apr. 10, 1983, suspended.	Jan. 9, 1974 and June 4, 1976	Do.

¹Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: March 23, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-8480 Filed 4-1-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Development of Fishery for King Mackerel off Louisiana

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule related notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council announces a public meeting to inform interested persons how the management of the king mackerel fishery under the Fishery Management Plan for Coastal Migratory Pelagic Resources is likely to affect their activities.

DATES: Individuals or organizations may attend the public meeting which will be held April 12, 1983, Grand Isle, Louisiana.

ADDRESS: American Legion Post 309, Grand Isle, Louisiana. The time of the meeting is 7 p.m. to 10 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy Boulevard, Tampa, Florida, 813-228-2815.

Dated: March 28, 1983.

Joseph P. Clem,

Acting Chief, Fisheries Process Division, National Marine Fisheries Service.

[FR Doc. 83-8560 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 48, No. 65

Monday, April 4, 1983

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-13-AD]

Airworthiness Directives; British Aerospace Corporation BAC 1-11 Series 200 and 400 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an Airworthiness Directive (AD) that would require repetitive visual and eddy current inspections of the fuselage longitudinal skin splices on British Aerospace Model BAC 1-11 series 200 and 400 airplanes. The proposed AD is needed to detect loose rivets and cracks extending from the splice rivet holes. Skin cracks, if allowed to grow to critical lengths, could compromise the structural capability of the fuselage.

DATE: Comments must be received on or before May 9, 1983.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-13-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The United Kingdom Civil Aviation Authority (CAA) has notified the FAA of an unsafe condition which may exist on BAC 1-11 airplanes. During the process of developing a structural audit on the BAC 1-11, it was determined that a directed inspection of the fuselage longitudinal skin joints (lap-joints) was necessary to detect loose rivets and cracks. British Aerospace Service Bulletin 53-A-PM5726 was declared mandatory by the CAA. This service bulletin requires both visual and eddy current inspections of the skin lap joints and repairs if damage is found. If uncorrected, cracks could grow and cause depressurization of the passenger cabin.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed would require the previously discussed inspections.

It is estimated that 63 U.S. registered airplanes would be affected by this AD, that is would take approximately 60 manhours per airplane to accomplish the

required actions, and that the average labor cost would be \$35 per manhour. Repair parts are estimated at \$17,600 per airplane. Based on these figures, the total cost impact of this AD is estimated to be \$1,241,100. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes certificated in all categories. Compliance is required as indicated. To prevent explosive decompression of the fuselage accomplish the following, unless previously accomplished. Within the next 1250 landings after the effective date of this AD or upon accumulating the number of landings determined by Figure 1 of British Aerospace, Aircraft Group, BAC 1-11 Alert Service Bulletin No. 53-A-PM5726, Revision 2, dated October 5, 1981, whichever occurs later:

1. Perform a visual and eddy current inspection of the fuselage longitudinal skin splices in accordance with the Section 2, Accomplishment Instructions of the service bulletin. The visual inspections must be repeated at intervals of 1250 landings; the eddy current inspections must be repeated at intervals of 3750 landings.
2. Repair any damage in accordance with the service bulletin.
3. Alternative means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Acceptable incorporation of the BAC 1-11 Supplemental Structural Inspection Document (SSID) into the approved airplane maintenance program of a BAC 1-11 operator constitutes an approved alternate means of AD compliance.

4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD. (Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of

Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on March 24, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

(FR Doc. 83-8625 Filed 4-1-83; 8:45 am)

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-23-AD]

Airworthiness Directives; Piper Models PA-36-285, PA-36-300, and PA-36-375 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Piper Models PA-36-285, PA-36-300 and PA-36-375 airplanes, which supersedes AD 76-25-02, and establishes service lives for additional wing components. The manufacturer has established by laboratory fatigue tests on the wing structure that failure of the affected components may occur when they are operated beyond the safe lives established by these tests. The replacements required by this AD will assure removal of the parts from service before such failures occur.

DATE: Comments must be received on or before June 10, 1983. Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Service Bulletin No. 744 applicable to this AD may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street,

Lock Haven, Pennsylvania 17745 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-CE-23-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: J. Maher, Airframe Section, ANE-172, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-CE-23-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: Subsequent to the original type certification of Piper Model PA-36 airplanes, the manufacturer initiated laboratory fatigue tests of the wing structure of the airplane. On the basis of results of this test program, AD 76-25-02 (41 FR 53778) was issued and established service lives on certain wing

structure components. Additional information has been obtained from continued tests, and Piper Aircraft Corporation has published service lives and replacement requirements for additional components based on the results of these tests in their Service Bulletin No. 744. There is a risk of failure of any component which is operated beyond its established service life.

Since the condition described is likely to exist or develop in other Piper Model PA-36-285, PA-36-300 and PA-36-375 airplanes of the same design, the proposed AD supersedes and incorporates the requirements of AD 76-25-02 and requires retirement of the additional components on which the manufacturer has established life limits at those times published in Piper Service Bulletin No. 744.

There are approximately 882 airplanes affected by the proposed AD. The cost of replacement of the life limited parts at each 4100 hours time-in-service as required by the AD is estimated to be \$6,012,118 to the private sector.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Piper.—Applies to Models PA-36-285, PA-36-300 and PA-36-375 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated unless already accomplished.

To prevent failure of wing structural components because of fatigue damage, accomplish the following:

a. replace the structural components specified below at the time-in-service set forth in Table 1. If, on the effective date of this AD, the component has accumulated or will accumulate within an additional 100 hours time-in-service, the number of hours time-in-service at which replacement is required, accomplish the replacement within the next 100 hours time-in-service after the effective date of this AD.

TABLE 1.—COMPLIANCE TIMES (COMPONENT TIME-IN-SERVICE, HOURS)

Airplanes	Type of replacement	Paragraph of AD					
		a.1)* a.2) a.3)	a.4)	a.5)	a.6)	a.7)	a.8)*
Models PA-36-285 and 300:							
S/Ns 36-7360001 thru 36-7560003	Initial	4100	4100	N/A	N/A	3100	2000
	Repetitive	4100	4100	N/A	N/A	4100	2000
S/Ns 36-7560004 thru 36-7560055	Initial	4100	N/A	N/A	4000	3100	2000
	Repetitive	4100	N/A	N/A	4100	4100	2000
S/Ns 36-7560056 thru 36-7660122	Initial	4100	N/A	4100	4000	N/A	2000
	Repetitive	4100	N/A	4100	4100	N/A	2000

TABLE 1.—COMPLIANCE TIMES (COMPONENT TIME-IN-SERVICE, HOURS)—Continued

Airplanes	Type of replacement	Paragraph of AD					
		a.1)* a.2) a.3)	a.4)	a.5)	a.6)	a.7)	a.8)*
S/Ns 36-7660123 and up	Initial	4100	N/A	4100	N/A	N/A	2000
	Repetitive	4100	N/A	4100	N/A	N/A	2000
Model PA-36-375; S/Ns 36-7802001 and up	Initial	4100	N/A	4100	N/A	N/A	2000
	Repetitive	4100	N/A	4100	N/A	N/A	2000

*Compliance with paragraphs a.1) and a.8) is also required whenever applicable bolt is removed.

(1) Replace the Wing attachment Upper Bolts P/N 77245-00 with unused bolts. replacement is also required whenever bolt is removed.

(2) Replace Wing Carry-Through Spar Fittings, P/N 97713-00, -02, or -03, with an unused P/N 97713-03 fitting.

(3) Replace Wing Spar Fitting, P/N 97712-00 with an unused P/N 97712-00 fitting.

(4) Replace Spar Carry-Through Assembly, P/N 76824-02, if installed with an unused Assembly P/N 76824-02.

(5) Replace Spar Assembly P/N 97701-00 and -01, Revision P, or later revision with Piper Spar Cap Replacement Kits Numbers 764393, Left Spar Assembly, and 764394, Right Spar Assembly.

(6) Replace Spar Carry-Through Assembly, P/N 76767-00 or P/N 76824-02 with an unused P/N 76824-02 assembly. (The repetitive replacement time-in-service is applicable to P/N 76824-02 assemblies now installed.)

(7) Replace Spar Assemblies P/N 97701-00 and P/N 97701-01, Revision N or earlier, and P/N 764393 and P/N 764394 Right Spar Cap Replacement Kits with an unused Spar Cap Replacement Kit P/N 764393, Left Spar Assembly, and P/N 764394 Right Spar Assembly. (The repetitive replacements time-in-service is applicable to P/N 764393 or P/N 764394, Spar Cap Replacement now installed.)

(8) Replace Wing Attachment Lower Bolts P/N 77245-00 with unused P/N 77245-00 bolts. Replacement is also required whenever bolt is removed.

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

(c) An equivalent method of compliance with this AD may be used if it is approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6680.

Piper Service Bulletin No. 744 dated May 12, 1982, refers to the subject matter of this AD.

This AD supersedes AD 76-25-02, Amendment 39-2786.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); sec. 8(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85)).

Note.—The FAA has determined that this proposed regulation only involves a repetitive cost of \$6,816.46 on each of 882 airplanes at intervals of approximately 5 years. Therefore, I certify that this action: (1) Is not a "major

rule" under Executive Order 12291; (2) is not a significant rule "under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-0628 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-32-AD]

Airworthiness Directives; Partenavia Costruzioni Aeronautiche S.p.A., Models P.68 and P.68B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Partenavia Costruzioni Aeronautiche S.p.A., Models P.68 and P.68B airplanes. It would require structural reinforcement of the fin rear spar in the area of the upper rudder hinge. The manufacturer has received reports of cracks in this area which could result in total rudder failure and loss of lateral control. Structural reinforcement of the fin rear spar will prevent this condition.

DATES: Comments must be received on or before June 6, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin (SB) No. 34, Rev. 1, dated February 15, 1978, and drawing No. R.0007, dated December 23, 1977, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche S.p.A., Via Cava, C.P. 2179, 80026 Casoria, Naples, Italy, or the Rules Docket at the address

below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. Larry Werth, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone 816/374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: Partenavia Costruzioni Aeronautiche S.p.A. has received reports of cracks in the fin rear spar in

the area adjacent to the upper rudder hinge on its Models P.68 and P.68B airplanes. The FAA has not received any reports concerning cracks in either the fin rear spar or the upper rudder hinge area. The manufacturer has developed a structural modification that reinforces the fin rear spar in the upper rudder hinge area. Continued flight without structural reinforcement of the fin rear spar may result in failure of the fin rear spar and loss of lateral control. As a result, Partenavia Costruzioni Aeronautiche S.p.A. has issued SB No. 34, Rev. 1, dated February 15, 1978, and drawing No. R.0007, dated December 23, 1977, that provides instructions for installing a structural modification to the fin rear spar which reinforces the fin rear spar at the upper rudder hinge. The Registro Aeronautico Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Partenavia Costruzioni Aeronautiche S.p.A. and the mandatory classification of this SB by RAI.

Based on the foregoing, the FAA believes that the condition addressed by Partenavia Costruzioni Aeronautiche S.p.A. SB No. 34, Rev. 1, dated February 15, 1978, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require structural reinforcement of the fin rear spar in the area of the upper rudder hinge on Partenavia Costruzioni Aeronautiche S.p.A. Model P.68 and P.68B airplanes. There are approximately three airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be \$1,260 to the private sector.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Partenavia Costruzioni Aeronautiche S.p.A.:
Applies to Models P.68 and P.68B (all Serial Numbers (SN) up to 128, excluding SN's 40, 112, 125, 126 and 127) airplanes certificated in any category.

Compliance: Required within the next 100 hours after the effective date of this Administrative Directive (AD), unless already accomplished.

To prevent failure of the fin rear spar accomplish the following:

(a) Install fin spar reinforcement in accordance with Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin (SB) No. 34, Rev. 1, dated February 15, 1978, and drawing No. R.0007, dated December 23, 1977.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, is used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85)).

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) certifies under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulation evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "Addresses."

Issued in Kansas City, Missouri on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-8524 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

(Docket No. 83-CE-15-AD)

Airworthiness Directives; Pilatus Britten-Norman Ltd., BN-2A MK. III Trislander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman Ltd., BN-2A MK. III Trislander Series Airplanes, which requires visual inspection of the wing attachment pins for corrosion, grinding marks, file marks or improper fit. The manufacturer has reported three airplanes which were found to have incorrectly assembled wing to fuselage attachments. The visual inspection and reinstallation of the wing attachment pin will detect and correct any wing attachment pin defects or installation defects which can adversely affect the safe life of the wing to fuselage attachment.

DATES: Comments must be received on or before June 6, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Pilatus Britten-Norman Ltd. Service Bulletin No. BN2/SB 146, Issue 1, dated December 31, 1980, applicable to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, England, or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Larry Werth, Aerospace Engineer, Foreign FAR 23 Section, Federal Aviation Administration, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-CE-15-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: Pilatus Britten-Norman Ltd. has reported three BN-2A MK. III Trislander Series Airplanes that have been found with incorrectly assembled wing to fuselage attachments. The FAA has not received any reports concerning improperly assembled wing to fuselage attachments. The manufacturer has determined that certain of these Trislander aircraft with specified serial numbers may have incorrectly fitted and/or improperly modified wing to fuselage attachment pins. Also, pins may have been fitted with insufficient assembly grease. Any of these installation defects can adversely affect the safe life of the wing to fuselage attachments. As a result, Pilatus Britten-Norman Ltd. has issued Service Bulletin No. BN2/SB 146, Issue 1, dated December 31, 1980, which provides instructions for the removal, visual inspection for corrosion, grinding marks, file marks or improper installation and reinstallation of the wing attachment pins. The United Kingdom Civil Aviation Authority (UKCAA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in England has classified this Service bulletin and the actions recommended therein by the manufacturer as mandatory to assure

the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Pilatus Britten-Norman Ltd. Service Bulletin No. BN2/SB 146, Issue 1, dated December 31, 1980, and the mandatory classification of this Service Bulletin by UKCAA.

Based on the foregoing, the FAA believes that the condition addressed by Pilatus Britten-Norman Ltd. Service Bulletin No. BN2/SB 146, Issue 1, dated December 31, 1980, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require removal of the wing attachment pins, visual inspection of the wing attachment pins for corrosion, grinding marks, file marks or improper fit and reinstallation of the wing attachment pins on Pilatus Britten-Norman Ltd., BN-2A MK. III Trislander Series Airplanes.

There are approximately eight airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be \$3,360 to the private sector.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Pilatus Britten-Norman Ltd.: Applies to BN-2A MK. III Trislander Series (S/Ns 1001 thru 1042, 1048 thru 1054, 1057 thru 1061, 350, 360, 361, and 363) airplanes certificated in any category.

Compliance: Required within the next 500 hours time-in-service after the effective date of this AD, unless already accomplished. To prevent defects in the wing attachment pins which can adversely affect the safe life of the wing to fuselage attachments accomplish the following:

(a) Remove the wing attachment pins, one at a time, in accordance with the instructions contained in the "ACTION" section of the Pilatus Britten-Norman Ltd. Service Bulletin No. NB2/SB 146, Issue 1, dated December 31, 1980 (hereinafter referred to as the SB), or an FAA approved equivalent.

(b) Visually inspect the wing attachment pins for corrosion, fretmarks, file/grinding marks and thread binding of the inboard nut in accordance with the instructions contained in the "ACTION" section of the SB and if defects are found, before further flight, replace the defective wing attachment pins with new attachment pins.

Note.—Refer to SB and Trislander Illustrated Parts Catalog (Pub. Ref. PC/2, Sec. 3.5.1).

(c) Visually inspect the wing joint gaps to ensure shim washers fill the gaps and before further flight, replace shim washers as required to fill the wing joint gaps.

Note.—Refer to SB and Trislander Maintenance Manual (Pub. Ref. MM/2).

(d) Reinstall wing attachment pins in accordance with the instructions contained in the "ACTION" section of the SB.

(e) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(f) An equivalent method of compliance with this AD if used must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85)).

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) certifies under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "Addresses."

Issued in Kansas City, Missouri, on March 22, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-0623 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ASW-17]

Designation of a Control Zone; New Iberia, LA**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to designate a control zone at New Iberia, LA. The intended effect of the proposed action is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAP's) to the Acadiana Regional Airport. This action is necessary since the city of New Iberia proposes to commission a nonfederal airport traffic control tower (ATCT), and the airport will meet the requirements for the establishment of controlled airspace to the surface.

DATES: Comments must be received on or before May 4, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:**History**

Federal Aviation Regulation Part 71, Subpart F 71.171 as republished in Advisory Circular AC 70-3A dated January 3, 1983, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Designation of the control zone at New Iberia, LA, will necessitate an amendment to this subpart. This amendment will be required at New Iberia, LA, since the city of New Iberia is proposing the operation of a nonfederal ATCT, and the airport will meet the requirements for controlled airspace to the surface during the hours the ATCT is in operation.

Comments Invited

Interested persons 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 proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) 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. 83-ASW-17." The postcard will be date/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 proposals 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

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

New Iberia, LA [New]

Within a 5-mile radius of the Acadiana Regional Airport (latitude 30°02'15" N., longitude 91°53'02" W.) and within 2 miles east and 4 miles west of the Lake Martin NDB

(latitude 30°11'33" N., longitude 91°52'58" W.) 181° bearing extending from the 5-mile radius area to 8.5 miles north of the airport; and within 2 miles each side of the Lafayette VORTAC 138° radial extending from the 5-mile radius area to 8 miles northwest of the airport, excluding that airspace designated as the Lafayette, LA, Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on March 25, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-8616 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ASW-16]

Alteration of Transition Area and Control Zone; Tulsa, OK**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area and control zone at Tulsa, OK. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing standard instrument approach procedures (SIAP's) to the Richard Lloyd Jones, Jr., Airport. This action is necessary since the FAA proposes to relocate the Glenpool VOR, and this action will alter the SIAP to the airport and change the designated airspace requirements.

DATES: Comments must be received on or before May 4, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 and F 71.171 as republished in Advisory Circular AC 70-3A dated January 3, 1983, contains the description of transition areas and control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area and control zone at Tulsa, OK, will necessitate an amendment to these subparts. This amendment will be required at Tulsa, OK, since there is a proposed change in IFR procedures to the Richard Lloyd Jones, Jr., Airport. The proposed relocation of the Glenpool VOR to a point south of the airport will change the SIAP using the VOR, and the final course alignment will necessitate an amendment to the designated airspace.

Comments Invited

Interested persons 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 proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) 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. 83-ASW-16." The postcard will be date/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 proposals 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

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend §§ 71.181 and 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Subpart F § 71.171

Tulsa Richard Lloyd Jones, Jr., Airport, OK [Revised]

Within a 5-mile radius of Richard Lloyd Jones, Jr., Airport (latitude 36°02'18" N., longitude 95°59'05" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Subpart G § 71.181

Tulsa, OK [Revised]

By adding "and within a 6.5-mile radius of Richard Lloyd Jones, Jr., Airport (latitude 36°02'18" N., longitude 95°59'05" W.)" (Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c)).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on March 25, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-8017 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9165]

Stihl, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 83-7241 beginning on page 11722 in the issue of Monday, March 21, 1983, make the following corrections on page 11724:

1. In the first column, the eighth line should read "purpose, content, results, current validity, reliability, or".

2. In the same column, the second complete paragraph, the eleventh line, the phrase "Order of" should read "Order for".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-57-80]

Classification of Limited Liability Companies; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating

to the classification of limited liability companies that was published in the *Federal Register* on November 17, 1980 (45 FR 75709). After consideration of the comments received on the proposed regulations, the Internal Revenue Service has decided that they should be withdrawn.

FOR FURTHER INFORMATION CONTACT:

David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459) (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that appeared in the *Federal Register* on November 17, 1980 (45 FR 75709). That notice proposed amendments to the regulations under section 7701 of the Internal Revenue Code of 1954 relating to the classification of entities for Federal tax purposes. Under the proposed regulations an entity could not be classified as a partnership for Federal tax purposes unless some member of the entity was personally liable under local law for claims against the entity.

A number of comments were received concerning the notice of proposed rulemaking. After consideration of these comments, the Internal Revenue Service has decided to withdraw the proposed regulations. The Internal Revenue Service is undertaking a study of the rules for the classification of entities for Federal tax purposes with special focus on the significance of the characteristic of limited liability.

Drafting Information

The principal author of this document was David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

The proposed amendments to 26 CFR Part 301 relating to the classification of limited liability companies published in the *Federal Register* (45 FR 75709) on November 17, 1980, are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-8701 Filed 4-1-83; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 460]

Lake Erie Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in the States of New York, Pennsylvania, and Ohio with the proposed name of "Lake Erie." This proposal is the result of a petition from Mr. William A. Gulvin, Secretary of the Ad Hoc Committee for the Lake Erie viticultural area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by May 19, 1983.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 460).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. William A. Gulvin, Secretary of the Ad Hoc Committee for the Lake Erie viticultural area, proposing an area in the States of New York, Pennsylvania, and Ohio as a viticultural area to be known as "Lake Erie." The proposed area includes approximately 3300 square miles of land area and approximately 775 square miles (statute) of Lake Erie for a total of 4075 square miles.

This grape-growing area is located on the Lake plain bordering the southern and eastern shores and on the island archipelago of Lake Erie. There are approximately 30 commercial wineries and 40,000 acres of commercial vineyards scattered throughout the lake area. Current orchard and vineyard surveys conducted by the States of New York, Pennsylvania, and Ohio report that commercial vineyards of one acre or more are located in every county (except Sandusky County) along the lakeshore from near Toledo, Ohio to south of Buffalo, New York.

Viticultural Area Name

Lake Erie is the geographical feature that defines this proposed viticultural area. Its name dates from the earliest written history of this continent, and Lake Erie is universally known as such. While reference is frequently made to

specific subareas of the Lake Erie district such as the Lake Erie Islands or the Chautauqua-Erie Grape Belt, or to the political subdivisions of the area, the Lake Erie viticultural area is also often recognized as a single entity. Harold J. Grossman, for example, in his book *Grossman's Guide to Wines, Beers, and Spirits* (1977), states that when discussing eastern wine-producing areas, it is better to discuss geographic areas of similar climate and geology than to group areas by States. Grossman states that the Chautauqua area of western New York, for example, lies in New York State but the wines realistically should be grouped with those around neighboring Lake Erie. Further on Grossman specifically defines this region with the term "Lake Erie." He states that Lake Erie is bordered on its eastern and southern shores by many vineyards that actually lie in Pennsylvania, Ohio, and western New York. The Pennsylvania wineries are mostly around the city of North East. The Ohio wineries stretch from the eastern border of Ohio and Pennsylvania all the way west to Sandusky. In New York the Chautauqua area extends westward from Buffalo to Pennsylvania.

Likewise, Dominick Abel, in his book *Guide to The Wines of the United States* (1979), states in his opening discussion of the Chautauqua region in New York that this section on the shores of Lake Erie really forms part of a single New York-Pennsylvania-Ohio-Lake Erie region. Ruth Ellen Church, in her book *Wines of the Midwest* (1982), goes further and notes that: "All of these establishments (wineries)—Ohio's, Pennsylvania's and New York's—lie close to the southern shores of Lake Erie and thus qualify for a Federal Lake Erie wine district designation; they may achieve it in the early 1980's."

And finally, a number of current tourist-oriented publications similarly use the designation "Lake Erie" in reference to this area. For example, the Association of American Vintners in its "Wine Tour Guide" (1982) employs the designation "Lake Erie Region (Western New York, Pennsylvania, Northern Ohio)" and proceeds to break the region down as "Lake Erie East," "Lake Erie West," and "Lake Erie Central." Likewise, the Pennsylvania Wine Association refers to the "Lake Erie Area" in its "1981 Wine Trails of Pennsylvania" guide.

Geographical/Viticultural Features

The petitioner claims the proposed viticultural area is distinguished from surrounding areas by its proximity to Lake Erie which exerts a moderating

influence on the area. This proximity to Lake Erie and the influence that Lake Erie exerts on the local climate is the fundamental factor that permits commercially successful viticulture in this area. Soils, elevations, and other physiographic features within the area are diverse and, through most of the area, do not directly form the basis of the Lake Erie area's viticultural distinction.

Authorities agree that temperature, especially in terms of length of frost-free growing season, freeze hazard at a given site (F. G. Haskins, "A Study of Fruit Sites in Northeastern Ohio from Standpoint of Frost Damage," 1950), and especially winter minimums, is the determining consideration with regard to the commercial viability of a vineyard in the northeast. T. D. Jordan et al. in their bulletin on "Cultural Practices for Commercial Vineyards" (1981) state that: "Temperature is the first consideration in selecting the location of a vineyard. It involves length of growing season, as well as magnitude and frequency of winter minimums. Temperature requirements must be satisfied for a site to be considered." They go on to note that for commercial viticulture in this region a growing season of 165 days is considered minimal and 180 plus days is preferable, and that winter minimum temperature should infrequently fall below minus 10 degrees Fahrenheit and almost never below minus 15 degrees Fahrenheit.

Stephen S. Visser, in his book *Climatic Atlas of the United States* (1954), well summarizes the general climatic effect of the Great Lakes on their surroundings.

Although the effect of a lake is chiefly to the leeward, in the Great Lakes region winds are so varied in direction that effects are evident on all sides. On the average, the (Great) Lakes raise the January average temperature of their surroundings about 5 degrees, the absolute minimum temperatures about 10 degrees, and the annual minima about 15 degrees. . . . They increase the average length of the frost-free season about 30 to 40 days on their eastern and southern sides. They have a slight negative total influence upon precipitation, decreasing it appreciably in summer, largely by reducing convectional thunderstorms. . . . The Lakes produce an average decrease of about five thunderstorms per year, and decrease the violence of many of those which do occur. . . . The south shore of Lake Erie, with only five dense-fog days a year, has less fog than any other coastal area except southern Florida.

Visser's comments concerning Lake Erie's effect on the summer moisture regime are very significant. As a rule, the successful culture of grapes requires a relatively dry and sunny growing and

ripening period. That condition is locally promoted during those seasons by Lake Erie, together with generally reduced cloudiness and therefore significantly greater insolation than in surrounding areas. Likewise, while viticulture in the area no longer stands or falls on it, the reduced summer rainfall and few fog days (which typically occur only in late winter and early spring), combined with almost continuous lake breezes, serve to considerably reduce problems with grape diseases in the Lake Erie area. Lastly, by reducing thunderstorm vigor and activity, Lake Erie shelters this area to some degree from the potential devastation of hail.

Most important, though, are the temperature effects of Lake Erie. The Lake Erie area enjoys what has been termed a "lacustrine climate" lacking the temperature extremes otherwise inherent in a continental location according to Richard E. Dahlberg in an article in *Economic Geography* (1961) entitled "The Concord Grape Industry of the Chautauqua-Erie Area." The region benefits generally by being lower in latitude than and downwind from the other Great Lakes. The great stretches of Lakes Superior and Huron to the northwest considerably moderate arctic air masses moving across these Lakes to the Lake Erie area. This effect is then locally enhanced by Lake Erie, thereby producing a climate adjacent to the Lake that has a lower mean daily range of temperatures. This results both in less growth-stimulating high temperatures and tissues-freezing low temperatures. These temperature effect are then diluted and gradually diminish as one proceeds inland from the Lake.

Lake Erie has by far the largest surface to volume ratio of any of the Great Lakes, with an average depth of only 58 feet and one-thirtieth of the volume of Lake Superior against a surface area of nearly 10,000 square miles. As a result, Lake Erie experiences by far the greatest annual temperature variation of any of the Great Lakes. It ranges from an average surface temperature of 72 degrees Fahrenheit in the late summer to 90 percent or more ice cover in the late winter—far more ice than typically develops on any other of the Great Lakes.

This wide and rapid seasonal fluctuation of the lake water temperature, and this fluctuation's lag with respect to seasonal air temperature variation, serves a very beneficial climatologic effect throughout the year. In the early spring, the accumulated ice and the very cold water of the Lake serve to cool the climate of the adjacent land against early spring warm spells

which would otherwise force premature development of buds and thereby leave the grapevines vulnerable to freeze damage. In mid to late April, the Lake commences to warm rapidly and then buffers the area against late spring frost after vine development has begun. In the summer, the high water temperature achieved in Lake Erie offers less hindrance to the heat summation necessary for full grape development than any other of the Great Lakes. The summer's high temperature is then carried over into fall, warming the air adjacent to the Lake and keeping fall frosts at bay for a month or more longer than surrounding areas. This results in an average frost-free period of approximately 170 to 175 days with a 200 day growing season to be found in some portions of the Lake Erie area, the longest growing season in the Great Lakes region. Likewise, proximity to the Lake in winter affords considerable protection against extreme minimum temperatures, with winter minimum temperatures of less than minus ten degrees Fahrenheit being uncommon across most of the proposed area while inland areas often experience temperatures 10 to 15 degrees lower.

In many portions of the lake area, the air drainage of a given site greatly affects its microclimate with respect to freeze and low temperature damage. In this regard, the sloping areas found further inland have rather an advantage over the more level areas often found close to the Lake, and Lake Erie, by being at the lowest elevation, serves as a vast sink for cold air to drain into.

The only portion of the Lake Erie area in which elevation and physical features play a direct role in delimiting viticulture is in Chautauque County, New York and Erie County, Pennsylvania. In these areas, the high-elevation Allegheny Plateau with its too short growing season and too long winter temperatures clearly limits the grape belt to a width of as little as three miles inland.

Historical/Current Evidence of the Boundaries

The Lake Erie viticultural area has a 150 year history of grape growing and winemaking according to Leon D. Adams in his book *The Wines of America* (1978). Trial and error over the years has proven viticulture, in areas bordering the proposed area, to be generally uneconomical.

The petitioner claims that the Lake Erie area is a distinct and contiguous viticultural district. Current orchard and vineyard surveys conducted by the States of New York (1976), Pennsylvania (1978), and Ohio (1976) report that,

except where interrupted by urban development, there are approximately 40,000 acres of commercial vineyards scattered throughout the Lake Erie area. Very little or no commercial viticulture is indicated in surrounding inland counties.

Likewise, there are more than 30 commercial wineries, some dating from well before the turn of the century, distributed rather evenly throughout the Lake Erie area. None of these wineries are located more than ten miles inland from the Lake.

The petitioner claims that the proposed boundaries reflect the extent of the area that contains sites which can justifiably be said to be suitable for commercial viticulture within the beneficial climatic influence of Lake Erie. The following outlines the considerations employed in selecting the specific boundaries proposed:

(1) Cazenovia Creek is proposed as the northeastern boundary of the viticultural area. It generally represents the location where viticulture is terminated by the urban development of Buffalo and an unsuitable flat topography which results in poor drainage of air.

(2) A line 12 miles inland from the Lake running from Cazenovia Creek near Colden, New York to the 1,300-foot contour line near Dayton, New York marks the general limit of grape growing in Erie County, New York. Viticulture further inland is prohibited by the highlands of the "Boston Hills."

(3) From near Dayton, New York to Godard, Pennsylvania, the 1,300-foot contour line delimits commercial viticulture. This contour is the highest contiguous line that follows the crest of the escarpment of the Allegheny Plateau in this section, and while very occasional Concord vineyards can be found above this elevation, they are almost never what could be described as commercial entities.

(4) From Godard, Pennsylvania, west to the intersection of Ohio Route 45 and Interstate 90, a line six miles inland from Lake Erie is proposed as the boundary. Areas further inland in this section are generally too high and too level to enjoy adequate air or water drainage for grape growing. Currently, there appears to be no commercial viticulture south of this line.

(5) The proposed boundary then proceeds south along Ohio Route 45 to a point about a mile north of Rock Creek, Ohio, 14 miles inland from the Lake, and then west along a line 14 miles inland from the Lake to the Ohio-Michigan border. In this area, viticulture extends further inland first, in northeastern Ohio through Cleveland, due to the broken

topography which provides several adequate sites quite far inland. Then from Cleveland to the west, the climatic moderation of Lake Erie extends further inland across the flat lowlands of north central and northwestern Ohio. Viticulture within the proposed boundary in this section is often limited for economic reasons by the urban and suburban development of greater Cleveland and Toledo and by heavy textured clay soils and competition from other types of agriculture between the two cities. The petitioner feels, however, that a significant potential for commercial viticulture exists throughout much of this section and therefore the area in this section should not be more closely delimited.

(6) The proposed boundary of the viticultural area then follows the Ohio-Michigan border to the international boundary and thence along the United States-Canada border to a point at 82 degrees 30 minutes west longitude which it then follows to the shore. This encompasses the Lake Erie (or Bass) Islands, whose area is almost completely devoted to the grape, and upon which the climatic influence of Lake Erie is self-evident.

(7) The boundary of the Lake Erie viticultural area then follows the lakeshore back to the starting point.

Proposed Boundaries

The boundaries of the proposed Lake Erie viticultural area may be found on four U.S.G.S. maps. They are titled "Toledo," scale 1:250,000 (1956, revised 1978); "Cleveland," scale 1:250,000 (1956, revised 1972); "Erie," scale 1:250,000 (1959, revised 1972); and "Buffalo," scale 1:250,000 (1962). The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations.

The proposed Lake Erie viticultural area completely encompasses the boundaries of the previously approved Isle St. George viticultural area located in Ohio and overlaps with the boundaries of the proposed Grand River Valley viticultural area which is also located in Ohio.

The Isle St. George (North Bass Island) viticultural area is surrounded by Lake Erie and is located in Ottawa County approximately 16 nautical miles north-northwest of Sandusky. For a description of the proposed Grand River Valley viticultural area, see today's Federal Register.

ATF has reservations about establishing viticultural areas which totally or partially overlap with other proposed or approved viticultural areas. ATF believes the significance of

viticultural areas as delimited grape-growing regions distinguishable by geographical features may be eroded by the indiscriminate establishment of overlapping viticultural areas. However, ATF recognizes that a rigid policy of disapproving a proposed viticultural area solely on the grounds that it overlaps with other proposed or approved viticultural areas would be inequitable since, in some cases, it may be justifiable. Therefore, ATF will judge each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas on a case-by-case basis. ATF will be guided in this judgement by evidence presented in the petition and by comments received from the public during the comment period.

For this reason, each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas must fulfill the requirements of regulations relating to the establishment of viticultural areas and contain evidence to substantiate that the area of overlap should be included in the proposed viticultural area.

Executive Order 12291

It has been determined that this proposal is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have significant economic impact on a substantial number of small entities. Since the benefits to be derived from using any viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Lake Erie viticultural area, ATF does not feel that the use of this

appellation of origin will have a significant economic impact on a substantial number of small entities.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. ATF is particularly interested in receiving comments concerning the overlapping of this proposed area with the previously-approved Isle St. George viticultural area and the proposed Grand River Valley viticultural area. ATF also wants comments concerning the large size of the proposed Lake Erie area (approximately 4075 square miles) and whether the area can be reduced. Furthermore, while this document proposes possible boundaries for the Lake Erie viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of 9.83. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.83 Lake Erie.

Paragraph 2. Subpart C is amended by adding § 9.83. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.83 Lake Erie.

(a) *Name.* The name of the viticultural area described in this section is "Lake Erie."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lake Erie viticultural area are four U.S.G.S. maps. They are titled:

- (1) "Toledo," scale 1:250,000 (1956, revised 1978);
- (2) "Cleveland," scale 1:250,000 (1956, revised 1972);
- (3) "Erie," scale 1:250,000 (1959, revised 1972); and
- (4) "Buffalo," scale 1:250,000 (1962).

(c) *Boundaries.* The Lake Erie viticultural areas is located along the shore and on the islands of Lake Erie across the States of New York, Pennsylvania, and Ohio. The beginning point is where Buffalo Creek empties into Lake Erie at Buffalo Harbor.

(1) From the beginning point the boundary proceeds up Buffalo Creek to the confluence of Cazenovia Creek.

(2) The boundary proceeds up Cazenovia Creek and thence up the west branch of Cazenovia Creek to a point approximately one mile north of Colden, New York, exactly 12 statute miles inland from any point on the shore of Lake Erie.

(3) The boundary proceeds southwestward and along a line exactly 12 statute miles inland from any point on the shore of Lake Erie to a point approximately one mile north of Dayton, New York, where it intersects the 1300-foot contour line.

(4) The boundary proceeds generally southwestward along the 1300-foot

contour line to a point almost two miles north-northwest of Godard, Pennsylvania, exactly six statute miles inland from any point on the shore of Lake Erie.

(5) The boundary proceeds southwestward along a line exactly six statute miles inland from any point on the shore of Lake Erie to the point where it intersects Ohio Route 45 near the intersection with Interstate 90.

(6) The boundary proceeds southward along Ohio Route 45 to a point exactly 14 statute miles inland from any point on the shore of Lake Erie approximately one mile north of Rock Creek, Ohio.

(7) The boundary proceeds southwestward, then westward, then northwestward along a line 14 statute miles inland from any point on the shore of Lake Erie to the point where it intersects the Ohio-Michigan boundary just north of Centennial, Ohio.

(8) The boundary proceeds eastward, then northeastward along the Ohio-Michigan border to the United States-Canada boundary.

(9) The boundary proceeds southeastward along the United States-Canada boundary to a point at 82 degrees 30 minutes west longitude.

(10) The boundary proceeds southward along 82 degrees 30 minutes west longitude to the shore of Lake Erie.

(11) The boundary proceeds northeastward along the shore of Lake Erie to the beginning point at the mouth of Buffalo Creek.

Approved: March 18, 1983.

Stephen E. Higgins,
Acting Director

[FR Doc. 83-6033 Filed 4-1-83; 6:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 461]

The Anderson Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms, (ATF) is considering the establishment of a viticultural area in Mendocino County, California, to be known as "Anderson Valley." This proposal is the result of a petition from the Anderson Valley Appellation Committee which is made up of various industry members in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come

from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by May 4, 1983.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385 (Attn: Notice No. 461)

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-80 (44 FR 58692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be

found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

AFT has received a petition from the Anderson Valley Appellation Committee proposing an area in Mendocino County, California, as a viticultural area to be known as "Anderson Valley." Anderson Valley is located in the western part of the county and lies generally along the watershed of the Navarro River, stretching from its headwaters in the coastal range and extending northwest toward, but not reaching, the Pacific Ocean. The proposed viticultural area includes approximately 57,600 acres within its boundaries.

Viticultural Area Name

The proposed viticultural area has been known as Anderson Valley since shortly after it was first settled in 1852 by Walter Anderson. The proposed area includes only the territory historically known as Anderson Valley and the surrounding slopes.

Geographical/Viticultural Features

The petitioner claims the proposed viticultural area is distinguished from surrounding areas by climatic variances and by the soil. The petitioner bases these claims on the following:

(a) The climate of the proposed Anderson Valley viticultural area has been described as "Coastal" by the Mendocino County Farm Advisor's Office, in their booklet, *The Climate of Mendocino County*. In comparison, the climate in much of the other areas of Mendocino County is classified as "Transitional" due to the fact that either the coastal or the interior climates can dominate the Mendocino County climate for either short or long periods of time.

(b) The climate of the proposed Anderson Valley viticultural area includes both Region I and Region II as classified by the University of California at Davis' system of heat summation by degree-days. A table of cumulative degree-days, published by the University of California Agricultural Extension Service Office in Lake, Mendocino, and Sonoma Counties, shows that the area around Philo is relatively cool and consequently is classified as Region I whereas the area around Boonville is warmer and consequently is classified as Region II. In comparison the Ukiah area, which lies approximately 15 miles to the

northeast of Anderson Valley, is warmer and consequently is classified as a Region II and Region III area depending on the particular location of the reporting station.

(c) In a publication entitled *Connoisseur's Guide to California Wine*, Alameda, California, 1978, Volume three, Issue six, page 109, the author states that "one of the most important of these (Mendocino County microclimates) will be Anderson Valley. This area is tucked into the mountains between Ukiah and the coast. The environment varies from a maritime climate, unsuitable for grape growing to a cool Region II climate on the University of California at Davis I-V heat accumulation scale. The portion of the valley shared by Edmeades and Husch, near Philo, is one of the coolest grape growing areas in California. The Boonville area, six miles up Anderson Valley, edges into Region II heat accumulation."

(d) The bottom land soils in Anderson Valley are all either derived from old valley filling material, or more recent alluvial deposits. Maps of the area show the same series soils throughout the valley, with the more recent soil types in the majority. Anderson Valley bottom land soils include at least 24 different types.

(e) The average rainfall of the proposed Anderson Valley viticultural area, as recorded by the Boonville Department of Highway Maintenance and published in *The Climate of Mendocino County*, a booklet compiled by the Mendocino Farm Advisor's Office, is 40.68 inches annually. Most of the rainfall comes in the period from November through March. In comparison, the average rainfall per year for the Ukiah area to the northeast and the Hopland (U.C.) area to the southeast is 35.95 inches and 37.00 inches respectively.

(f) According to Roberto A. de Grassi, Agricultural Commissioner for Mendocino County, Anderson Valley was surveyed and studied some years ago by grape-growing specialists from the University of California at Davis. These specialists found that Anderson Valley had an excellent environment and potential for growing premium quality varietal wine grapes by virtue of its coastal climatic condition in addition to the favorable grape soil types. Since this initial survey and finding, extensive vineyards have been, and are being, planted in this region. Mr. de Grassi further states that the budding local wineries in Anderson Valley are producing a distinctive characteristic wine typical of Region I and II, thereby

substantiating the validity of the evaluation made by early researchers.

Historical Background

Anderson Valley lies generally along the watershed area of the Navarro River, in the western part of Mendocino County. Cultivation of the soil began with the first settlement in 1852. Grapes were planted in the area shortly afterward. Along Greenwood Ridge, numerous small vineyards dotted the area. One of these historic entities remains today, the DuPratt Vineyard.

There is documentation that some of the oldest, continuously producing vineyards date from 1922. Edmeades Winery, established in 1974, was the first winery to begin operations in Anderson Valley since the end of Prohibition. Wines from Anderson Valley are often favorably mentioned in many respected wine publications.

The four major varieties of grapes being grown in this area are Chardonnay (151 acres), Gewurztraminer (103 acres), Riesling (111 acres), and Pinot Noir (47 acres). This acreage information was obtained from the publication, 1981 Mendocino County Grape Acreage, published by the Mendocino County Farm Advisors Office.

Currently, there are approximately 600 acres of grapes located within the proposed viticultural area with major concentrations around the Bonville, Philo, and Navarro area. Although the number of acres of grapes under cultivation is small compared to the total size of the proposed area, the scattered location of the grapes makes it necessary to include the whole area. Also, according to Mr. Bruce E. Bearden, Farm Advisor for Mendocino County, the grape acreage within the proposed Anderson Valley viticultural area is expanding and will likely double within the next few years and the number of wineries will likely increase from six to eight or nine.

Proposed Boundaries

The boundaries of the proposed Anderson Valley viticultural area may be found on three U.S.G.S. 15 minute series, quadrangle maps ("Navarro Quadrangle, California—Mendocino Co.," "Boonville Quadrangle, California—Mendocino Co." and "Orbaun Valley Quadrangle, California"). The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations immediately following the preamble to this notice of proposed rulemaking.

The proposed Anderson Valley viticultural area is completely

encompassed by the boundaries described in a petition for a viticultural area in Mendocino County with the proposed name of Mendocino.

ATF recognizes that in some cases it will be necessary to establish viticultural areas which totally or partially overlap with other proposed or approved viticultural areas. ATF, however, believes the significance of viticultural areas as delimited grape-growing regions distinguishable by geographical features may be eroded by the indiscriminate establishment of overlapping viticultural areas. Therefore, ATF will judge each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas on a case-by-case basis. ATF will be guided in this judgment by evidence presented in the petition and by comments received from the public during the comment period.

For this reason, each petition which proposes a viticultural area that overlaps with other proposed or approved viticultural areas must fulfill the requirements of regulations relating to the establishment of viticultural areas and contain evidence to substantiate that the area of overlap should be included in the proposed viticultural area. In the case where one proposed area is totally encompassed by one or more larger proposed or approved viticultural areas, evidence must be submitted to show that the smaller viticultural area is viticulturally distinguishable from the surrounding areas.

Executive Order 12291

It has been determined that the proposal is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant

economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Anderson Valley viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Public Participation—Written Comments

The proposed Anderson Valley viticultural area is located totally within the proposed boundaries described in a petition for a viticultural area in Mendocino County to be called Mendocino. ATF is particularly interested in receiving comments from all interested persons regarding this overlap issue as well as any other pertinent comments concerning the proposed Anderson Valley viticultural area. Furthermore, while this document proposes possible boundaries for the Anderson Valley viticultural area, comments concerning other possible boundaries will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority

Accordingly, under authority in 27 U.S.C. 205 (49 Stat. 981, as amended), the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of 9.86. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.86 Anderson Valley.

Par. 2. Subpart C is amended by adding § 9.86. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.86 Anderson Valley.

(a) *Name.* The name of the viticultural area described in this section is "Anderson Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Anderson Valley viticultural area are three U.S.G.S. maps. They are titled:

- (1) "Navarro Quadrangle, California—Mendocino Co.," 15 minute series (1961);
- (2) "Boonville Quadrangle, California—Mendocino Co.," 15 minute series (1959); and
- (3) "Ornbaun Valley Quadrangle, California," 15 minute series (1960).

(c) *Boundaries.* The Anderson Valley viticultural area is located in the western part of Mendocino County, California. The beginning point is at the junction of Bailey Gulch and the South Branch North Fork Navarro River in Section 8, Township 15 North (T.15N.), Range 15 West (R.15W.), located in the northeast portion of U.S.G.S. map "Navarro Quadrangle."

(1) From the beginning point, the boundary runs southeasterly in a straight line to an unnamed hilltop (elevation 2015 feet) in the northeast corner of Section 9, T.13W., R.13W., located in the southeast portion of U.S.G.S. map "Bonnville Quadrangle";

(2) Thence southwesterly in a straight line to Benchmark (BM) 680 in Section 30, T.13N., R.13W., located in the northeast portion of U.S.G.S. map "Ornbaun Valley Quadrangle";

(3) Thence northwesterly in a straight line to the intersection of an unnamed creek and the south section line of Section 14, T.14N., R.15W., located in the southwest portion of U.S.G.S. map "Bonnville Quadrangle";

(4) Thence in a westerly direction along the south section lines of Sections 14, 15, and 16, T.14N., R.15W., to the intersection of the south section line of Section 16 with Greenwood Creek, approximately .2 miles west of Cold Springs Road which is located in the southeast portion of U.S.G.S. map "Navarro Quadrangle";

(5) Thence in a southwesterly and then a northwesterly direction along Greenwood Creek to a point in Section 33 directly south (approximately 1.4 miles) of Benchmark (BM) 1057 in Section 28, T.15N., R.16W.;

(6) Thence directly north in a straight line to Benchmark (BM) 1057 in Section 28, T.15N., R.16W.;

(7) Thence in a northeasterly direction in a straight line to the beginning point.

Approved: March 23, 1983.

Stephen E. Higgins,
Acting Director.

[FR Doc. 83-8634 Filed 4-3-83; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 462]

Grand River Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Ohio to be known as "Grand River Valley." This proposal is the result of a petition submitted by Mr. Anthony P. Debevoise, President of Chalet Debonne Vineyards, Inc., a winery located in Madison Ohio. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

DATE: Written comments must be received by May 19, 1983.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco

and Firearms, P.O. Box 385, Washington, DC 20044-0383, (Attn: Notice No. 462).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54824) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on the features which can be found on the United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in northeastern Ohio as a viticultural area to be known as "Grand River Valley." The area has approximately 125,000 acres and consists of all of the land within 2 statute miles, in any direction, of the Grand River from its origin to the point at which it flows into Lake Erie.

The name "Grand River" was assigned by early explorers and settlers to the river called "Sheauga" or "Geauga" by the natives. This Indian word actually means "raccoon" but was so widely misinterpreted that the name "Grand River" has applied to the river since the early nineteenth century.

The petitioner claims that virtually all commercial vineyards in Geauga, Lake, and Ashtabula Counties are within 2 miles of the river, with the exception of some relatively small plantings in the immediate vicinity of the lake. According to a survey conducted in 1975 by Lawrence Anderson, U.S.D.A. Extension Agent for Ashtabula County, the grape plantings in the 4 counties in which Grand River is located are:

County	Acreage	Number of growers
Ashtabula	1,787	134
Lake	422	45
Geauga	85	4
Trumbull	(?)	(?)
	2,294	183

¹ None.

The petitioner claims that the proposed area produces approximately 70% of Ohio's annual crop. There are 4 wineries in the proposed area.

About one-third of the proposed Grand River Valley viticultural area is located inside the proposed Lake Erie viticultural area, proposed in a notice published in today's Federal Register. The area inside both proposed areas consists of approximately 46,000 acres and includes more than 99% of all grapevines growing within 2 miles of the river. The remaining two-thirds of the Grand River Valley, approximately 79,000 acres, contains only 2 acres (at West Farmington) known to be planted in grapes.

The petition states: "With Lake Erie helping to provide an overall longer growing season (circa 175 days) the Grand River Valley itself contributes in fulfilling the air drainage requirements for prime viticultural lands."

The petitioner also emphasizes that successful vineyards, over a period of several generations, attest to the unique viticultural features of the area. While

ATF agrees that agricultural land use is a geographical feature, the regulation, 27 CFR 4.25a(e)(2)(iii), requires that the petition contain "evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas." ATF agrees that the moderating effect of Lake Erie distinguishes part of the proposed area from its surroundings. Further, the air and water drainage provided by the Grand River Valley distinguishes the proposed area from the proposed Lake Erie viticultural area. However, the natural boundary of the lake's effect on climate divides the Grand River Valley into a climate area which is strongly influenced by the lake and a climate area which is weakly influenced or not influenced by the lake.

Lake Erie's moderating influence on the climate makes grape growing possible within a short distance inland from the shore. The lake freezes in the winter and the late spring thaw prevents unseasonal warm spells in late winter and early spring. Otherwise, premature bud development during these unseasonal warm spells would leave the grapevines vulnerable to damage during a freeze in late spring. In autumn, the warm water of the lake delays the first freeze a month or longer in comparison to areas farther inland from the lake shore. The lake's protection against spring frost damage and the delay of the first autumn frost result in a growing season between 170 and 185 days, depending on the distance inland from the lake shore.

In Cultural Practices for Commercial Vineyards, Miscellaneous Bulletin 111, published by the New York State College of Agriculture and Life Sciences, in January 1980, the authors state: "Temperature is the first consideration in selecting the location of a vineyard. It involves length of growing season, as well as magnitude and frequency of winter minimums. Temperature requirements must be satisfied for a site to be considered." The authors also note that for commercial viticulture in this region, a growing season of 165 days is considered minimal and 180 plus days is preferable, and that the winter minimum temperature should infrequently fall below minus 10 degrees Fahrenheit and almost never below minus 15 degrees Fahrenheit.

In The occurrence of Freezing Temperatures in late spring and early fall, Special Circular 94, published by the Ohio Agricultural Experimental Station (now the Ohio Agricultural Research and Development Center, or O.A.R.D.C.), in October 1959, the isobar

for the 180 day growing season passes lengthwise through the middle of Lake County. The isobar for the 170 day growing season passes through the intersection of the 3 county lines of Ashtabula, Lake and Geauga Counties (as a distance about 9 miles inland from the lake shore) and the intersection of the 3 county lines of Cuyahoga, Lake and Geauga Counties (at a distance about 7 miles inland from the lake shore). The isobar for the 160 day growing season is no closer than 20 miles from the lake shore anywhere in Geauga County, and much farther from the lake shore throughout Ashtabula County.

In *Extreme Monthly and Annual Temperatures in Ohio*, Research Bulletin 1041, published by O.A.R.D.C., in November 1970, the isobar for the annual low temperature of -5 to -10 degrees Fahrenheit corresponds closely with the isobar for the 170 day growing season previously discussed; the isobar for annual low temperature of -10 to -15 degrees Fahrenheit corresponds approximately with the isobar for the 160 day growing season previously discussed. The isobar for average annual lowest temperature of 0 to -5 degrees Fahrenheit is between 10 and 15 miles from the lake shore; the average annual lowest temperature of -5 to -10 degrees Fahrenheit covers most of the State of Ohio.

These data help identify the natural inland boundary of the lake's moderating effect on the climate. Based on these and other data, the Lake Erie viticultural area has been proposed with a boundary in northeastern Ohio which is 6 miles inland from the shore east of Ohio Route 45, and 14 miles inland from the shore west of Ohio Route 45. ATF believes that the lake's effect on climate is the overriding geographical feature affecting viticulture. Without it, grape growing would not be possible on a commercial scale in northeastern Ohio. Based on this data, and based on the current locations of commercial vineyards in northeastern Ohio, ATF is proposing, as an alternative, to confine the Grand River Valley viticultural area to the portion of the valley within the proposed Lake Erie viticultural area.

The boundary proposed by the petitioner is set out as the proposed § 9.87a; the boundary proposed as an alternative by ATF is set out as the proposed § 9.87b.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (§

U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

ATF is not able to assign a realistic economic value to using "Grand River Valley" as an appellation of origin. An appellation of origin is primarily an advertising intangible. Moreover, changes in the values of grapes or wines may be caused by a myriad of factors unrelated to this proposal.

Any value derived from using the "Grand River Valley" appellation of origin would apply equally to all grape growers in the proposed area.

Therefore, ATF believes that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 the Bureau has determined that this proposal is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public Participation—Written comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Grand River Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

ATF is especially interested in comments which discuss the following questions:

Should the Grand River Valley viticultural area be confined within the proposed Lake Erie viticultural area?

Are there any significant geographical features affecting viticulture which can support extending the proposed area farther inland than the natural boundary of the lake's moderating effect on the climate?

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and Procedure, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

Part 9—American Viticultural Areas

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the heading of § 9.87. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.87 Grand River Valley.

Par. 2. Subpart C is amended by adding § 9.87. The petitioner's boundary is set out as § 9.87a; the alternative proposed by ATF is set out as § 9.87b. As added, § 9.87 reads as follows:

§ 9.87a **Grand River Valley** (petitioner's boundary).

(a) *Name.* The name of the viticultural area described in this section is "Grand River Valley."

(b) *Approved map.* The approved map for determining the boundary of the Grand River Valley viticultural area is the U.S.G.S. topographic map in the scale of 1:250,000, entitled Cleveland, number NK 17-8, dated 1956, revised 1972.

(c) *Boundary.* The Grand River Valley viticultural area is located in the following Ohio counties: Lake, Geauga, Ashtabula, and Trumbull. The viticultural area consists of all of the land within 2 statute miles, in any direction, of the Grand River from its origin near West Farmington to the point at which it flows into Lake Erie.

§ 9.87b **Grand River Valley** (alternative boundary proposed by ATF).

(a) *Name.* The name of the viticultural area described in this section is "Grand River Valley."

(b) *Approved map.* The approved map for determining the boundary of the Grand River Valley viticultural area is the U.S.G.S. topographic map in the scale of 1:250,000, entitled Cleveland, number NK 17-8, dated 1956, revised 1972.

(c) *Boundary.* The Grand River Valley viticultural area is located in the following Ohio counties: Lake, Geauga, and Ashtabula. The viticultural area consists of all of the land within the Lake Erie viticultural area (§ 9.83) which is also within 2 statute miles, in any direction, of the Grand River. Specifically, the Grand River Valley viticultural area consists of all of the land west of Ohio Route 45 which is within 2 statute miles, in any direction, of the Grand River, and which is also within 14 statute miles inland from any point on the shore of Lake Erie.

Signed: March 1, 1983.

Stephen E. Higgins,
Acting Director.

Approved: March 23, 1983.

David Q. Bates,
Deputy Assistant Secretary (Operations)

[FR Doc. 83-0632 Filed 4-1-83; 8:45 am]
BILLING CODE 4810-31-M.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 421 and 465

[WH-FRL 2338-2]

Nonferrous Metals Manufacturing Point Source Category and Coil Coating Point Source Category (Can Making Subcategory); Hearing

AGENCY: Environmental Protection Agency.

ACTION: Public hearing.

SUMMARY: Notice is hereby given of a hearing open to the public to discuss and receive comments on two pretreatment regulations proposed in the Federal Register relating to coil coating (can making) (February 10, 1983; 40 FR 6268) and to nonferrous metals manufacturing point source category (February 17, 1983; 40 FR 7032).

DATES: A public hearing has been scheduled for the following date and place: April 27, 1983—Washington, D.C.

ADDRESS: The public hearing will be held at the following address: Skyline Inn, South Capitol and I Street SW.

FOR FURTHER INFORMATION CONTACT: Harold B. Coughlin, Project Officer for Public Participation, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 382-7115.

Anyone wishing to make an oral statement and submit written testimony at the hearing should indicate so at the time of registration.

SUPPLEMENTARY INFORMATION: Registration for the hearing will be held from 8:30 to 9:00 AM. Oral testimony will be presented as follows: 9:30 to 11:30 AM Nonferrous Metals, 1:00 PM to 3:00 PM—Coil Coating (Can Making). Following the registration period there will be a brief presentation by an EPA official covering the development of effluent limitations and standards under the Clean Water Act of 1977. Also, opportunity will be given throughout the day for audience participants to submit written questions to the Presiding Officer. These questions will be addressed during the question and answer session which will conclude the presentations of oral testimony for each category.

A court recorder will be present at the public hearing. Official transcripts will be available at no cost. To assist the court recorder persons giving statements are requested to provide copies of their testimony.

Dated: March 24, 1983.

Frederick A. Eidsness, Jr.,
Assistant Administrator for Water.
[FR Doc. 83-0473 Filed 4-1-83; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73, and 76

[Docket No. 83-114; FCC 83-67]

Re-Examination of Technical Regulations

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and proposed rulemaking.

SUMMARY: The Commission is initiating an examination of all of its technical rules and regulations. Some of them are obsolete and may be removed. Others may need revising or updating. The agency's staff initiated this proceeding, but is now seeking public participation through written comment. In this document, the FCC is proposing to delete several regulations which it no longer believes are necessary. However, the main part of this item is a Notice of Inquiry which asks specific questions about technical regulations. It is hoped that the public's response to these questions will lead to additional changes in the FCC's Rules and Regulations.

DATES: Comments must be submitted on or before May 2, 1983.

Replies may be submitted on or before June 1, 1983.

ADDRESS: Federal Communications Commission, Office of Science & Technology, Technical Analysis Division, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michel J. Marcus (202) 632-7040.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 15

Communication equipment, Radio.

47 CFR Part 73

Radio broadcast, Television.

47 CFR Part 76

Cable television.

Notice of Inquiry and Proposed Rule Making

In the matter of a re-examination of technical regulations; Gen Doc. 83-114.
Adopted: February 17, 1983.

Released: March 18, 1983.

By the Commission.

Introduction

1. The purpose of this proceeding is to examine certain of the Commission's technical regulations with the ultimate intent of eliminating those that no longer serve useful purposes, replacing those that are overly burdensome with less constraining regulations or retaining those which are found to be acceptable in their present form, without undermining the Commission's responsibilities under the Communications Act of 1934, as amended. While this Notice of Inquiry (NOI) is a broad discussion of the rationale for reducing the Commission's technical regulations and adopting alternative approaches, the Notice of Proposed Rule Making (NPRM) proposes to eliminate some specific technical regulations which we feel are no longer needed. By technical regulations we are referring to rules of an engineering/technical nature which limit or otherwise govern the public's use of the frequency spectrum, and the electrical characteristics of radio and other electronic equipment and systems under the Commission's jurisdiction. Such regulations are contained in Parts 2, 5, 15, 18, 21, 22, 23, 25, 68, 73, 74, 76, 78, 81, 83, 87, 90, 94, 95, 97, and 99 of our Rules and Regulations. We hope that by modifying burdensome rules we may be able to stimulate technological innovation in communications technology and further our statutory charter.

2. Electronic equipment subject to Commission technical regulation can be grouped generally into the following three broad categories: (1) Licensed radio transmitting equipment, authorized under the various radio service rules; (2) nonlicensed radio frequency devices, authorized under Parts 15 and 18, which are capable of radiating electromagnetic energy but do not require an individual license to operate; and (3) cable television (CATV) and telephone terminal equipment (Parts 76 and 68, respectively) which is regulated by the Commission for other reasons, such as minimizing radiation from CATV systems and decreasing the possibility of harm to the telephone network. All of our existing technical regulations pertaining to these three categories of equipment will be examined in this proceeding, with the exception of out-of-band emission limitations. We are not examining in this proceeding rules which, although of a

somewhat technical nature, pertain mostly to license assignment policy.¹

3. With specific regard to licensed radio services, we are examining all technical regulations which specify or limit the magnitude or distribution of power within the authorized frequency band of a transmitting system. Included are rules relating to the following: emission wave form (e.g., NTSC standards); type of modulation and characteristics of the modulating signal; frequency tolerance; transmitted power within the authorized channel, however specified (e.g., ERP, output power, DC power to final amplifier, etc.); power roll-off as a function of frequency and antenna system design parameters (e.g., polarization and directivity); and field strength and field contours.

4. There are several reasons why we are undertaking this examination. First, it is possible that some of our current technical regulations, particularly those which serve a standardizing function, may have outlived their usefulness. That is, while they may have been useful or even necessary to help introduce a new service or system, there may be less reason for maintaining them now if that service or system has matured. Second, the pace of technological evolution in the telecommunications field may have reached a level where rigid regulatory constraints could preclude other, more desirable services to a greater degree now than they did in the past. Special rules may be required, however, to facilitate the introduction of new technologies, and to minimize the possibility of their mutual interference. Third, the telecommunication industry is generally more competitive now than in the past, which lessens some of the market-structure concerns which have led to government involvement in the standards setting process. Finally, there may be alternative regulatory approaches which are capable of providing essential control with fewer constraints on technological innovation. All of these factors suggest that the time is right for a comprehensive look at our technical regulations and underlying regulatory policies. This Notice of

¹ Examples of these are rules specifying the width of assignable channels and their specific locations in the spectrum; band or channel allocation rules which specify permissible type of service (e.g., land mobile), class of user (e.g., business), or type of system (e.g., trunked); rules allotting individual channels to specific geographical areas; rules specifying minimum frequency separation between adjacent channel assignments or distance separation between assignments; channel loading co-channel and accessing rules pertaining to time sharing of channels within a given area; and rules governing the coordination and selection of channels to be assigned to individual licensees.

Inquiry and Proposed Rule Making is the first step in that reexamination process.

5. In the discussion that follows we address the basic regulatory purposes and functions that our technical regulations are intended to serve and whether these purposes and functions appear to be valid regulatory concerns today. Specific alternative methods of regulation which may be capable of providing essential controls with fewer constraints on the marketplace are considered. Some of the potential advantages and disadvantages of these alternative techniques are also discussed.

6. To aid in this examination, we have attached to this Notice a table (Appendix A) listing all of the Commission's technical regulations which we believe fall within the scope of this proceeding. These regulations are grouped according to the rule part in which they are found and further classified according to the regulatory purposes to which they appear to be related. This arrangement will help associate the discussion in the body of the Notice with particular rules and radio services. We would point out that the classifications in the Table cannot be taken as absolute. Indeed, there doubtless are several different ways to classify our standards (see paragraph 7 below). Furthermore, the "X" marks in the table cannot show the relative importance of the various reasons why a given standard exists. Finally, we should recognize that while we may consider "quality" standards generally less vital than "safety" standards, or "design" standards generally more restrictive than "performance" standards, these judgments may not hold true in particular cases. We invite comment on any of the rules in the Table, whether mentioned explicitly in the text of this Notice or not. We particularly invite discussion of changes which may have taken place since adoption of a given rule, e.g., changes in technology, and how those changes affect the necessity for continuance, modification, or elimination of the rule under discussion.

Existing Technical Regulations and Potential Deregulatory Alternatives

7. We are empowered under the Communications Act to control the technical aspects of electronic equipment: both emitters and receptors. We have sought to meet certain technical goals through a combination of three types of regulations:

- (a) Performance requirements,
- (b) design requirements, and
- (c) conduct requirements.

Performance requirements form the basis of virtually all our technical regulations. They specify the limits of a licensee's technical liability. Design requirements are more detailed specifications which have sometimes been judged necessary to remove ambiguity which might remain if only a performance specification were adopted. The primary disadvantage of a design standard is the risk of over specification, which might unnecessarily restrict implementation of technologies or services not envisioned at the time of adoption of the design standard. For that reason the Commission has been very reluctant to adopt design standards for some years, and the elimination or modification of such standards is one of the aims of this present proceeding.² Conduct regulations, on the other hand, act to check performance by ensuring that licensees confirm that they actually meet our requirements.³ As a matter of general policy, the only area with which we should have a presumptive concern is the performance of electronic equipment. To the extent performance regulations truly define technical requirements, we question the need for additional design and conduct regulations. Moreover, even in governing performance, we find it in the public interest to give users as much technical flexibility as possible consistent with the rights of others to utilize the spectrum. Hence, all three levels of technical regulation will come under close scrutiny in this Docket.

8. The Commission's technical regulations can be generally grouped into four categories, according to regulatory purpose of function as differentiated from the "type" of regulation as discussed above in paragraph 7:

(a) Quality standards on telecommunications services and equipment,

(b) standards to ensure interoperability among various pieces of equipment,

² One example of a design standard is contained in § 90.211(d)(1) of the Rules. That rule requires certain transmitters to be equipped with a low-pass audio filter having specified characteristics, even though absolute emission limits are imposed elsewhere in the Rules (§ 90.209). In 1980 the Commission recognized that the audio filter requirement precluded the possibility of transmitting certain digital signals. The Commission therefore removed the audio filter design requirement for digital transmissions, while providing certain procedures in the type acceptance process that ensure the emission limits of § 90.209 will be met.

³ An example of a conduct regulation is the requirement on FM broadcast licensees to annually measure equipment performance with no more than fourteen months elapsing between measurement periods. See 47 CFR § 73.254.

(c) standards for interference control, and

(d) standards for spectrum efficiency.

9. Although the Congress has given us limited powers to control the performance of electronic equipment, it has deferred to us (except in the marine service) the establishment of specific goals and given us wide latitude to determine our role in this areas.⁴ For example, Section 302 authorizes the Commission to control interference both by regulating emitters "capable of emitting radio frequency energy * * * in sufficient degree to cause harmful interference * * *" and by regulating receptors through the establishment of "minimum performance standards for home electronic equipment systems to reduce their susceptibility to interference * * *" (47 U.S.C. 302). Section 303 allows regulation of radio stations "with respect to * * * external effects and the purity and sharpness of emissions * * *" and "to prevent interference between stations * * *" (47 U.S.C. 303). A general concern about performance is reflected in the language of Section 1, which speaks of regulations "to make available so far as possible to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service * * *" (47 U.S.C. 1).

10. In this NOI we suggest a two step approach for assessing the ability of existing technical regulations to achieve the four goals mentioned above. We consider first the conditions under which technical regulations may be needed in achieving each goal. Second, where there is an apparent need for regulation, we consider regulatory alternatives which may be less constraining than existing technical rules. However, where there is no apparent need for regulation, we will propose deleting the existing rules.

Control of Technical Quality

11. As the table in the Appendix indicates, many of our technical regulations are based on a concern about the technical quality of radio services and systems. We have divided quality-based technical regulations into two groups: system compatibility standards and minimum performance standards. System compatibility standards are those regulations which

⁴ We recognize, however that in addition to domestic statutes there are a number of treaties and international agreements to which the United States is a party, which contain technical standards or limitations applicable to facilities operated by Commission licensees. Such treaties and agreements will, of course, be taken into account in developing specific proposals to amend our domestic technical regulations.

require the use of specific transmission formats so that receivers, which in cases of interest will be under separate control from the transmitter, can adequately receive and demodulate the transmitted signal. A good example of this type of technical regulation is § 73.682, transmission standards, which requires television broadcast licensees to use the NTSC waveform format. The second group of quality-based regulations, minimum performance standards, guarantees the provision of a minimum level of service and may be related to effective use of spectrum. These regulations establish technical thresholds such as minimum modulation, minimum field strength and maximum distortion for transmission systems. Minimum field strength standards also help to guarantee some level of efficiency. Most quality related technical regulations are found in the broadcast services' (Part 73) rules. For example, we have rules which specify the minimum field strength requirements for television transmitters and the maximum distortion, hum, and noise in AM broadcast transmitters. Much of the rationale behind these regulations is no doubt seated in the traditional regulatory concepts applied to the broadcast services and the high degree of standardization and uniformity of technical quality which is a part of that traditional view of the service. The broadcast service of today, however, is quite different from that of many years ago. There appear to be stronger market incentives today to control performance and thus reduce the need for detailed regulations.

12. Although less comprehensively than in broadcasting, some of our common carrier regulations also seek to guarantee quality. Here, too, we see trends toward greater competition and diversity of service which may reduce regulatory concern over quality. The traditional view of the telephone network has been that of a single, highly integrated, monopoly-owned system subject to strong public control. However, changes in public policy and advances in technology are bringing forth diversity and expansion of competitive enterprise in this area also. Terrestrial microwave and satellite systems, for example, owned by independent companies are competing with the Bell System for long distance services. Cable systems originally installed for television distribution are beginning to evolve into wideband general-purpose telecommunications systems, capable of carrying a variety of data, voice and video services. Innovative radio-based systems (e.g.,

cellular and digital termination systems) are, or soon will be, competing for local two-way voice and data services. Future possibilities also include direct communications links from satellites to the home (or to the office or car) and wide-band fiber optic systems connected directly to the home or office. In these circumstances, while we retain our interest in quality and efficiency in common carrier services, we think it fair to ask whether these goals would be achieved through competitive incentives, and with less direct regulatory intervention.

13. In the common carrier services we have already tailored the degree of regulatory involvement to the particular service addressed. With the acceleration of structural change in telecommunications which is now occurring, this process should continue. But we also recognize that the increased competition and diversity which new technologies promise have not yet been fully realized. The current market situation might best be described as being in a period of transition. Whether the present level of competition and diversity is sufficient to warrant the elimination or revision of technical quality regulations is a question we now face and will continue to face. The answer to this question will depend on conditions in particular markets as well as types of service.

14. With particular regard to radio broadcast services, we have previously determined that current market forces can be effectively substituted for regulation in accomplishing certain goals. In the Radio Deregulation proceeding, for example, we found that because of the high degree of . . . competition and number of stations in the broadcasting field, there is even less of a need now than there was twenty years ago for us to articulate any "rigid" mold or fixed formula for station operation.⁶ Based on our findings in that proceeding, we have relaxed Commission rules and policies in the areas of commercial time limits, non-entertainment programming, ascertainment of community needs, and program logkeeping requirements. We similarly believe that the current level of competition in the broadcast services may be sufficient to maintain technical quality with fewer government regulations.

15. Section 76.605 of the Commission's Rules and Regulations details the technical standards that must be met by cable television systems. This section includes both quality-based regulations;

for example, minimum signal to noise ratio, and interference-based regulations, for example, maximum radiation limits. The quality-based standards were promulgated to ensure that subscribers received an acceptable television picture and to encourage national standards in an infant industry. Today, it appears that most cable television equipment exceeds our minimum quality standards.

16. The requirements of § 76.605 apply only to Class I cable television channels. These channels are used to relay broadcast television signals to cable subscribers. There are no quality-based technical regulations applicable to cable television channels used for non-broadcast programming, including both pay and non-pay services such as all-movie channels, all-sports channels, or channels devoted solely to children's programming. Apparently the rule was structured this way because the cable service was originally viewed as one ancillary to the broadcasting service and, therefore, a broadcast licensee had a right to expect that his signal would be relayed to the cable subscriber with minimum degradation. Additionally, the Commission wished not to frustrate the use of some cable channels for innovative programming which might not meet standard broadcast specifications. While we do not dispute these concerns today, we do question the need for the Commission to continue to mandate the quality of Class I cable channels. Insofar as commercial programming is concerned, we are not aware of any significant difference in the quality of Class I channels and the quality of Class II and III cable channels, which are not regulated by the Commission.

17. We recognize a difference between the Cable Television Service and the Television Broadcast Service—competition. In most markets, competition between television broadcast stations should ensure an acceptable level of signal quality even absent government regulation. Competition exists in the Cable Television Service, but to a lesser degree. Cable operators must vie with each other to receive a franchise to provide service within a given area. Moreover, cable systems compete with broadcast stations after they have been franchised, although in some smaller markets there may be no real alternative to the cable system. It appears to us, however, that the technical quality of cable systems is influenced less by competition and more by the state of technology, which has in general surpassed the Commission's ten year old

regulations. Accordingly, we request comment on whether it is necessary for the Commission to continue its regulation of cable television technical quality.

Interoperability

18. While we have suggested a reduced regulatory involvement in controlling the technical quality of services, our proper role in ensuring interoperability is more difficult to define. By "interoperability" we are referring generally to the capability of radio or other electronic equipment (either transmitters or receivers) under the control of one entity to interconnect (send and/or receive communications) with equipment controlled by others. Thus, we define interoperability to be a dynamic form of compatibility.

19. Interoperability is obviously more important for some types of services and/or equipment than others. It is essential, for example, in traditional broadcast services in which a transmitter under the control of a licensee must be able to communicate with receivers owned by members of the public. It is also important for a given broadcast receiver to be capable of receiving signals from several transmitters. Interoperability is less important in private communications systems in which all of the interconnected transmitters and receivers are normally controlled by a single entity (e.g. a typical business land mobile radio system). In the CB Service, interoperability, while not essential, contributes to the appeal and usefulness of the service for many users. In maritime and aeronautical services, equipment interoperability is an essential functional as well as safety factor.⁷ Thus, there is no question that interoperability is beneficial or even essential in many uses of electronic equipment. The issue before us is whether or in what cases interoperability is of sufficient public importance to warrant retention of existing interoperability regulations, or whether marketplace forces will achieve interoperability in the absence of direct regulatory constraint.

20. Before addressing that issue, however, it may be instructive to examine the alternative mechanisms which can be used to bring about interoperability. Basically, interoperability can be achieved either through common signal characteristics

⁶ Report and Order in BC Docket No. 79-219, 46 FR 13863 (1981).

⁷ Because of the international character of maritime and aeronautical services, technical standards for interoperability appear in numerous treaties and international agreements as well as FCC rules.

or through the use of converters. If standards are to be used they can be set either by regulation or allowed to evolve in the marketplace. Where interoperability is desired between different modes of operation, conversion devices can be used. For example, a television receiver designed to decode the West German TV signal, PAL, may have a converter or include a capability that allows it to decode the French TV signal, SECAM, also. If such translation devices are low in cost and are, in fact, made available, they provide a potentially viable alternative to technical standards as a means of achieving interoperability. In the extreme case, the equipment may be so inexpensive that users may find it optimal to keep or purchase more than one system, or multiple-mode translation devices.

21. The Commission has historically played a major role in standards-setting for interoperability purposes. The greatest regulatory involvement has been in the broadcasting, maritime, and aviation services for which we have adopted detailed technical regulations with the clear purpose of ensuring a high degree of interoperability (and effective spectrum use). The NTSC⁷ color television transmission standard is a specific example. In fact, it seems that, with few exceptions, whenever it has appeared that there are clear benefits to be obtained from interoperability, we have incorporated standards in our regulations.

22. In recent years the Commission has set technical interoperability standards for the cellular radio service, tentatively declined to do so for teletext, and declined to do so for AM stereo. Nonetheless, for AM stereo, quality standards (as opposed to interoperability standards) were adopted and compatibility with existing monophonic receivers was required. These recent actions indicate that the Commission does find reason to reach different conclusions in different cases, when considering whether to adopt technical regulations or to rely on the marketplace for purposes of assuring interoperability. Increasingly, however, we have recognized both the potential frustration of innovation and the cost, both direct and indirect, of employing our regulatory process to set such standards and have generally forborne from adopting detailed technical regulation except in cases in which the

uncertainties of reliance on the marketplace clearly could not be tolerated.

23. This Notice, however, is concerned with the question of what to do, if anything, about *existing* interoperability regulations. Regardless of the purpose for an interoperability standard when it is adopted, that rule may no longer be needed after a period of time. After a standard has been in effect for a number of years and all users are meeting it with relative ease, maintaining that standard as a regulation may no longer be necessary to ensure continued interoperability.

24. What would happen, for example, if we deleted the NTSC television transmission standards from our rules? Would large numbers of television stations suddenly switch to inferior quality signals or to non-compatible transmission modes? That likelihood seems remote since reception might be degraded or impossible using available receivers. Wouldn't the high cost of receiving a non-standard signal tend to discourage stations from switching to other formats except where a licensee sought to provide a new kind or quality of service? Would deletion of the standard from our rules benefit the public overall by removing regulatory obstacles to innovative alternatives to standard services of marginal value? Indeed, new services such as teletext, and closed captioning required positive Commission action before they could be used because their transmission would have violated our NTSC standard requirements.⁸ If the Commission deleted the NTSC standards from the rules, we would not only remove regulatory obstacles to changes in transmission standards, but also would ease the way for the further evolution of the NTSC format itself. While deletion for the NTSC standard in practical terms would likely not affect the traditional TV services or equipment it could remove impediments to the introduction of new services or to technical innovation.

25. On the other hand in some services interoperability is a required safety factor, often mandated by treaty, and this must be considered along with other factors when changing technical standards. For example, in the marine VHF service (§ 83.851 *et seq.*) there are

specific technical standards on emissions in accordance with both our rules and international agreements. There is an assumption that instant interoperability between diverse stations is essential to safety of life and property. Any technical flexibility that would impede such instant interoperability is unacceptable. Regulation of these services is in large measure an outgrowth of international agreements. If these regulations are to be reconsidered, the appropriate forum would be the international arena.

26. Many of our services in which interoperability regulations exist are not primarily concerned with safety, however. If we were to remove such regulations in cases in which the service involved is mature, the present standard would be expected to be utilized in practice for a considerable period of time. If and when innovations do occur, they are likely to be gradual and, as we have said, initially replace those signals of lowest value to the public. Thus, we are inquiring whether some of our existing interoperability standards may have outlived their usefulness and whether their deletion from our regulations would have principally beneficial effects. Comments on which particular interoperability standards may fit this category are requested.

Interference Control

27. Of the three basic types of technical regulations, control of interference is easiest to justify under our statutory mandate. If there were no potential for interference, there would probably be no radio licensing, as it was the chaotic interference between AM broadcasting stations in the early 1920's which eventually led to the creation of the Federal Radio Commission in 1927, which became the FCC in 1934.

28. Interference is a negative effect of radio use caused by one radio system user to another. Interference caused by one radio user can increase costs to others, or to society in general. Absent some form of government intervention by regulation or law, severe conflicts between users of the spectrum would be inevitable. Thus, we accept the premise that interference control is a valid, even essential, government function. However, we do not necessarily accept that our existing technical regulations are the most efficient or least constraining means of achieving interference control.

29. Our existing technical regulations exercise interference control by limiting the interference potential of transmitting systems and other radio frequency devices, including receivers, low power

⁷The National Television Systems Committee (NTSC) of the Electronics Industries Association (EIA) prepared the standard specifications approved by the FCC, December, 1953, for commercial color television broadcasting.

⁸In the case of closed captioning, the Commission was petitioned in November, 1975, and a Report and Order implementing the Commission's decision was released in December, 1976 (Docket 20093). In the case of teletext, the Commission was first petitioned in July, 1980, and a Notice of Proposed Rule Making was released in November, 1981 (BC Docket 81-741). A final decision in the matter of teletext has not yet been reached by the Commission.

communications devices, and ISM equipment. Typically, they do this by limiting the power, bandwidth and other technical parameters of emissions at the output of the transmitters and by limiting radio frequency energy radiated by receivers and other non-licensed radio frequency devices, as well as radio frequency voltage conducted on to public utility power lines by the devices. In many cases they also limit effective radiated power of transmitting stations, which is affected not only by transmitter output power but also by the characteristics of the transmitting antenna system. In most instances, our rules also limit antenna height⁹ and, in some cases, antenna polarization and directivity.

30. The rules on transmitter output power usually contain both a maximum, which is normally specified at the output terminals of the transmitter and a roll-off function which defines how the power in the emission must decrease at frequencies closer to the edges of the channel and in adjacent and other channels. This roll-off specification varies depending upon the intended service and the type of modulation to be used.

31. The other emission regulations typically used are specifications on frequency tolerance and modulation type. Frequency tolerance rules generally specify the maximum permissible frequency departure from the assigned frequency. This departure usually results from instability of the frequency control system of the transmitter due to transmitter aging and environmental factors such as vibration and temperature extremes. Modulation rules specify the method (and sometimes the extent) by which transmitter output power and frequency may be varied as a function of time to convey information or produce other desired communications effects. Normally, the rules specify, and therefore limit, the methods of modulation which may be employed on particular channels.

32. As indicated, the purpose of these technical regulations, from the standpoint of interference control,¹⁰ is to limit the interference potential of transmitting systems. While all of these regulations may have some impact on interference, some would appear to have a heavier impact than others. The most important rules, it would appear, are those which limit transmitter or system output power and power roll-off as a

function of frequency. In fact, these overall bandwidth/power-related rules may be so all-encompassing from an interference control standpoint that separate input type rules on modulation and frequency tolerance may not always be necessary. Eliminating such additional restrictions would increase system design flexibility, but could complicate frequency assignment and frequency coordination problems, which bear upon spectrum efficiency. Additionally, specific frequency tolerances are required by international agreements in some services.

33. If, for example, we were to eliminate input restrictions on modulation type (while retaining existing power limits and roll-off specifications) licensees on these channels would be free, from a regulatory standpoint, to use innovative modulation methods, perhaps even multiple emissions, within a single channel. Our ultimate regulatory goals of controlling interference on the assigned channel and other spectrum would be maintained, but with less regulatory constraint on the use of the assigned channel. Assuming that existing maximum power limits and roll-off rules are retained, we request comment as to whether the use of new modulation types will cause any significant increase in interference to either co-channel or adjacent channel receivers of present design. If the channels involved are not assigned on an exclusive basis, a change in modulation type by one or more users could disrupt the established channel sharing order. But there are many bands and services in which channels are assigned exclusively where the deletion of modulation rules may have little or no effect on interference, while increasing design flexibility. Moreover, on shared channels, innovative modulation techniques might be allowed if all users voluntarily agree. Comments should also focus on the tradeoff between achieving flexibility and achieving nationwide interoperability for services such as common carrier land mobile, where nationwide compatibility of equipment for use with facilities of diverse service providers has been determined to be desirable.

34. Similar reasoning can be applied to frequency tolerance rules. As long as transmitters are required to operate within the power and frequency roll-off envelope specified for authorized channels, does it matter (from an interference standpoint) how much of a channel is occupied by the emission and how much is allotted to account for frequency tolerance? Since existing roll-

off rules do not take frequency tolerance into account, they would have to be broadened slightly if the tolerance rules were to be eliminated. This change is a relatively simple modification. Deleting the tolerance rules would therefore appear to be a low-cost way to increase licensee flexibility without increasing interference. However, where channels are not assigned on an exclusive basis, there may be cases where frequency tolerance limits should be kept to maintain interoperability. Furthermore, frequency tolerance may be required in bands where separation distances between co-channel stations are based on carefully controlled carrier frequency relationships, e.g. television station offset frequency assignments. Here too, comments should focus on the tradeoff between potential flexibility and nationwide service compatibility in common carrier land mobile services.

35. If, as suggested in the preceding discussion, input rules on modulation and frequency tolerance were relaxed or deleted in certain bands, the principal remaining emission limits in those bands would be the rules on maximum power and roll-off. While we see no way to eliminate such power related limits, it may be possible to simplify them somewhat. Our rules now typically limit both the output power of transmitters and their effective radiated power (ERP). It is ERP which determines the interference potential of a radio frequency emission source; input power is merely a factor affecting ERP. Since ERP limits provide a more direct means of controlling the interference output potential of transmitting systems, where such limits exist it may not be necessary to specify a limit on transmitter power as well. Dropping the transmitter power limit may be feasible in some services and, where done, would permit greater flexibility in system design than now exists and, as long as the effective radiated power limits are maintained, should have no effect on interference. However, in services such as the Citizen Band Radio Service, where the licensee's technical sophistication is usually rather limited, requirements on transmitter output power which is more easily measured than ERP, may be maintained.

36. An even less constraining method of controlling co-channel interference might be direct regulation of permissible coverage area and field strength. Under this Approach a channel assignee (licensee) would be permitted to use any combination of radiated power, antenna directivity and location within the specified coverage area, as long as the expected field strength (defined

⁹ Our rules also limit antenna height for aeronautical safety reasons, consistent with FAA requirements.

¹⁰ Some of these rules (e.g., modulation type) may also ensure interoperability.

statistically) at the area boundaries did not exceed the specified limit. Compliance with the boundaries did not exceed the specified limit. Compliance with the boundary field strength limit could be determined through standard calculation methods, also specified in the rules. The same calculation methods could also be used to convert the present power and antenna height limits into equivalent coverage area and boundary field strength limits.

37. The basic objective of these regulatory changes would be to increase flexibility in system design as much as possible without increasing potential interference beyond what exists under our present technical rules. Where we are dealing with new, unoccupied channels for which there are no existing technical rules, even greater flexibility may be possible. For example, in a recent decision in PR Docket No. 79-191 releasing 250 channels in the 800 MHz band, the Commission set many new precedents for technical flexibility. For this new spectrum, users are allowed to subdivide channels into narrower channels (such as to allow single-side-band (SSB) use) where the channel or channels are assigned to an SMRS licensee or exclusively to a single licensee, or where all users of a system agree. Also, upon justification, they are permitted to group contiguous channels and use them as a larger bandwidth channel (for applications such as time division multiple access (TDMA)). Users who chose these options would be required to meet the out-of-band emission limits of § 90.209 and to keep their power, averaged over the channel(s) involved the same as it normally would be under the previous emission standards. In the case of users who have non-contiguous channels the new rules allow voluntary exchanges of channels with other licensees in order to develop contiguous blocks.

38. We seek comments as to whether and with what modifications this new type of technical flexibility may be extended to established bands and services. Such flexibility could give licensees valuable options in introducing innovative technology and avoid the need for Commission action and delay when new technologies are proposed.

39. While we stated in the above mentioned proceeding that we did not intend that the increased flexibility should lead to co-channel or adjacent channel interference, we did not adopt specific rules to prevent its occurrence. However, the type acceptance of transmitters occupying more than one channel will require a waiver of § 90.203

in which we could address the interference potential of such a system. We seek comments on whether specific rules are needed to prevent such interference and, if so, how they might be designed to keep maximum flexibility. If specific rules are deemed necessary, one approach to this problem would be to define for each service nominal receiver characteristics that are typical of reasonable quality receivers in actual use. Licensees wishing to use a typical modulations could then measure the interference potential of their modulation on co-channel and adjacent channel users employing conventional modulation and nominal receivers. This measurement could then be compared to measurements of co-channel and adjacent channel interference between users employing conventional modulation. The measure of relative interference could be the ratio of power needed for the new modulation to degrade the victim receiver to a certain intelligibility (or bit error rate) compared to the amount of power needed by the conventional system to cause the same amount of degradation. Such a measure is similar to the I/S factor developed by Bell Labs to quantify the effectiveness of communications jammers.¹¹ Given the relative interference potential of a new modulation, presumably we could control its actual interference by requiring licensees who use it to limit their output power accordingly. For example, if a licensee was authorized 500 watts output of 25 kHz FM and wanted to use a new modulation whose relative interference potential was +3 dB, he could do so provided he limited his output power to 250 watts.

40. This then leads to the question of who would determine the relative interference potential. One method might be to have it done by the FCC laboratory as part of the equipment authorization process. This would be an objective measurement but due to limited staff availability, it might be almost as time consuming as a rulemaking for each modulation. Alternatively, we could let the manufacturer of a new type of equipment make the measurements and submit it for our review along with the equipment authorization application. This could allow a quick approval process for manufacturers who have the resources to perform the appropriate tests but would also involve a higher risk of interference to other users. Manufacturers without the resources for

¹¹ Bell Telephone Laboratories, "RCM Handbook No. 4, Communications Countermeasures", 1944, AD 130274. A copy of this handbook will be inserted in the record of this proceeding.

testing could still petition for waivers and/or rulemaking. We seek comments as to whether the relative interference of new signals can be defined as outlined above, whether this could be the basis of expedited introduction of new technology consistent with controlling interference, what types of tests would be needed to measure relative interference, and what alternative methods exist which would allow rapid introduction of new technologies.

The Spectrum Efficiency Issue

41. A reason often given to justify standards on modulation type and frequency tolerance is the need to control the efficiency of spectrum use, i.e., how much spectrum is used to produce a given output. However, for the most part, it would appear that minimum spectrum efficiency objectives can be met without the use of detailed in-band regulations. The most obvious and direct method, and one now used extensively, is to specify the maximum bandwidth which may be authorized for a particular communication service or function. For example, in the portion of the UHF spectrum allocated for some land mobile uses, we presently authorize a maximum width of 25 kHz per voice channel. Similarly, in the UHF-TV service our rules authorize a maximum channel width of 6 MHz for the full power transmission of a single standard color television signal. It is this specification of communication function and maximum width, coupled with our co-channel and adjacent channel assignment procedures, which provides primary control over spectrum efficiency through control of interference.

42. Thus, in bands in which we specify a single communication function and a maximum bandwidth, additional technical regulations may not be necessary for controlling spectrum efficiency. In some services and bands, however, we do not limit the use of a channel to a particular communication function. When the permissible use of a channel is very broadly defined (e.g., data) and is not limited to a single function (e.g., voice) merely specifying a maximum channel width does not effectively control spectrum efficiency. In such situations, we often prescribe a particular modulation type of known efficiency. In one case, we have specified a minimum data rate (bits per second) per hertz of authorized bandwidth as an efficiency standard. [47 CFR 21.122(a)(1)]. This latter approach provides a more direct control over efficiency. It minimizes the seeking of additional spectrum by licensees, and it is less of a constraint on system design.

However, where analog modulation is used, the direct specification of spectrum efficiency in terms of information content is more difficult. How to optimize spectrum efficiency in multi-function bands in which analog modulation is used, without specifying particular modulation types or other similarly constraining system design regulations, presents a challenging area for further study. Suggestions as to how this might be accomplished would be welcome in this proceeding.

43. As a final point on spectrum efficiency, we believe that, as a general matter, the more we are able to expand licensee choice through deregulation, the more licensees will be motivated through self interest to use their channels in an economically and spectrally efficient manner. Removing technical restrictions, as suggested herein, would increase opportunities for system design innovation, without the unavoidable administrative delay which results when changing FCC rules. Thus, to the extent that we are moving in the direction of deregulating spectrum use in general, the need to regulate spectrum efficiency in particular may be decreasing.

Summary

44. In the preceding discussion we have suggested that the need for many of our technical quality regulations may be diminishing, principally because of the trend toward greater diversity and competition in the telecommunications marketplace. We have also suggested that, especially in non-safety related services, many of our existing interoperability standards may no longer be necessary where the markets for those services are sufficiently well organized and mature. In such cases we are suggesting a sunset approach in which the standards would lose their regulatory status after a period of time.

45. From the standpoint of interference control, we have suggested that certain of our existing technical regulations, particularly those on modulation type and frequency tolerance, may not be necessary, and could be considered for deletion in the interest of greater design flexibility. Deletion of transmitter output power limits has also been suggested in cases in which both that limit and an effective radiated power limit exist. An alternative regulatory method has been discussed in which even greater system design flexibility might be possible by replacing existing limits on transmitter output power, antenna height, etc., with rules specifying permissible areas of operation and associated boundary limits on field strength or power flux

density. We would expect to retain existing power roll-off specifications and maximum ERP limits under any of these alternative regulatory approaches to limit interference to co-channel and adjacent channel operations.

46. Most of our discussion so far is in this NOI has focused on the development of general principles and alternative regulatory concepts which might be used in reducing or otherwise improving existing technical regulations. While we have suggested such principles and alternative approaches and have discussed some of the issues associated with them we recognize that their actual application will raise issues peculiar to the specific services, systems, and bands involved. We have not attempted to address these service-related issues in any depth in this discussion, but we do intend to address them in this proceeding. Consequently, in addition to comments on the general regulatory concepts which we have discussed so far, we invite comments on the applicability of these concepts to particular services and bands. The attached table will help in identifying rules and services which may be affected as a result of applying the concepts which we have discussed.

Questions

47. The questions listed below are not exhaustive. They merely typify the Commission's areas of concern. Information not directly responsive to these questions but relevant to the general subject matter of the Inquiry is welcome and invited. To facilitate staff review and reply comments, each response should clearly state the precise topic or question being addressed and the services and frequency bands to which the comments apply. Responses to the specific questions that follow should be identified by the question label.

48. Please provide answers and supporting data to the following questions:

(a) To what extent has increased competition and diversity of service and technologies created sufficient market incentives to warrant deletion of quality related technical regulations? In what particular services and bands should such regulations be deleted beyond those proposed herein? What other factors besides competition and diversity should be considered in deciding whether or not such regulations are needed? To what extent, in particular cases, is the consumers' ability to discern, compare and make choices among different quality levels a factor? To what extent do vendors' incentives, absent direct regulatory

intervention, assure achievement of adequate service quality?

(b) If the Commission removes some or all its technical quality regulations, will users in smaller, less competitive markets suffer? Should such removal be limited solely to markets in which there is effective competition?

(c) To what extent have some or many of the Commission's technical interoperability regulations outlived their usefulness? Which specific rules of this nature should be considered for immediate elimination. Which ones might be deleted after an additional, "sunset" period?

(d) What kinds of beneficial innovations may be possible as a result of deletion of quality and/or interoperability regulations in specific bands and services. In particular, would deletion of the detailed NTSC standards for television broadcasting service speed the introduction of beneficial video technologies or other types of home information services? Is there a mid-ground, e.g., should the Commission require television broadcast signals to be compatible with existing NTSC-type receivers without mandating explicit transmission specifications?

(e) In regard to interference control, to what extent and in what bands and services are existing input-oriented regulations (e.g., modulation and frequency tolerance) redundant in achieving a necessary degree of control? What beneficial innovations in system design might be made possible by deletion of these rules?

(f) Which of the various regulatory methods available for controlling spectrum efficiency, e.g., specifying channel size and communication function, specifying a particular technology or specifying transmission rate per unit bandwidth, would be most beneficial in particular bands and services? Should services of nationwide scope be differentiated from localized services, or services used by single entities? Since specifying transmission rate per unit bandwidth provides greatest system design flexibility, how can it, or a similar approach, be applied to analog systems? How beneficial is a technology-based efficiency standard, e.g., specifying trunking? Are there other, more effective approaches that we should consider? How should we determine the appropriate level of spectrum efficiency for a particular band and service? Should we consider the economic value (scarcity) of the spectrum or other factors in making this determination? To what extent are marketplace incentives developing which can be relied upon as a substitute

for technical regulation in ensuring proper levels of spectrum efficiency? What might be done to increase such incentives?

Notice of Proposed Rule Making

49. As stated in the introduction, while we are seeking comments on broad regulatory principles, we are also proposing to eliminate certain technical regulations which we believe may no longer be necessary. The specific rules are listed in Appendix B of this proceeding. We invite comments on these specific proposed deletions as well as on the broader issues previously addressed. We expect to issue further notices of proposed rulemaking to revise other technical regulations after we have examined the responses to this notice.

50. In the case of the broadcast services, it is important to note that the Commission has *never* regulated the quality of what we term the "end product," that is, the ultimate video and/or audio information received by the public. For example, the FCC does not regulate program content or quality. Thus, if a television or radio station transmits an unclear picture (e.g. due to camera focussing problems or film quality) or an unclear sound (e.g. due to scratches or warps on records), that station is not violating our rules. Moreover, generally the FCC does not regulate the quality of equipment used to receive broadcast signals.¹² However, this equipment, namely receivers and receiving antennas, certainly impacts the quality of the information delivered to the public; indeed, in some instances, this equipment dominates signal quality. Regardless of our lack of control over the complete broadcast system, we have traditionally required quality standards on all the transmitting equipment which broadcast signals pass through before reaching their ultimate destination. In re-examining our technical regulations, we conclude tentatively that to continue to regulate only a part of the total system through which an unregulated signal must pass may not serve a useful purpose.

51. We further recognize that the competition among broadcasters and certain other service providers is probably sufficient to regulate picture and sound quality. Thus, we propose to eliminate the transmission system requirements detailed in §§ 73.40(a) (1) thru (6), § 73.317(a) (1) thru (5), and § 73.687 (a) and (b) of our Rules and Regulations. These sections govern the

fidelity of AM, FM and TV transmitters, respectively, and as such, are quality control regulations. We request comment on the impact, if any, of the implementation of these proposals on broadcast service quality. We also request comments on whether the Commission could eliminate other quality control regulations from its Rules. The attached table is a tentative listing of all technical standards found in our Rules. The regulations that appear to be related to quality are indicated in the last column. We invite suggestions to add other regulations to the table, provided one can justify their inclusion as technical standards. We particularly welcome discussion of the table and suggested changes.

52. The Commission's Rules covering Radio Frequency Devices¹³ are intended to control the interference potential of electronic devices that employ radio frequency energy in their normal operation. The vast majority of the technical regulations applicable to radio frequency devices are, as such, interference based regulations. In our review of the rules, however, we did find a few exceptions in Subpart G, Auditory Assistance Devices.

53. This Subpart provides for the operation of systems designed to aid the hearing-impaired. A low powered transmitter is used to transmit information to a group of receivers. These systems are typically employed as teaching aids for hearing-impaired students. They can also be used for distribution of audio to the hearing-impaired at locations such as churches and theaters. Because of their low interference potential, these systems are operated without an individual license.

54. While some of the technical standards applicable to auditory assistance devices are interference-based, such as the receiver emission limitation of Section 15.367, others are apparently intended to ensure system quality. Rule §§ 15.361, 15.363, and 15.365 control the quality of auditory assistance receivers by setting standards for receiver characteristics such as stability and selectivity. When the rules were adopted, hearing-impaired children were concentrated in relatively few schools so there was a need to accommodate a high number of channels in a limited amount of available spectrum. To achieve this the channels were spaced closely together and receivers were required to discriminate among many channels in dense radio frequency environment. We believe that manufacturers have gained considerable experience in designing

equipment under the high density channeling arrangement and are in the best position to decide what receiver specifications are needed to ensure good performance. Furthermore, with the "mainstreaming" of handicapped children¹⁴ there are now many schools with fewer hearing-impaired students and thus there is now a need for economical systems that need not work under a high density channeling plan. Therefore, we propose to delete §§ 15.361, 15.363 and 15.365 from our rules. We solicit comments on whether manufacturers have sufficient incentives to safeguard against degradation of these devices for the hearing-impaired and whether manufacturer guarantees are adequate to ensure that systems work in their intended environment.

Procedural Matters

55. Accordingly, the Commission adopts this *Notice of Inquiry and Proposed Rule Making* under the authority contained in Section 4(i) of the Communications Act of 1934, as amended.

56. Pursuant to Section 605 of the Regulatory Flexibility Act (Public Law 96-354, September 19, 1980, 94 Stat 1164, 5 U.S.C. 601 *et seq.*) the Commission certifies that the action proposed herein will not have a significant economic impact on a substantial number of small entities. The proposed changes will affect small and large businesses alike by reducing slightly the burdens placed on them by the existing Rules.

57. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed

¹² The Commission has made an exception to this general policy in the case of UHF television receivers. See 47 CFR 15.65, 15.66, 15.67, and 15.68.

¹³ 47 CFR 15.1-15.423.

¹⁴ 42 FR 42497 (August 23, 1977).

written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of Commission procedures governing *ex parte* presentations in informal rule making is available from the Consumer Assistance and Information Division, FCC, Washington, D.C. 20554.

58. Pursuant to the procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before May 2, 1983 and reply comments on or before June 1, 1983. All relevant and timely comments

will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

59. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

60. In accordance with the provisions of Section 1.419 of the Commission's Rules, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 11 copies. Members

of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All comments should be clearly marked General Docket No. 83-114 and will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. All written comments should be sent to: Secretary, Federal Communications Commission, Washington, D.C. 20554. For further information on this proceeding, contact Michael Marcus at (202) 632-7040. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632-7000. Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

OST REVIEW OF COMMISSION RULES: CLASSIFICATION OF TECHNICAL REGULATIONS¹

	Interoperability		Efficiency	Interference	Quality	
	Safety	Non-safety			System compatibility	Minimum performance
Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations:						
Subpart I—Marketing of Radiofrequency Devices:						
Sec. 2.815 External radiofrequency power amplifiers	—	—	—	X	—	—
Part 5—Experimental Radio Services (Other Than Broadcast):						
Subpart C—Technical Standards:						
Sec. 5.101 Frequency stability	—	—	X	—	—	—
Sec. 5.102 Types of emission	—	—	X	—	—	—
Sec. 5.103 Emission limitations	—	—	X	—	—	—
Sec. 5.104 Modulation requirements	—	—	X	—	—	—
Sec. 5.105 Power and antenna height	—	—	—	X	—	—
Sec. 5.106 Wildlife tracking and ocean buoy tracking operations	—	—	X	X	—	—
Subpart H—Student Authorization:						
Sec. 5.405 Power limitation	—	—	—	X	—	—
Part 15—Radio Frequency Devices:						
Subpart A—General:						
Sec. 15.7 General requirement for restricted radiation devices	—	—	—	X	—	—
Subpart C—Radio Receivers:						
Sec. 15.59 Interference requirement for a CB receiver	—	—	—	X	—	—
Sec. 15.63 Radiation interference limits	—	—	—	X	—	—
Sec. 15.65 All-channel television broadcast reception: General requirement, and antennas	—	—	—	—	X	—
Sec. 15.66 All-channel television broadcast reception: Noise figure	—	—	—	—	—	X
Sec. 15.67 All-channel television broadcast reception: Peak picture sensitivity	—	—	—	—	—	X
Sec. 15.68 All-channel television broadcast reception: Receivers manufactured on or after July 1, 1971	—	—	—	—	—	X
Subpart D—Low Power Communication Devices—General Requirements:						
Sec. 15.105 Class B emission prohibited	—	—	—	X	—	—
Sec. 15.111 Operation below 1600 KHz	—	—	—	X	—	—
Sec. 15.112 Alternative provisions for operation between 160 and 190 KHz	—	—	—	X	—	—
Sec. 15.113 Alternative provisions for operation between 510 and 1600 KHz	—	—	—	X	—	—
Sec. 15.114 Interim requirements for cordless telephone terminal devices operating between 26.97-27.2 MHz	—	—	X	X	—	—
Sec. 15.115 Interim requirements for operation between 26.97-27.27 MHz	—	—	X	X	—	—
Sec. 15.116 Operation of a non-voice device between 26.99-27.26 MHz	—	—	X	X	—	—
Sec. 15.118 Technical specification for the band 49.82-49.90 MHz	—	—	X	X	—	—
Sec. 15.119 Alternative technical specifications for the band 49.82-49.90 MHz	—	—	X	X	—	—
Sec. 15.120 Operation above 70 MHz	—	—	—	X	—	—
Subpart E—Low Power Communication Devices—Specific Devices:						
Sec. 15.153 Class B emission prohibited	—	—	—	X	—	—
Sec. 15.162 Operation in the band 88-108 MHz	—	—	X	X	—	—
Sec. 15.172 Operation in the band 38-41 MHz	—	—	X	X	—	—
Sec. 15.174 Operation in the band 88-108 MHz	—	—	X	X	—	—
Sec. 15.176 Operation in the band 174-216 MHz	—	—	X	X	—	—
Sec. 15.182 Operation above 70 MHz: Devices manufactured prior to July 15, 1963	—	—	—	X	—	—
Sec. 15.183 Operation above 70 MHz: Devices manufactured between July 15, 1963 and March 24, 1971	—	—	X	X	—	—
Sec. 15.184 Operation above 70 MHz: Devices manufactured after Mar. 24, 1971	—	—	X	X	—	—
Sec. 15.192 Alternative provisions	—	—	X	X	—	—
Subpart F—Field Disturbance Sensors:						
Sec. 15.305 General technical specification	—	—	X	X	—	—
Sec. 15.307 Permitted bands of operation	—	—	X	—	—	—

OST REVIEW OF COMMISSION RULES: CLASSIFICATION OF TECHNICAL REGULATIONS¹—Continued

	Interoperability		Efficiency	Interference	Quality	
	Safety	Non-safety			System compatibility	Minimum performance
Sec. 15.309 Emission limitations	—	—	—	X	—	—
Sec. 15.321 Emission limitations for operation under § 15.305(c)	—	—	—	X	—	—
Subpart G—Auditory Training Devices:						
Sec. 15.351 Frequencies available in the band 72-76 MHz	—	—	X	—	—	—
Sec. 15.353 Transmitter frequency tolerance (72-76 MHz)	—	—	X	—	—	—
Sec. 15.355 Transmitter power (72-76 MHz)	—	—	—	X	—	—
Sec. 15.357 Transmitter modulation requirements (72-76 MHz)	—	—	X	—	—	—
Sec. 15.361 Receiver frequency stability (72-76 MHz)	—	—	—	—	—	X
Sec. 15.363 Receiver selectivity and desensitization (72-76 MHz)	—	—	—	—	—	X
Sec. 15.365 Receiver image frequency rejection (72-76 MHz)	—	—	—	—	—	X
Sec. 15.367 Receiver emission limitation (72-76 MHz)	—	—	—	X	—	—
Subpart H—Class I TV Devices:						
Sec. 15.403 Output signal level	—	—	—	X	—	—
Sec. 15.405 Output terminals	—	—	—	—	—	X
Sec. 15.407 Transfer switch and isolation requirement	—	—	—	X	—	—
Sec. 15.419 Radiation interference limits	—	—	—	X	—	—
Part 18—Industrial, Scientific, and Medical Equipment:						
Subpart A—General:						
Sec. 18.13 ISM frequencies and frequency tolerances	—	—	X	—	—	—
Sec. 18.14 Operation on microwave frequencies	—	—	X	X	—	—
Subpart C—Ultrasonic Equipment:						
Sec. 18.71 Operation without a license	—	—	—	X	—	—
Sec. 18.72 Technical limitations	—	—	—	X	—	—
Subpart D—Industrial Heating Equipment:						
Sec. 18.102 Technical limitations	—	—	—	X	—	—
Subpart E—Medical Diathermy Equipment:						
Sec. 18.141 Operation on assigned frequencies	—	—	X	—	—	—
Sec. 18.142 Operation on unassigned frequencies	—	—	—	X	—	—
Subpart F—RF Stabilized Arc Welders:						
Sec. 18.161 Technical specifications	—	—	—	X	—	—
Subpart H—Miscellaneous Equipment:						
Sec. 18.261 Miscellaneous equipment	—	—	X	X	—	—
Subpart I—Induction Cooking Ranges:						
Sec. 18.272 Induction cooking range subject to these rules	—	—	X	—	—	—
Sec. 18.273 Radiation limit	—	—	—	X	—	—
Sec. 18.274 Conducted RF limit	—	—	—	X	—	—
Part 21—Domestic Public Fixed Radio Services:						
Subpart C—Technical Standards:						
Sec. 21.101 Frequency tolerance	—	—	X	—	—	—
Sec. 21.104 Types of emission	—	—	X	—	—	—
Sec. 21.107 Transmitter power	—	—	—	X	—	—
Sec. 21.108 Directional antennas	—	—	—	X	—	—
Sec. 21.109 Antenna and antenna structures	—	—	—	X	—	—
Sec. 21.110 Antenna polarization	—	—	X	X	—	—
Sec. 21.122 Microwave digital modulation	—	—	X	—	—	—
Subpart G—Digital Electronic Message Service:						
Sec. 21.503 Frequency stability	—	—	X	—	—	—
Sec. 21.506 Transmitter power	—	—	—	X	—	—
Sec. 21.507 Radiated power limitation in the 10,600-10,690 MHz band	—	—	—	X	—	—
Sec. 21.509 Antennas	—	—	—	X	—	—
Subpart I—Point-to-Point Microwave Radio Service:						
Sec. 21.701 Frequencies	—	—	X	X	—	—
Sec. 21.702 Transmitter power	—	—	—	X	—	—
Sec. 21.703 Bandwidth and emission limitations	—	—	X	—	—	—
Sec. 21.704 Modulation requirements	—	—	X	—	—	X
Subpart J—Local Television Transmission Service:						
Sec. 21.803 Transmitter power	—	—	—	X	—	—
Sec. 21.804 Bandwidth and emission limitations	—	—	X	—	—	—
Sec. 21.805 Modulation requirements	—	—	X	—	—	X
Subpart K—Multipoint Distribution Service:						
Sec. 21.904 Transmitter power	—	—	—	X	—	—
Sec. 21.905 Emissions and bandwidth	—	—	X	—	—	—
Sec. 21.906 Antennas	—	—	—	X	—	X
Sec. 21.907 Transmission standards	—	—	—	—	—	X
Part 22—Public Mobile Radio Services:						
Subpart C—Technical Standards:						
Sec. 22.101 Frequency tolerance	—	—	X	—	—	—
Sec. 22.104 Types of emission	—	—	X	—	—	—
Sec. 22.107 Transmitter power	—	—	—	X	—	—
Sec. 22.108 Directional antennas	—	—	—	X	—	—
Sec. 22.109 Antenna and antenna structures	—	—	—	X	—	—
Sec. 22.110 Antenna polarization	—	—	X	X	—	—
Sec. 22.122 Microwave digital modulation	—	—	X	—	—	—
Subpart G—Domestic Public Land Mobile Radio Service:						
Sec. 22.501 Frequencies	—	—	—	X	—	—
Sec. 22.503 Geographical separation of co-channel stations	—	—	—	X	—	—
Sec. 22.505 Antenna height-power limit for base stations	—	—	—	X	—	—
Sec. 22.506 Power limitations	—	—	—	X	—	—
Sec. 22.507 Bandwidth and emission limitations	—	X	X	—	—	—
Sec. 22.508 Modulation requirements	—	X	X	X	—	—
Sec. 22.522 Base station signaling system requirements for calling airborne stations	—	X	—	—	—	—
Subpart H—Rural Radio Service:						
Sec. 22.602 Transmitter power	—	—	—	X	—	—
Sec. 22.603 Types of emission	—	X	X	—	—	—
Sec. 22.604 Emission limitations	—	—	X	—	—	—
Sec. 22.605 Modulation requirements	—	—	X	—	—	X
Subpart K—Domestic Public Cellular Radio Telecommunications Service:						
Sec. 22.903 Cellular system service areas	—	—	—	X	—	X

OST REVIEW OF COMMISSION RULES: CLASSIFICATION OF TECHNICAL REGULATIONS¹—Continued

	Interoperability		Efficiency	Interference	Quality	
	Safety	Non-safety			System compatibility	Minimum performance
Sec. 22.904 Power limitations	—	—	—	X	—	—
Sec. 22.905 Antenna height-power for base stations	—	—	—	X	—	—
Sec. 22.906 Types of emissions and modulation requirements	—	X	X	—	—	X
Sec. 22.907 Emission requirements	—	—	—	X	—	—
Sec. 22.915 Cellular system compatibility specification	—	X	—	—	—	—
Subpart L—Offshore Radio Telecommunications Service:						
Sec. 22.1001 Frequencies	—	—	—	X	—	—
Sec. 22.1002 Power limitations	—	—	—	X	—	—
Sec. 22.1003 Bandwidth and emission limitations	—	—	X	—	—	—
Sec. 22.1004 Modulation requirements	—	—	X	X	—	—
Part 23—International Fixed Public Radiocommunication Services:						
Sec. 23.13 Types of emission	—	—	X	—	—	—
Sec. 23.15 Emission limitations	—	—	X	—	—	—
Sec. 23.18 Frequency tolerances	—	—	X	—	—	—
Sec. 23.18 Authorization of power	—	—	—	X	—	—
Sec. 23.19 Use of directional antennas	—	—	—	X	—	—
Sec. 23.20 Assignment of frequencies	—	—	—	X	—	—
Part 25—Satellite Communications:						
Subpart C—Technical Standards:						
Sec. 25.202 Frequencies, frequency tolerance and emission limitations	—	—	X	—	—	—
Sec. 25.204 Power limits	—	—	—	X	—	—
Sec. 25.205 Minimum angle of antenna elevation	—	—	—	X	—	—
Sec. 25.208 Power flux density limits	—	—	—	X	—	—
Sec. 25.209 Antenna performance standards	—	—	—	X	—	—
Sec. 25.252 Maximum permissible interference power	—	—	—	X	—	—
Sec. 25.253 Determination of coordination distance for near great circle propagation mechanisms	—	—	—	X	—	—
Sec. 25.254 Computation of coordination distance contours for propagation modes associated with precipitation scatter	—	—	—	X	—	—
Sec. 25.255 Guidelines for performing interference analyses for precipitation scatter modes	—	—	—	X	—	—
Part 68—Connection of Terminal Equipment to the Telephone Network: ²						
Subpart D—Conditions for Registration:						
Sec. 68.302 Environment simulation	—	—	—	—	—	—
Sec. 68.304 Leakage current limitations	—	—	—	—	X	—
Sec. 68.306 Hazardous voltage limitations	—	—	—	—	X	—
Sec. 68.308 Signal power limitation	—	—	—	—	X	—
Sec. 68.310 Longitudinal balance limitations	—	—	—	—	X	—
Sec. 68.312 On-hook impedance limitations	—	—	—	—	X	—
Sec. 68.314 Billing protection	—	—	—	—	X	—
Subpart F—Connectors:						
Sec. 68.500 Specifications	—	—	—	—	X	X
Sec. 68.502 Configurations	—	—	—	—	X	—
Sec. 68.504 Adapters	—	—	—	—	X	—
Part 73—Radio Broadcast Services:						
Subpart A—AM Broadcaster Stations:						
Sec. 73.40 Transmission system requirements	—	—	—	—	—	X
Sec. 73.51 Determining operating power	—	—	—	X	—	—
Sec. 73.182 Engineering standards of allocation	—	—	—	X	—	X
Sec. 73.187 Limitation on daytime radiation	—	—	—	X	—	X
Sec. 73.62 Directional antenna system tolerances	—	—	—	X	—	X
Sec. 73.189 Minimum antenna heights or field strength requirements	—	—	—	—	—	X
Subpart B—FM Broadcast Stations:						
Sec. 73.207 Minimum mileage separation between co-channel and adjacent-channel stations on commercial channels	—	—	—	X	—	—
Sec. 73.211 Power and antenna height requirements	—	—	—	X	—	X
Sec. 73.213 Stations at spacing below the minimum separations	—	—	—	X	—	—
Sec. 73.254 Equipment performance measurements	—	—	—	—	—	X
Sec. 73.267 Operating power, determination and maintenance of	—	—	—	X	—	X
Sec. 73.268 Modulation	—	—	X	—	—	—
Sec. 73.269 Frequency tolerance	—	—	X	—	—	—
Sec. 73.297 Stereophonic broadcasting	—	—	—	—	X	—
Sec. 73.316 Antenna systems	—	—	—	X	—	—
Sec. 73.317 Transmission system requirements	—	—	—	—	—	X
Sec. 73.319 Subsidiary communications multiplex operations: engineering standards	—	—	—	X	—	X
Sec. 73.322 Stereophonic transmission standards	—	—	—	—	X	X
Subpart C—Noncommercial Educational FM Broadcast Stations:						
Sec. 73.507 Minimum distance separations between co-channel and adjacent-channel stations	—	—	—	X	—	—
Sec. 73.510 Antenna systems	—	—	—	—	—	X
Sec. 73.511 Power and antenna height requirements	—	—	—	X	—	—
Sec. 73.567 Determining operating power	—	—	—	X	—	X
Sec. 73.596 Stereophonic broadcasting	—	—	—	—	X	—
Subpart E—Television Broadcast Stations:						
Sec. 73.610 Separations	—	—	—	X	—	—
Sec. 73.614 Power and antenna height requirements	—	—	—	X	—	—
Sec. 73.682 Transmission standards	—	—	—	—	—	X
Sec. 73.683 Field intensity contours	—	—	—	—	—	X
Sec. 73.685 Transmitter location and antenna system	—	—	—	X	—	X
Sec. 73.687 Transmission system requirements	—	—	—	X	—	X
Sec. 73.699 TV engineering charts	—	—	—	X	X	—
Subpart F—International Broadcast Stations:						
Sec. 73.751 Power requirement	—	—	—	—	—	X
Sec. 73.753 Antenna	—	—	—	—	—	—
Sec. 73.766 Modulation and bandwidth	—	—	X	—	—	—
Sec. 73.767 Frequency tolerance	—	—	X	—	—	—
Subpart G—Emergency Broadcast System:						
Sec. 73.906 Attention signal	X	—	—	—	—	—
Sec. 73.940 Encoder devices	X	—	—	—	—	—
Sec. 73.941 Decoder devices	X	—	—	—	—	—

OST REVIEW OF COMMISSION RULES: CLASSIFICATION OF TECHNICAL REGULATIONS—Continued

	Interoperability		Efficiency	Interference	Quality	
	Safety	Non-safety			System compatibility	Minimum performance
Part 74—Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services:						
Subpart A—Experimental Television Broadcast Stations:						
Sec. 74.132 Power limitations	—	—	—	X	—	—
Subpart B—Experimental Facsimile Broadcast Stations:						
Sec. 74.232 Power limitations	—	—	—	X	—	—
Subpart C—Developmental Broadcast Stations:						
Sec. 74.332 Power limitations	—	—	—	X	—	—
Subpart D—Remote Pickup Broadcast Stations:						
Sec. 74.431 Special rules applicable to remote pickup stations	—	—	—	X	—	—
Sec. 74.461 Transmitter power	—	—	—	X	—	—
Sec. 74.462 Authorized bandwidth and emissions	—	—	X	—	—	—
Sec. 74.463 Modulation requirements	—	—	X	—	—	—
Sec. 74.464 Frequency tolerance	—	—	X	—	—	—
Subpart E—Aural Broadcast STL and Intercity Relay Stations:						
Sec. 74.534 Power limitations	—	—	—	X	—	—
Sec. 74.535 Emission and bandwidth	—	—	X	—	—	—
Sec. 74.536 Directional antenna required	—	—	—	X	—	—
Sec. 74.561 Frequency tolerance	—	—	X	—	—	—
Subpart F—Television Auxiliary Broadcast Stations:						
Sec. 74.636 Power limitations	—	—	—	X	—	—
Sec. 74.661 Frequency tolerance	—	—	X	—	—	—
Subpart G—Television Broadcast Translator Stations:						
Sec. 74.702 Frequency assignment	—	—	—	X	—	—
Sec. 74.735 Power limitations	—	—	—	X	—	—
Sec. 74.736 Emissions and bandwidth	—	—	X	—	—	—
Sec. 74.750 Transmitters and associated equipment	—	—	—	—	X	X
Sec. 74.761 Frequency tolerance	—	—	X	—	—	—
Subpart H—Low Power Auxiliary Stations:						
Sec. 74.861 Technical requirements	—	—	X	X	—	—
Subpart I—Instructional Television Fixed Service:						
Sec. 74.935 Power limitations	—	—	—	X	—	X
Sec. 74.936 Emissions and bandwidth	—	—	X	—	—	—
Sec. 74.938 Transmission standards	—	—	—	—	X	—
Sec. 74.939 Special rules governing ITFS response stations	—	—	X	X	—	—
Sec. 74.950 Equipment performance and installation	—	—	—	—	X	—
Sec. 74.961 Frequency tolerance	—	—	X	—	—	—
Sec. 74.970 Modulation limits	—	—	—	—	X	X
Subpart L—FM Broadcast Translator Stations and FM Broadcast Booster Stations:						
Sec. 74.1235 Power limitations	—	—	—	X	—	—
Sec. 74.1236 Emission and bandwidth	—	—	X	—	—	—
Sec. 74.1250 Equipment and installation	—	—	—	X	—	X
Sec. 74.1251 Frequency tolerance	—	—	X	—	—	—
Part 76—Cable Television Service:						
Subpart K—Technical Standards:						
Sec. 76.605 Technical Standards	—	—	—	—	—	X
Sec. 76.610 Operation in the frequency bands 108-136 and 225-400 MHz	—	—	—	X	—	—
Sec. 76.611 Operation near certain aeronautical and marine emergency radio frequencies	—	—	—	X	—	—
Part 78—Cable Television Relay Service:						
Subpart B—Applications and Licenses:						
Sec. 78.18 Frequency assignments	—	—	X	X	X	—
Sec. 78.19 Interference	—	—	—	X	—	—
Subpart D—Technical Regulations:						
Sec. 78.101 Power limitations	—	—	—	X	—	X
Sec. 78.105 Antennas	—	—	—	X	—	—
Sec. 78.111 Frequency tolerance	—	—	X	—	—	—
Sec. 78.115 Modulation limits	—	—	X	—	—	—
Part 81—Stations on Land in the Maritime Services and Alaska—Public Fixed Stations:						
Subpart D—General Station Requirements	X	—	—	—	—	—
Subpart E—Standard Technical Requirements	X	—	—	—	—	—
Part 83—Stations on Shipboard in the Maritime Services:						
Subpart D—General Station Requirements	X	—	—	—	—	—
Subpart E—Standard Technical Requirements	X	—	—	—	—	—
Subpart R—Radiotelegraph Stations Provided for Compliance with Part II of Title III of the Communications Act or the Radio Provisions of the Safety Convention	X	—	—	—	—	—
Subpart S—Radiotelephone Stations Provided for Compliance with Part II of Title III of the Communications Act or the Radio Provisions of the Safety Convention	X	—	—	—	—	—
Subpart T—Radiotelephone Installations Provided for Compliance with Part III of Title III of the Communications Act	X	—	—	—	—	—
Subpart U—Radiotelephone Installations Provided for Compliance with the Great Lakes Radio Agreement	X	—	—	—	—	—
Subpart V—Type Approval of Compulsory Shipboard Equipment	X	—	—	—	—	—
Subpart X—Radiotelephone Stations Provided for Compliance with the Vessel Bridge-to-Bridge Radiotelephone Act	X	—	—	—	—	—
Subpart Z—Use of On-board Communications	X	—	—	—	—	—
Part 87—Aviation Services:						
Subpart A—General Information	X	—	—	—	—	—
Subpart B—Airborne Stations	X	—	—	—	—	—
Subpart C—Aeronautical Advisory Stations	X	—	—	—	—	—
Subpart D—Aeronautical Multicom Stations	X	—	—	—	—	—
Subpart E—Aeronautical En Route Stations	X	—	—	—	—	—
Subpart G—Flight Test Stations	X	—	—	—	—	—
Subpart H—Aviation Instructional Stations	X	—	—	—	—	—
Subpart I—Aldrome Control Stations	X	—	—	—	—	—
Subpart N—Radionavigation Land Stations	X	—	—	—	—	—
Subpart O—Civil Air Patrol Stations	X	—	—	—	—	—
Subpart P—Land Test Stations	X	—	—	—	—	—
Part 90—Private Land Mobile Radio Services:						
Subpart I—General Technical Standards:						
Sec. 90.205 Power	—	—	—	X	—	—

OST REVIEW OF COMMISSION RULES: CLASSIFICATION OF TECHNICAL REGULATIONS¹—Continued

	Interoperability		Efficiency	Interference	Quality	
	Safety	Non-safety			System compatibility	Minimum performance
Sec. 90.207 Types of emissions	—	X	X	—	—	—
Sec. 90.209 Bandwidth limitations	—	—	X	—	—	—
Sec. 90.211 Modulation requirements	—	—	—	—	—	X
Sec. 90.213 Frequency tolerance	—	—	X	—	—	—
Sec. 90.215 Transmitter measurements	—	—	—	X	—	—
Sec. 90.217 Exemption from technical standards	—	—	—	X	—	—
Subpart J—Non-Voice and other Specialized Operations:						
Sec. 90.235 Secondary fixed tone signaling and alarm operations	—	—	—	X	—	—
Sec. 90.239 Interim provisions for operation of automatic vehicle monitoring (AVM) systems	—	—	—	X	—	—
Sec. 90.241 Radio call box operations	X	—	—	X	—	—
Sec. 90.242 Travelers' information stations	X	—	—	X	—	—
Sec. 90.247 Mobile repeater stations	—	—	—	X	—	—
Sec. 90.249 Control stations	—	—	—	X	—	—
Subpart K—Standards for Special Frequencies or Frequency Bands:						
Sec. 90.253 Use of frequency 4363.8 kHz	—	—	—	X	—	—
Sec. 90.255 Assignment and use of the frequencies 27.235, 27.245, 27.255, 27.265 and 27.275 MHz	—	—	X	X	—	—
Sec. 90.257 Assignment and use of frequencies in the band 72-76 MHz	—	—	X	X	—	—
Sec. 90.261 Assignment and use of frequencies in the band 450-470 MHz for fixed operations	—	—	—	X	—	—
Subpart L—Authorization in the Band 470-512 MHz (UHF-TV Sharing):						
Sec. 90.307 Protection criteria	—	—	—	X	—	—
Sec. 90.315 Special provisions governing use of frequencies in the 488-494 MHz band (TV Channel 17) in the Southern Louisiana Offshore Zone	—	—	—	X	—	—
Subpart M—Special Regulations Governing Licensing and Use of Frequencies in the 806-821 MHz and 851-866 MHz Bands:						
Sec. 90.379 Limitations on power and antenna height	—	—	—	X	—	—
Sec. 90.381 Restrictions on operational fixed stations	—	X	—	—	—	—
Part 94—Private Operational-Fixed Microwave Service:						
Subpart C—Technical Standards:						
Sec. 94.63 Interference protection criteria for operational-fixed stations	—	—	—	X	—	—
Sec. 94.65 Frequencies	—	—	X	—	—	—
Sec. 94.67 Frequency tolerance	—	—	X	—	—	—
Sec. 94.71 Emission and bandwidth limitations	—	—	X	—	—	—
Sec. 94.73 Power limitations	—	—	—	X	—	—
Sec. 94.75 Antenna limitations	—	—	—	X	—	—
Sec. 94.77 Interference to geo-stationary satellites	—	—	—	X	—	—
Sec. 94.90 Special provisions for low power, limited coverage systems in the 12,200-12,700 MHz band	—	—	X	X	—	—
Sec. 94.92 Technical standards for stations authorized prior to July 1, 1976	—	—	X	X	—	—
Part 95—Personal Radio Services:						
Subpart A—General Mobile Radio Service:						
Sec. 95.55 Authorized frequencies	—	—	X	X	—	—
Sec. 95.59 Emission types authorized	—	X	X	—	—	—
Subpart C—Radio Control (R/C) Radio Service:						
Sec. 95.217 (R/C Rule 17) How high may I put my antenna? ²	—	—	—	X	—	—
Sec. 95.220 (R/C Rule 20) What communications may I transmit?	—	—	X	—	—	—
Subpart D—Citizens Band (CB) Radio Service:						
CB Rule 18 How high may I put my antenna? ²	—	—	—	X	—	—
CB Rule 20 How much power may I use?	—	—	—	X	—	—
Subpart E—Technical Regulations:						
Sec. 95.611 Availability of frequencies	—	X	—	X	—	—
Sec. 95.613 Transmitter power	—	—	—	X	—	—
Sec. 95.615 Frequency tolerance	—	—	X	—	—	—
Sec. 95.617 Emission limitations	—	—	X	—	—	—
Sec. 95.619 Modulation requirements	—	—	X	X	—	—
Part 97—Amateur Radio Service:						
Subpart C—Technical Standards:						
Sec. 97.61 Authorized frequencies and emissions	—	X	X	X	—	—
Sec. 97.65 Emission limitations	—	—	X	—	—	—
Sec. 97.67 Maximum authorized power	—	—	—	X	—	—
Sec. 97.69 Radio teleprinter transmissions	—	X	X	—	—	—
Sec. 97.77 Standards for type acceptance of external radio frequency power amplifier kits	—	—	—	X	—	—
Part 99—Disaster Communications Service:						
Subpart D—Operating Requirements:						
Sec. 99.33 Assigned frequencies and authorized emissions	X	—	X	—	—	—
Sec. 99.35 Transmitting power	—	—	—	X	—	—
Sec. 99.37 Equipment requirements	X	—	—	—	—	—

¹ X Indicates relevant classification. — Indicates classification not relevant.² While we recognize that the primary concern behind these regulations is protection of the telephone network, we have termed them quality regulations for the purposes of this proceeding. Although these particular restrictions on antenna height are the result of FAA policy, in general maximum antenna height restrictions are interference-based standards and we have classified these regulations as such.

Appendix B

Parts 15, and 73, of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 15—RADIO FREQUENCY DEVICES

§§ 15.361, 15.363, 15.365 [Removed]

1. Sections 15.361, 15.363, and 15.365 are removed.

PART 73—RADIO BROADCAST SERVICES

§ 73.40 [Amended]

1. In § 73.40, Transmission system requirements, paragraphs (a)(1) through (a)(6) are removed. The remainder of this paragraph, (a)(7) through (a)(14), may be redesignated (a)(1) through (a)(8), but will otherwise not be changed.

§ 73.317 [Amended]

2. In § 73.317, Transmission system requirements, paragraphs (a)(1) through (a)(5) are removed. The remainder of this paragraph, (a)(6) through (a)(14), may be redesignated (a)(1) through (a)(9), but will otherwise not be changed.

§ 73.687 [Amended]

3. In § 73.687, Transmission system

requirements, paragraphs (a) and (b) are removed, and the designators will be reserved for future use.

[FR Doc. 83-8070 Filed 4-1-83; 8:45 am]
BILLING CODE 6712-01-M

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-103; Notice No. 82-11]

Exemption; Driver Qualification Files

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on a proposal to grant, in part, a petition filed by the American Bakers Association. The petitioner requests an exemption from the driver qualification rules regarding certain paperwork and administrative requirements for drivers of motor vehicles having a gross vehicle weight rating between 10,001 and 15,000 pounds. The granting of the request would reduce paperwork requirements without an adverse effect on safety.

DATE: Comments must be received on or before July 5, 1983.

ADDRESS: Submit comments, preferably in triplicate, to BMCS Docket No. MC-103; Notice No. 82-11, Room 3404, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The American Bakers Association (ABA) has petitioned the FHWA to grant an exemption from the driver qualification rules regarding certain paperwork and administrative requirements for drivers operating vehicles having a gross vehicle weight rating (GVWR) between 10,001 and 15,000 pounds. There is an exemption for drivers of lightweight vehicles currently

in effect (49 CFR 391.62(a)). A lightweight vehicle is a vehicle having a GVWR of 10,000 pounds or less, provided that the vehicle is not used in the for-hire carriage of passengers or used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded (49 CFR 390.17).

The current exemption (49 CFR 391.62(a)), applicable to drivers who only operate lightweight vehicles, provides relief by excluding them from the requirements for:

1. The disclosure of, investigation into, and inquiries about, the background, character, and driving record of drivers, (49 CFR 391 Subpart C).
2. The road test and written examination, (49 CFR 391 Subpart D).
3. The medical examination, certificate of medical examination, and possession of a medical certificate, (49 CFR 391 Subpart E (§§ 391.41, 391.43, and 391.45)).
4. The maintenance of driver files and records, (49 CFR 391 Subpart F).

The purpose of these current exemptions is to relieve motor carriers of detailed recordkeeping and other administrative obligations which may be unduly burdensome given the nature of the operations involved. On the other hand, drivers of lightweight vehicles are not exempted from the requirements of the driver qualification rules: e.g., the requirement to hold a driver's license or permit, the requirement for minimum physical qualifications, and the requirement for knowledge and ability to operate motor vehicles safely upon the public highways.

In their petition, the ABA seeks to apply these exemptions to drivers of additional vehicles, specifically those between 10,001 and 15,000 pounds GVWR. They propose this be achieved in the most limited way possible by expanding the definition of "lightweight vehicle", only in its application to the qualification of drivers, 49 CFR 391.62(a), to include vehicles having a GVWR between 10,001 and 15,000 pounds.

Responding to the ABA petition, the FHWA issued an advance notice of proposed rulemaking (ANPRM) (47 FR 39698) on September 9, 1982 to solicit comments and data concerning the information the ABA used to support its petition.

In their petition, the ABA states that today's vehicles rated at between 10,001 and 15,000 pounds GVWR have size and handling characteristics similar to older vehicles rated at 10,000 pounds and less and are similar in terms of chassis, engine, power train, brake system, and tires. As a result, they say, vehicles

between 10,001 and 15,000 pounds GVWR have the same operational characteristics as the lighter rated vehicles and require no additional driver training.

Bakery trucks, like most trucks under 15,000 pounds GVWR, are used almost exclusively in local pick-up and delivery service, and no in long distance over-the-road movements. Thus, even when used beyond exempt intercity zones (49 CFR 390.16, 391.2), these trucks are used in the same type of local delivery service as vehicles operating within exempt zones. The ABA concludes that given the present exemption for local delivery operations, which includes an exemption from Part 391, even for drivers of the heaviest trucks on the road, the relief sought should be granted to ensure that vehicles which are used similarly—in local delivery service—are treated similarly.

Economic Impact

The ABA provided information which indicated that the cost of compliance with the paperwork requirements of Part 391 for two baking cooperatives having 15,500 vehicles subject to interstate use is over one-half million dollars annually. They state that the applicability of these regulations to drivers of all 10,001 to 15,000 pound GVWR vehicles in the baking industry alone results in very significant costs, which are incurred annually.

In addition to direct regulatory costs, they say, the continued application of these requirements discourages the baking industry from using more efficient trucks with greater payload capacity, even though those trucks have similar operating and safety characteristics. The ABA concludes that the cost of the paperwork requirements can result in a business selecting vehicles rated at less than 10,000 pounds GVWR when, but for the costs of those paperwork requirements, a higher rated vehicle would be more cost effective.

Advance Notice of Proposed Rulemaking

These questions asked in the advance notice in response to the petition were:

1. Do present vehicles, weighing between 10,001 to 15,000 pounds GVWR, have size and handling characteristics similar to older vehicles rated at 10,000 pounds or less? (When the original 10,000 pound exemption was granted, it was believed that their operational characteristics were the same as automobiles.)
2. Are vehicles between 10,001 to 15,000 pounds GVWR similar to vehicles under 10,000 pounds GVWR in terms of

chassis, engine, power train, brake system, and tires? What major structural or operational differences exist between these groups of vehicles?

3. Do any vehicles between 10,001 to 15,000 pounds GVWR require special or additional driver training or skills not required for vehicles of 10,000 pounds or less?

4. Are any vehicles between 10,001 to 15,000 pounds GVWR articulated vehicles? What is the most common configuration of these vehicles? Most unusual?

5. In what type operations are your vehicles of 10,001 to 15,000 pounds GVWR generally involved (intracity, pick-up and delivery, intercity, etc.)?

6. What is the annual total mileage operated by a typical vehicle weighing between 10,001 and 15,000 pounds GVWR?

7. Should drivers operating vehicles weighing between 10,001 and 15,000 pounds GVWR be exempt from the:

- (a) physical examination,
- (b) road test, and
- (c) written test.

8. Should motor carriers be exempt from performing background investigations, driving record investigations and maintenance of driver files for those drivers operating motor vehicles with a GVWR of 15,000 pounds and under? If so, why?

A total of 19 commenters responded to the ANPRM. Of that total, 13 commenters supported the petition, 2 commenters offered partial support, and 4 commenters opposed the petition totally.

Summary of Comments

There was unanimous agreement among those supporting the petition that vehicles having a GVWR between 10,001 and 15,000 pounds have size and handling characteristics similar to vehicles having a GVWR of 10,000 pounds or less.

The Private Truck Council of America, Inc., attributes the similarities to new technologies which have produced 15,000 pound GVWR vehicles with similar driving characteristics to lightweight vehicles. They state that driver visibility, automatic transmissions, and power assisted brakes all combine to make this larger vehicle behave similar to its lightweight counterpart.

Similarly, the ABA commented that improvements in automotive technology provide a basis for granting the requested exemption. They further commented that, "since the development of the present 10,000 pound exemption in 1975, the vehicle manufacturers and their suppliers have continuously

improved (and continue to improve) technology with respect to, among other things, tires, brakes, wheels, power steering, transmissions, steering geometry, and the use of lighter, more durable, and stronger materials." As a result, they contend, the operational and handling characteristics are similar to vehicles having a GVWR of 10,000 pounds or less.

Likewise, the Private Carrier Conference stated in their comments that "Obviously, the additional 5,000 pounds GVWR translates into some difference in terms of weight distribution, overall length, overall width and height. However, to do no more than tabulate the numerical differences begs the question as to whether the handling of vehicles between 10,001 and 15,000 pounds GVWR require skills or additional driver training not necessitated insofar as the handling of vehicles having a GVWR of 10,000 pounds or less is concerned. The Conference vigorously asserts that the marginal increase in GVWR of 5,000 pounds does not alter the essential fundamental characteristics of the vehicles in question. Hence, vehicles with 15,000 pounds GVWR have the same operational characteristics as the lighter weight vehicles and require no additional driver training."

Another commenter, the National Association of Wholesaler-Distributors (NAW), stated their belief that there are only minuscule differences in the handling and operational characteristics of lightweight vehicles and any vehicle which is not articulated. Because of this, the NAW suggests that the exemption sought by the ABA in their petition, be extended to include drivers of all non-articulated vehicles regardless of their weight. This recommendation, like that of the Anderson Armored Car Service, Inc. who requested that the exemption be extended to include drivers of vehicles having a GVWR of up to 25,000 pounds, is beyond the scope of this rulemaking.

Other comments, such as those of Metz Baking Company, indicated that the main difference in the handling characteristics of the two classes of vehicles in question is in "the suspension and brake systems which are heavier duty giving longer life, less maintenance and adding safer operation of the vehicle."

The commenters agreed that, because the handling and operational characteristics of the vehicles are so similar, there is no need for additional driver training for drivers of vehicles between 10,001 and 15,000 pounds GVWR. Comments such as those of

Boge's Bread which indicate that the driving skills needed are the same as those required for passenger cars, are indicative of the majority of commenters favoring the petition.

Conversely, commenters who oppose the proposed changes stated that the differences in handling and operational characteristics are substantial between vehicles under 10,000 pounds GVWR and those between 10,001 to 15,000 pounds GVWR. The United Parcel Service (UPS) for example, stated that driver training is necessary due to differences in the field of view available from left and right-hand convex mirror systems, as well as differences in braking systems and center of gravity. "Braking systems," stated UPS, "are designed for maximum loads, hence there is excess braking capacity for lightly loaded vehicles, which could result in brake lock-up and uncontrolled skids, particularly in panic-stop situations." "The center of gravity on trucks, they state, is higher and makes them more prone to overturning, especially during abrupt steering maneuvers." Other differences mentioned by UPS which require attention include acceleration differences and the effect of crosswinds on stability.

The comments of the American Trucking Associations, Inc., (ATA) reflected concerns similar to those of the UPS on handling and operational characteristics. When comparing vehicles in the two weight classes in question, the ATA found "considerable differences between them in weight distribution [axle loading] (loaded and empty), differences between loaded weight and empty weight, and overall length." Other fundamental characteristics reported by the ATA include the height of the center of gravity since as the center of gravity increases the inherent stability of the vehicle decreases. This, when coupled with the development of greater momentum because of heavier weight, creates potential problems with stability in turns, on curves, or whenever abrupt steering inputs are made.

Similar concerns were also expressed by Foremost McKesson Food Group. Although they partially support the proposed changes, they state that additional training and skills are needed for the 10,001 to 15,000 pound vehicles because of longer, wider chassis and increased weight, use of mirrors, backing skills, securing, vehicle control using engine compression, as well as braking.

Discussion of Comments

The FHWA focused on the operational and handling characteristics of vehicles between 10,001 and 15,000 pounds GVWR as compared to those 10,000 pounds or less GVWR to assess whether the similarities of the vehicles in each weight class warrant similar treatment under the regulations.

Based on the comments to the docket, it is evident that the majority of those who favor the exemption are convinced that those vehicles possess only minor differences in handling. On the other hand, those opposed feel that the differences are evident from an engineering standpoint and should continue to be treated differently. It is important to note that the comments received from those supporting the petition lacked substantive evidence to support their contention, but rather only offered their opinion on the operational and handling characteristics. While the comments opposing the proposed exemption provided some substantive data concerning structural design and weight distribution, this is not sufficient to substantiate actual differences in operational and handling characteristics.

It is the opinion of the FHWA that, because the operations in question are generally conducted at low speeds in local pick-up and delivery service and there is very little data to support the concerns of those who allege instability in the larger vehicles, the comments of those supporting the petition are more convincing than those opposing the petition. It should be noted however that the FHWA has concerns regarding the stability of these vehicles, even in low speed operation, and will continue to research this issue during the comment period of this notice. The focus of the research will be on both stability of the vehicles and their handling characteristics. The results should assist the FHWA in determining the need for driver training, testing, and qualifications for these vehicles as well as for those having a GVWR of 10,000 pounds or less.

At this time, pending the outcome of the research and comments to this notice, the FHWA agrees that drivers of vehicles between 10,001 and 15,000 pounds GVWR could be afforded the exemptions from the following:

1. Disclosure of, investigation into, and inquiries about, the background, character, and driving record of drivers (49 CFR Part 391, Subpart C),
2. The road test and written examination (49 CFR Part 391, Subpart D), and

3. Maintenance of driver files and records (49 CFR Part 391, Subpart F).

These proposed exemptions would apply only to drivers of those vehicles having a GVWR between 10,001 and 15,000 pounds which are not articulated and which have no more than 2 axles. This limitation will insure that only those drivers of vehicles which are claimed to be similar in operational characteristics and stability to those 10,000 pounds or less GVWR are exempted.

The exemption proposed for drivers of vehicles having a GVWR between 10,001 and 15,000 pounds does not include the provision concerning medical examination, certificate of medical examination, and possession of a medical certificate. The FHWA strongly believes that, based on data provided in comments to the ANPRM, this provision is necessary to ensure that drivers are physically qualified to drive. Additionally, the FHWA will review this issue as it relates to drivers of lightweight vehicles who presently enjoy the exemption, in a separate rulemaking which will be initiated within the next year.

At the time the present lightweight vehicle exemption was granted it was made clear that the relief granted did not exempt drivers from being medically qualified to drive, but rather only from the paperwork requirements associated with the medical criteria. Unless a driver is examined by a physician and issued a medical certificate, there is virtually no way to enforce this requirement or assure the public that adequate protection is being afforded them.

Data provided by the UPS in response to the ANPRM confirms the necessity of this provision. The UPS reported that, of the thousands of driver applicants seeking employment with the company annually, 12% were disqualified for medical reasons. Further, they revealed that they conduct medical examinations of half their 43,000 drivers annually and, in the past year, 5% of the drivers examined were removed from driver status because they developed medical abnormalities that disqualified them under the current FMCSR.

This concern was also addressed by the ATA. They believe that the only way to detect hidden medical conditions which are likely to cause loss of control of a vehicle is through a medical examination. Further, the only way to prove that an examination has been made is by requiring a medical certificate.

The FHWA agrees that many medical conditions cannot be detected without a physician's examination. The above

data, coupled with data which indicates that approximately 15%¹ of all major and minor highway crashes are associated with medical problems (other than alcohol), strongly supports the continuation of the requirement for medical examination, carrier possession of a medical certificate, driver possession of a medical card, and reexamination every two years. Further, reexamination of the current exemption for drivers of lightweight vehicle is warranted as set forth above, and FHWA will initiate a separate rulemaking on this subject within the next year.

Economic Considerations

Unless the results of our research or the comments to this notice indicate that the proposed exemptions will have a negative effect on safety, the FHWA believes it will be in the Nation's best interest to grant the exemptions which have been discussed. This decision, in light of economic considerations, appears to be a positive move, even though the comments of the International Brotherhood of Teamsters (IBT), prompted the FHWA to closely and seriously weigh the arguments presented. The IBT commented, "The allegation that companies purchase equipment of less than 10,000 pounds GVWR in order to come within the § 391.62(a) exemption, when heavier equipment would be more efficient, is highly suspect. The ABA has offered no evidence to support this claim, and it seems doubtful that the burden of maintaining a few files and conducting a background investigation (something most employers do as a matter of course), would cause a company to willingly forego 5,000 pounds of cargo capacity if such capacity were in fact needed. In any event, contrary to current popular thinking, the mere fact that a regulation creates compliance costs is not grounds for its revocation, nor for providing exemption."

The FHWA agrees that the mere fact that a regulation creates compliance cost is not grounds for its revocation, nor for providing an exemption to it. However, since the FHWA currently has no substantive data indicating there are significant differences in the operational and handling characteristics of the two weight classes of vehicles in question, the economic considerations take on more weight. Based on the available data, the net benefit to society would outweigh other considerations raised in the comments.

¹ Waller, Julian A., M.D., M.P.H., Medical Impairment to Driving, Chas. C. Thomas, 1973, p. 7.

The ABA clearly states, in both their petition and their comments to the ANPRM, the costs incurred as a result of the regulations are directly passed on to the consumer. The ABA also comments that "there is no doubt that significant cost savings would accrue to vehicle operators and their customers from the grant of relief."

Based on data available at this time, the proposed exemption represents approximately 55-60% of the relief requested in terms of burden imposed by the regulations.

The FHWA believes that, so long as safety is not compromised, granting the ABA petition is advisable since the benefits gained by the affected industry will be passed on to the consumers.

Those desiring to comment on this rulemaking action are asked to submit their views, data, and arguments to the docket at the above address. Comments need not be limited to the areas specifically mentioned in the NPRM. All comments received will be considered before any final rules are developed.

All comments submitted will be available, both before and after the closing date, for examination by interested persons in the Docket Room of the BMCS, Room 3404, 400 Seventh Street, SW., Washington, D.C. 20590.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation.

A draft regulatory evaluation has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading "FOR FURTHER INFORMATION CONTACT." The FHWA specifically requests information upon which to determine whether such action would have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 391

Motor carriers, Driver qualifications, Highways and roads.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Subchapter B, Part 391, as set forth below.

PART 391—QUALIFICATION OF DRIVERS

Part 391 is amended by adding a new § 391.64 to read as follows:

§ 391.64 Drivers of vehicles having a GVWR of between 10,001 and 15,000 pounds.

(a) The following rules in this part do not apply to a person who drives a nonarticulated, 2 axle vehicle having a gross vehicle weight rating between 10,001 and 15,000 pounds.

(1) Subpart C (relating to disclosure of, investigation into, and inquiries about, the background, character, and driving record of drivers).

(2) Subpart D (relating to road tests and written examinations).

(3) Subpart F (relating to maintenance of files and records).

(b) *Exception.* The exemptions granted in this section do not apply if the vehicle is—

(1) transporting passengers for-hire; or

(2) transporting hazardous materials of a type or quantity that requires a vehicle to be marked or placarded in accordance with § 177.823 of this title.

• • • • •

(49 U.S.C. 304, 1655; 49 CFR 1.48 and 301.60) (Catalog of Federal Domestic Assistance Program, Number 20.217, Motor Carrier Safety)

Issued: March 28, 1983.

Kenneth L. Pierson,
Director, Bureau of Motor Carrier Safety,
Federal Highway Administration.

[FR Doc. 83-8580 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces a public meeting on proposed revisions to the rules governing the domestic Atlantic bluefin tuna fishery. The proposed rules were published in the Federal Register on March 30, 1983.

DATE: The meeting will be held on April 20, 1983.

ADDRESS: A public meeting on the proposed revisions to Subparts A and B of 50 CFR Part 285 will be held on the date and time, and at the location listed below.

Hearing Location

Date: April 20.

Location: Room 401, Page 2 Building,
3300 Whitehaven Street NW.,

Washington, D.C.

Telephone: 202-634-7218.

Time: 2 p.m.-4 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Stone, Acting Chief,
Operations Coordination Group, 202-
634-7218.

Dated: March 30, 1983.

Joseph P. Clem,
Acting Chief, Fisheries Process Division,
National Marine Fisheries Service.

[FR Doc. 83-8580 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 48, No. 65

Monday, April 4, 1983

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

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

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

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 13, 1983.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Laboratory, Room 223, Flue-Cured Tobacco Cooperative Stabilization Corporation, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Time: 1 p.m.

Purpose: To review various regulations and proposed regulations issued under the Tobacco Inspection Act, 7 U.S.C. 511-511q, elect officers, and discuss the quantities of tobacco designated to warehouses in each marketing area for the 1983 flue-cured

season. Also, other matters as specified in 7 CFR Part 29 will be discussed.

The meeting is open to the public though space and facilities are limited. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting should contact Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street, S.W., United States Department of Agriculture, Washington, D.C., 20250 (202) 447-2567.

Dated: March 29, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-6696 Filed 4-1-83; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

Order Establishing International Cargo Rate Flexibility Policy

The Board, by Policy Statement PS-109, effective February 27, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER-1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board established zones of flexibility. The

zone of flexibility, established in 14 CFR 399.41 also provides for Special Tariff Permission, subject to notice requirements, for rates within the zone. As stated in ER-1322, the Board has taken action to allow air carriers to respond more quickly to changing costs and competitive conditions.

In establishing the SFRL for the two-month period starting April 1, 1983 we have projected nonfuel costs based on the year ended September 30, 1982 and have determined fuel prices on the basis of experienced monthly fuel cost levels and reported weekly fuel cost trends.

By Order 83-3-148 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

Atlantic.....	0.9538
Western Hemisphere.....	1.0035
Pacific.....	0.9826

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact:
Julien R. Schrenk, (202) 673-5298.

By the Civil Aeronautics Board: March 29, 1983.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-6656 Filed 4-1-83; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 25, 1983

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Mar. 21, 1983	41380	American International Airways, Inc., c/o Howard S. Boros, Boros & Garofalo, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of American International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to conduct scheduled foreign air transportation between Albany and Burlington, on the one hand, and Montreal, on the other.
Mar. 22, 1983	41385	Conforming Applications, Motions to Modify Scope and Answers may be filed by April 18, 1983. Colonial Airlines, Inc., c/o Harry A. Bowen, Bowen & Atkin, Suite 350, 2020 K Street, N.W., Washington, D.C. 20006. Application of Colonial Airlines, Inc. pursuant to Section 401 (d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in interstate and overseas charter air transportation of persons, property and mail as follows: a. Between any point in any State of the United States, or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States, or the District of Columbia, or any territory or possession of the United States; b. Authority to engage in all-cargo operations between points within the United States and its possessions. (Section 418 of the Act.)
Mar. 22, 1983	41386	Conforming Applications, Motions to Modify Scope, and Answers may be filed by April 19, 1983. Colonial Airlines, Inc., c/o Harry A. Bowen, Bowen & Atkin, Suite 350, 2020 K Street, N.W., Washington, D.C. 20006. Application of Colonial Airlines, Inc. pursuant to Section 401(d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in foreign charter air transportation of property as follows: a. Between any point in any State of the United States, or the District of Columbia, or any territory or possession of the United States, and

Date filed	Docket No.	Description
		(1) Any point in Canada; (2) Any point in Mexico; (3) Any point in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands and any other foreign place in the Gulf of Mexico and the Caribbean Sea; and (4) Any point in Central or South America.
Mar. 22, 1983	41387	Conforming Applications, Motions to Modify Scope and Answers may be filed by April 19, 1983. Singapore Airlines Limited, c/o Laurence A. Short, Short, Klein & Karas, 1101 30th Street, N.W., Suite 303, Washington, D.C. 20007. Application of Singapore Airlines Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations applies for renewal and amendment of its Foreign Air Carrier Permit so as to permit it to continue its on-going operations in foreign air transportation between the United States of America and the Republic of Singapore. Answers may be filed by April 19, 1983.
Mar. 22, 1983	41361	ERA Helicopters, Inc., c/o Robert Reed Gray, Hale Russell & Gray, 1025 Connecticut Ave., N.W., Washington, D.C. 20036. Amendment No. 1 to the Application of ERA Helicopters, Inc. amends its application filed March 11, 1983, to request that the Board grant it authority to provide scheduled all-cargo service between the following points within the State of Alaska: Anchorage-Headhorse Anchorage-Nome Anchorage-Valdez The authority herein requested is in addition to the authority requested in applicant's original application.
Mar. 25, 1983	41393	Ryan Aviation Corporation, c/o R. Bruce Keiner, Jr., Crowell & Moring, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Ryan Aviation Corporation pursuant to Section 401(d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in interstate and overseas charter air transportation of persons, property, and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.
Mar. 25, 1983	41119 41192	Conforming Applications, Motions to Modify Scope and Answers may be filed by April 22, 1983. Michigan Peninsula Airways, Ltd. d/b/a/ MPA International Airways, c/o Herbert A. Rosenthal, Hausman and Rosenthal, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Supplemental Direct Exhibits of Michigan Peninsula Airways, Ltd. Answers may be filed by April 22, 1983.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-8659 Filed 4-1-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:30 p.m. and will end at 6:30 p.m., on May 5, 1983, in the Roosevelt Room, at the Summit Hotel, Fifty-First and Lexington Avenue, New York, New York. The purpose of this meeting is to discuss program plans for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Robert J. Mangum, 420 East Twenty-Third Street, New York, New York, 10010; (212) 420-3935 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278; (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. March 28, 1983.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 83-8583 Filed 4-1-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409), notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on April 26, 1983, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4:15 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and major budget and program developments; (2) update on planning for the 1990 census; (3) income problems in the 1980 census; (4) new developments in the Survey of Income and Program Participation; (5) underground economy; (6) user access to the Longitudinal Establishment Data

File; (7) general discussion and Committee recommendations; and (8) plans and date for the next meeting.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Bobby Russell, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-7844.

Dated: March 28, 1983.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 83-8599 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Pectin From Mexico; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade
Administration, Commerce.

ACTION: Final affirmative countervailing
duty determination.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of

the countervailing duty law were being provided to manufacturers, producers, or exporters in Mexico of pectin as described in the "Scope of Investigation" section of this notice. The net bounty or grant is 11.19 percent *ad valorem*. The Department of Commerce and Pectina de Mexico, S.A., the only known manufacturer and exporter of pectin in Mexico, have entered into a suspension agreement (47 FR 54987). However, we continued the investigation at the request of the petitioner. The suspension agreement will remain in force, and we will not issue a countervailing duty order, unless there is a violation in accordance with section 704(i) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1273.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation and in accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act), we have determined that the government of Mexico provided certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Mexico of pectin as described in the "Scope of Investigation" section of this notice. We determine the net bounty or grant to be 11.19 percent *ad valorem*.

The Department of Commerce and Pectina de Mexico, S.A. (Pectina), the only known manufacturer and exporter of pectin in Mexico, have entered into a suspension agreement. Pursuant to section 704(f)(3)(B) of the Act, the agreement will remain in effect and we will not issue a countervailing duty order as long as the conditions of the agreement are met.

Case History

On June 24, 1982, we received a petition from Hercules, Inc. of Wilmington, Delaware, on behalf of the U.S. industry producing pectin. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, on the manufacture, production, or exportation of pectin from Mexico.

Mexico is not a "country under the Agreement" within the meaning of

section 701(b) of the Act, and therefore section 303 of the Act applies to this investigation. Under this section, where as here the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We reviewed the petition, and on July 14, 1982, determined that an investigation should be initiated (47 FR 31414).

We presented a questionnaire concerning the allegations to the government of Mexico at its embassy in Washington, D.C. On August 27, 1982, we received a partial response to the questionnaire. Additional information was supplied on September 7 and 9, 1982.

The government of Mexico requested that its response to our questionnaire be classified pursuant to Executive Order 12356 (effective August 1, 1982). In a letter dated September 27, 1982, we declined to accept the response as classified confidential foreign government information and returned the response to the government of Mexico. On October 7, 1982, the Mexican government submitted a business confidential and a non-confidential version of its earlier response, which we accepted.

On September 17, 1982, we issued our preliminary determination in the investigation (47 FR 42014). We preliminarily determined that the government of Mexico provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Mexico of pectin. The program preliminarily determined to bestow countervailable benefits was the preferential financing program under the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX). Tax rebates for exports under the Certificado de Devolucion de Impuesto (CEDI) program and benefits under the Certificates of Fiscal Promotion (CEPROFI) program were preliminarily determined not to be utilized.

On December 1, 1982, Pectina and the Department of Commerce signed a suspension agreement, as provided for by section 704 of the Act (47 FR 54987). Under the agreement, Pectina voluntarily renounced all countervailable benefits under the CEPROFI, FOMEX and CEDI programs.

Scope of Investigation

The merchandise covered by this investigation is pectin from Mexico. The merchandise is currently classifiable under *Tariff Schedules of the United States* item No. 455.04.

The period for which we are measuring subsidization is the first half of 1982.

Analysis of Programs

In its response, the government of Mexico provided data for the applicable periods.

Based upon our analysis of the petition, the response to our questionnaire, our verification and oral and written comments made by interested parties, we determine the following.

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants were provided to Pectina under the programs listed below.

A. The CEPROFI Program

In 1979, the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which spells out broad economic goals for the country. Tax credits, which are called Certificates of Fiscal Promotion (CEPROFI's) are used to promote the NIDP goals, which include increased employment, the promotion of regional decentralization, and industrial development particularly of small and medium-sized firms.

CEPROFI certificates are non-transferable tax certificates of a set value which may be used for a five-year period to pay federal taxes. CEPROFI certificates are granted for many purposes including investments in "priority" industrial regions of the country, as well as for programs that are available to all companies on equal terms. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plant and equipment, or the value of purchases of capital goods produced in Mexico.

During our verification of the government of Mexico's response, we were informed that Pectina received one CEPROFI certificate during the period for which we are measuring subsidization. The CEPROFI was granted for the purpose of constructing a plant in a specific region in Mexico. Accordingly, the Department determined that the government of Mexico is providing bounties or grants to Pectina under the CEPROFI program because benefits were limited to

companies located within specific regions of Mexico. We have allocated the countervailable CEPROFI benefits received in the first six months of 1982 over the total sales of Pectina produced during that period, which results in a net bounty or grant of .68 percent *ad valorem*.

B. Preferential Financing Programs

FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico (Mexico's central bank) acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions. The financial institutions establish contracts for lines of credit with manufacturers and exporters of merchandise. In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met:

(1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation. Pectina's FOMEX loans were at the maximum interest rates.

We found that FOMEX loans were available on terms inconsistent with commercial considerations to producers, manufacturers, and exporters of pectin for two purposes: pre-export (production) and export financing.

We have used as benchmarks for the commercial rate of interest in Mexico the national average rate for comparable short-term peso and dollar-denominated loans during the first half of 1982. We have determined that during the first six months of 1982, comparable peso-denominated loans were available at 46.95 percent, and comparable dollar-denominated loans were available at 17.95 percent. The peso rate was determined from information supplied by the Department of the Treasury and the dollar rate was determined from

information supplied by the Federal Reserve Board.

For those FOMEX loans obtained by Pectina on pectin exported to the United States during the period January 1, 1982-June 30, 1982, we computed the difference in interest expense between the FOMEX loans and that which would have been incurred had the loans been made at the benchmark commercial rates of interest. We allocated the amount of the benefits over the value of exports of pectin to the United States during the same period.

We determine the net amount of the benefit for loans granted for pre-exports to be 5.65 percent *ad valorem* and the net amount of the benefit for export financing to be 4.86 percent *ad valorem*, for a total bounty or grant under the two programs of 10.51 percent *ad valorem*.

II. Program Determined To Be Suspended

CEDI Program

We determine that the CEDI program which was described in the notice of "Initiation of Countervailing Duty Investigation" is countervailable.

The CEDI is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are used, a percentage of the c.i.f. value of the exported product. The Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published. Exporters are required to apply for each CEDI by providing to the Ministry of Commerce (SECOFIN) documentation with respect to each individual shipment of qualifying exports. SECOFIN processes the application and, on approval, instructs the Ministry of Treasury to issue the CEDIs in the amount specified. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended the eligibility of the products under investigation for CEDI tax rebates by an executive order published on August 25, 1982, in the *Diario Oficial de la Federacion* (Official Gazette). The order abrogates prior executive orders which contained the lists of products eligible to receive CEDI certificates. Suspension of the eligibility to apply for the CEDI was effective one day after publication of the executive order in the *Diario Oficial*.

Although exporters of the merchandise under investigation received benefits under the CEDI

program during the period for which we are measuring subsidization, the CEDIs ceased to be available after August 25, 1982. Because the exporters used the CEDI certificates on a current basis, the pectin that was accorded benefits under this program was not likely to enter the United States on or after the date of the suspension of liquidation of the merchandise, which was issued after the preliminary determination.

If this program were to be reactivated, the Department will review its applicability in the annual reviews under section 751 of the Act.

III. Respondent's Comments

Comment 1

Pectina contends that the appropriate basis for determining whether Pectina received preferential financing from the government of Mexico is by contrasting the rate available under the FOMEX program with the rate commercially available to Pectina.

DOC Position

Where a benefit results from a broad, national lending program, we use national average commercial interest rates on comparable loans as our benchmarks rather than the rates at which individual companies received or could have received loans. In any event, Pectina received no non-FOMEX short-term loans during the period in which we are measuring subsidization.

Comment 2

Pectina argues that the actual effective rate of interest on FOMEX export financing loans is higher than 6 percent because the Rules of Operation of FOMEX require that interest on export shipment loans be paid in advance. The effective interest rate on the loan is thus increased by payment of the interest charge in advance.

DOC Position

We found that interest on commercial loans in Mexico is paid in advance. Since the benchmark for dollar-denominated loans is based upon the same terms, no adjustment is appropriate because the terms are comparable.

Comment 3

Pectina asserts that the FOMEX rate for export financing should be increased by the fee for commercial risk insurance because the FOMEX Rules of Operation list as a requirement that the exporter have an insurance policy to cover the credit issued by a company authorized to insure against commercial risks.

DOC Position

It is common commercial practice in Mexico for exporters to obtain commercial risk insurance on their shipments to the United States. While banks may not explicitly require such insurance as a condition to receipt of a commercial export loan, it is reasonable to expect that the terms would be adjusted accordingly in the absence of insurance.

The Department has no evidence to indicate that exporters of this merchandise: (a) Do not normally obtain commercial risk insurance for their non-FOMEX export loans, or (b) that the terms for obtaining a commercial export loan would not be adjusted to reflect the fact that the shipments are uninsured.

Comment 4

Pectina argues that the CEPROFI program under which Pectina received a CEPROFI certificate for decentralization of industry does not constitute a bounty or grant.

DOC Position

We disagree. The CEPROFI Pectina received was regionally targeted because such CEPROFI's are limited to companies located in specified regions of Mexico.

Comment 5

Pectina contends that the benefits for the CEPROFI certificate it received during the period for which we are measuring subsidization should be allocated to 1979, the period for which the eligibility for the CEPROFI occurred, or alternatively over all sales between 1979 and 1982, the date of receipt.

DOC Position

We disagree. Pectina did not receive the CEPROFI until 1982. The Department has allocated benefits for CEPROFI's received during the period for which we are measuring subsidization over Pectina's total sales during the period for which we are measuring subsidization.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of Pectina's operations and records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with

its regulations (19 CFR 355.35). No request for a public hearing was received in this investigation. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered.

In the event the suspension agreement is violated, the Department, in accordance with section 704(i) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of Pectin and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published in accordance with section 705(d) of the Act.

Dated: March 25, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-0640 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-25-M

Polypropylene Film From Mexico; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Mexico of polypropylene film as described in the "Scope of the Investigation" section of this notice. The net bounty or grant is 5.68 percent *ad valorem*. The Department of Commerce and Celulosa y Derivados, a manufacturer of polypropylene film that accounts for over 85 percent of the total exports of the subject merchandise to the United States from Mexico, have entered into a suspension agreement (47 FR 54992). However, we continued the investigation at the request of the petitioner. The suspension agreement will remain in force, and we will not issue a countervailing duty order unless there is a violation in accordance with section 704(i) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1273.

SUPPLEMENTARY INFORMATION: Final Determination

Based upon our investigation and in accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act), we have determined that the government of Mexico provided certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Mexico of polypropylene film, as described in the "Scope of the Investigation" section of this notice. We determine the net bounty or grant to be 5.68 percent *ad valorem*.

The Department of Commerce and Celulosa y Derivados, a manufacturer of polypropylene film that accounts for over 85 percent of the total exports of the subject merchandise to the United States from Mexico, have entered into a suspension agreement. Pursuant to section 704(f)(3)(B) of the Act, the agreement will remain in effect and we will not issue a countervailing duty order as long as the conditions of the agreement are met.

Case History

On June 24, 1982, we received a petition from Hercules, Inc. of Wilmington, Delaware, on behalf of the U.S. industry producing polypropylene film. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly, or indirectly, on the manufacture, production, or exportation of polypropylene film from Mexico.

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the merchandise is nondutiable and there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We reviewed the petition, and on July 14, 1982, determined that an investigation should be initiated (47 FR 31414).

We presented a questionnaire concerning the allegations to the government of Mexico at its embassy in Washington, D.C. On August 30, 1982, we received a partial response to the questionnaire. Additional information was supplied on September 7 and 9, 1982.

The government of Mexico requested that its response to our questionnaire be classified pursuant to Executive Order 12356 (effective August 1, 1982). In a letter dated September 27, 1982, we declined to accept the response as confidential foreign government information and returned the response to the government of Mexico. On October 7, 1982, the Mexican government submitted a business confidential and a non-confidential version of its earlier response, which we accepted.

On September 17, 1982, we issued our preliminary determination in the investigation (47 FR 42015). We preliminarily determined that the government of Mexico provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Mexico of polypropylene film. The programs preliminarily determined to bestow countervailable benefits were the following: Tax credits under the Certificates of Fiscal Promotion (CEPROFI) program, and preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX). Tax rebates for exports under the Certificado de Devolucion de Impuesto (CEDI) program were preliminarily determined not to be utilized because the program was suspended.

On December 1, 1982, Celulosa y Derivados and the Department of Commerce signed a suspension agreement, as provided for by section 704 of the Act (47 FR 54992). Under the agreement, Celulosa y Derivados voluntarily renounced all countervailable benefits under the CEPROFI, FOMEX and CEDI programs.

Scope of the Investigation

The merchandise covered by this investigation is polypropylene film, which is a thin transparent film made from polypropylene resin. It is currently classifiable under items 774.5590 and 771.4316 of the *Tariff Schedules of the United States Annotated*.

The period for which we are measuring subsidization is the first half of 1982.

Analysis of Programs

In its response, the government of Mexico provided data for the applicable periods.

Based upon our analysis of the petition the response to our questionnaire, our verification and oral and written comments made by interested parties, we determine the following.

I. Programs Determined To Be Bounties or Grants

We determine that bounties or grants were provided to manufacturers, producers, and exporters in Mexico of polypropylene film under the programs listed below.

A. *The CEPROFI Program:* In 1979, the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which spells out broad economic goals for the country. Tax credits which are called Certificates of Fiscal Promotion (CEPROFIs) are used to promote the NIDP goals, which include increased employment, the promotion of regional decentralization, and industrial development particularly of small and medium-sized firms.

CEPROFI certificates are non-transferable tax certificates of a set value which may be used for a five-year period to pay federal taxes. CEPROFI certificates are granted for many purposes including investments in "priority" industrial regions of the country, as well as for programs that are available to all companies on equal terms. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plant and equipment, or the value of purchases of capital goods produced in Mexico.

The Mexican producers of polypropylene film received CEPROFI certificates during the period for which we are measuring subsidization for the purpose of encouraging industrial development in specific regions in Mexico. Accordingly, the Department determines that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of polypropylene film under the CEPROFI program because benefits were limited to companies located within specific regions of Mexico. We have allocated the countervailable CEPROFI benefits received in the first six months of 1982 over the total sales of the merchandise under investigation produced during that period, which results in a net bounty or grant of 4.91 percent *ad valorem*.

B. *Preferential Financing Programs:* FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions. The financial institutions establish contracts for lines

of credit with manufacturers and exporters of merchandise.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation.

We found that FOMEX loans were available on terms inconsistent with commercial considerations to producers, manufacturers, and exporters of polypropylene film for two purposes: pre-export (production) financing and export financing.

We have used as benchmarks for the commercial rate of interest in Mexico the national average rate for comparable short-term peso and dollar-denominated loans during the first half of 1982. We have determined that during the first six months of 1982, comparable peso-denominated loans were available at 46.95 percent, and comparable dollar-denominated loans were available at 19.57 percent. The peso rate was determined from information supplied by the Department of the Treasury and the dollar rate was determined from information supplied by the Federal Reserve Board.

For those FOMEX loans obtained by Celulosa y Derivados on polypropylene film exported to the United States during the period January 1, 1982-June 30, 1982, we computed the difference in interest expense between the FOMEX loans and that which would have been incurred had the loans been made at the benchmark commercial rates of interest. Celulosa y Derivados received FOMEX loans at rates below the maximum rates. We allocated the amount of the benefits over the value of exports of polypropylene film to the United States during the same period.

We determine the net amount of the benefit for loans granted for pre-exports to be 0.42 percent *ad valorem* and the net amount of the benefit for export

financing to be 0.35 percent *ad valorem*, for a total bounty or grant under the two programs of 0.77 percent *ad valorem*.

II. Program Determined To Be Suspended

CEDI Program: We determine that the CEDI program which was described in the notice of "Initiation of Countervailing Duty Investigation" is counteravailable.

The CEDI is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise, or, if national insurance and transportation are utilized, a percentage of the c.i.f. value of the exported product. The Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published. Exporters are required to apply for each CEDI by providing to the Ministry of Commerce (SECOFIN) documentation with respect to each individual shipment of qualifying exports. SECOFIN processes the application and, on approval, instructs the Ministry of Treasury (TESORERIA) to issue the CEDIs in the amount specified. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended the eligibility of the products under investigation for CEDI tax rebates by an Executive Order published on August 25, 1982 in the *Diario Oficial de la Federación* (Official Gazette). The order abrogates prior executive orders which contained the lists of products eligible to receive CEDI certificates. Suspension of the eligibility to apply for the CEDI was effective one day after publication of the executive order in the *Diario Oficial*.

Although exporters of the merchandise under investigation received benefits under the CEDI program during the period for which we are measuring subsidization, the CEDIs ceased to be available after August 25, 1982. Because the exporters used the CEDI certificates on a current basis, the polypropylene film that was accorded benefits under this program was not likely to enter the United States on or after the date of the suspension of liquidation of the merchandise, which was issued after the preliminary determination.

If this program were to be reactivated, the Department will review its applicability in the annual reviews under section 751 of the Act.

III. Respondent's Comments

Comment 1: Celulosa y Derivados argues that the appropriate market rate for comparison with FOMEX rates is the actual rates received in the United States by the polypropylene film industry.

DOC Position: We have used as a benchmark for pre-export loans a comparable countrywide peso loan rate of 48.95 percent and as a benchmark for export loans a comparable countrywide dollar-denominated loan rate of 19.57 percent. Where a benefit results from a broad national lending program, we use national average commercial interest rates on comparable loans as our benchmarks rather than the rates at which individual companies received loans. Loans in the national currency of the country are not considered comparable to loans in a foreign currency. Accordingly, we have considered pre-export and export financing FOMEX loans separately.

Comment 2: Celulosa y Derivados contends that the FOMEX rate for export financing should be increased by the fee for commercial risk insurance because the FOMEX Rules of Operation list as a requirement that the exporter have an insurance policy to cover the credit issued by a company authorized to insure against commercial risks.

DOC Position: It is common practice in Mexico for exporters to obtain commercial risk insurance on their shipments to the United States. While banks may not, per se, explicitly require such insurance as a condition to receipt of a commercial export loan, it is reasonable to expect that the terms would be adjusted accordingly. The Department has no evidence to indicate that exporters of this merchandise: (a) Do not normally obtain commercial risk insurance for their non-FOMEX export loans, or (b) that the terms for obtaining a commercial export loan would not be adjusted to reflect the fact that the shipments are uninsured.

Verification: In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of Celulosa y Derivados' operations and records.

Administrative Procedures: The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). No request for a public hearing was received in this investigation. In accordance with the Department's regulations (19 CFR

355.34(a)), written views have been received and considered.

In the event the suspension agreement is violated, the Department, in accordance with section 704(i) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of polypropylene film and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published in accordance with section 705(d) of the Act.

Dated: March 25, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-8638 Filed 4-1-83; 8:48 am]

BILLING CODE 3510-25-M

Wool From Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination and countervailing duty order.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of wool, as described in the "Scope of Investigation" section of his notice. The net bounty or grant for shipments of the subject merchandise made prior to January 1, 1983 is 5.58 percent *ad valorem*. The net bounty or grant for shipments of the subject merchandise made on or after January 1, 1983 is 4.65 percent *ad valorem*. Further information regarding the calculation of these rates is contained in the Incentives for Exports Leaving from Southern Ports Program.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Office of Investigations, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 377-1273.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (the Act), are being provided to manufacturers, producers, or exporters

in Argentina of wool, as described in the "Scope of Investigation" section of this notice.

Case History

On September 21, 1982, we received a petition filed in proper form from the National Wool Growers Association, Inc. on behalf of the wool industry in the United States. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Argentina of wool. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on October 18, 1982, we initiated a countervailing duty investigation (47 FR 46349).

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act and therefore, section 303 of the Act applies to this investigation. Under this section, since the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten to cause material injury to a U.S. industry.

The petition included non-dutiable wool from Argentina as provided for in items 306.3132 and 306.3334 of the *Tariff Schedules of the United States Annotated*. On December 22, 1982, we terminated the investigation with respect to the non-dutiable wool since the petition did not provide any information relating to injury (47 FR 57981).

On October 21, 1982, we presented a questionnaire concerning the allegations to the government of Argentina at its embassy in Washington, D.C. We received the response to the questionnaire on November 22, 1982. On January 10-14, 1983, we verified in Argentina the response submitted by the Argentine government.

On December 13, 1982, we announced our intention to postpone the preliminary countervailing duty determination involving wool until not later than January 14, 1983 (47 FR 56532). We determined under section 703(c)(1)(B) of the Act that the case was extraordinarily complicated because of the number and complexity of the alleged bounties or grants and the difficulty in determining the extent of use by manufacturers, producers or exporters.

On January 12, 1983, we issued our preliminary determination in the investigation (48 FR 2162). The preliminary determination stated that

the government of Argentina provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Argentina of wool.

Scope of Investigation

The products covered by this investigation consist of wool currently classified under the following *Tariff Schedules of the United States Annotated (TSUSA)* numbers:

306.3152	306.3273
306.3172	306.3354
306.3253	306.3374

The period for which we are measuring subsidization is January through June of 1982.

Analysis of Programs

In its response, the government of Argentina provided data for the applicable period. Based on our analysis of the petition, the response to our questionnaire, our verification, and written comments submitted by interested parties, we determine the following:

I. Program Determined to Confer Bounties or Grants

Incentives for Exports Leaving From Southern Ports: We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Argentina of wool under the Incentives for Exports Leaving from Southern Ports Program.

This program provides a payment for wool shipped from the southern ports of Argentina. In Resolutions No. 11 and 368 of January 6 and March 23, 1981, respectively, the Ministry of Economy established a 10 percent payment for exports of products shipped from designated ports located in the southern region of Argentina.

In October 1982, the Ministry of Economy passed Resolution No. 287, which established different levels for this payment according to port of shipment. Payments ranging from 5 to 9 percent were established for eight ports. These rates are based on the distance between each port and Buenos Aires. These new payments became effective on December 1, 1982. Under Resolution No. 287, the payment for each port is reduced one percentage point annually.

In order to be eligible for the payment, the goods being shipped through the southern ports must either be produced or processed within the southern region. To establish that the goods are produced or processed locally, a Municipal Certificate must be completed by the

company and notarized by the municipal authorities.

This payment is not a rebate of taxes, but rather an incentive to promote economic development in the regions south of the Colorado River and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Since the payments for export shipped through designated southern ports is a program which targets a specific region, we determined that this payment confers benefits which constitute bounties or grants within the meaning of the countervailing duty law.

According to the Wool Federation of Argentina, Madryn is essential the only designated southern port through which wool was shipped during the period for which we are measuring subsidization. In our preliminary determination, we calculated the estimated bounty or grant on the basis that 56 percent of the wool was shipped through the port of Madryn during the period for which we are measuring subsidization. The incentive payment applicable to wool shipped through the port of Madryn during the same period was 6 percent.

As of January 1, 1983, the payment for wool shipped through the port of Madryn was reduced to 5 percent. We verified that during the period for which we are measuring subsidization, 93 percent of the wool exported to the United States was shipped through the port of Madryn. Virtually all the other wool exports to the United States were shipped through Buenos Aires which does not qualify for an incentive payment. We calculated the amount of the net bounty or grant by finding the weighted average of the payment based on the value of all exports of wool to the United States from January through June 1982. For shipments prior to January 1, 1983, the net bounty or grant is 5.58 percent *ad valorem*. However, as the payment applicable to the port of Madryn was reduced from 6 percent to 5 percent as of January 1, 1983, we are calculating for shipments on or after this date a rate based on the 5 percent payment currently in effect. Using this 5 percent rate, we have determined that the net bounty or grant for all exports of wool to the United States shipped on or after January 1, 1983 is 4.65 percent *ad valorem*.

II. Programs Determined To Be Suspended

We determine that the following programs are suspended, and they are currently not available to producers, manufacturers, or exporters of wool in Argentina.

A. Indirect Tax Refund on Export (Reembolso): Established in 1971, the reembolso program is a rebate of indirect tax upon exportation. It authorizes a refund by cash payment upon export of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. The amount of the reimbursement is equal to a fixed percentage of the f.o.b. value of the exported merchandise. This percentage varies by product.

In 1976, the reembolso program was restructured and reembolso levels were established in accordance with a prescribed method.

The levels ranged from 0 percent for primary goods to 25 percent for manufactured goods. At that time, none of the wool covered by this investigation was granted a reembolso. On December 12, 1979, the Ministry of Economy established a 5 percent reembolso for washed wool, which is covered by this investigation. Except for a short period in May 1981, this 5 percent reembolso on washed wool remained in effect until May 4, 1982. On May 5, 1982, Resolution No. 437 abolished the 5 percent reembolso.

Accordingly, we determine that the reembolso program with respect to exports of wool is suspended.

Although exporters of wool received benefits through the reembolso established for washed wool during the period for which we are measuring subsidization, wool that was accorded benefits under this program is not likely to enter the United States on or after January 14, 1983, the date of the suspension of liquidation of entries of the merchandise. If this program is reactivated with regard to wool exporters, the Department will review its application in the annual reviews required under section 751 of the Act.

B. Multiple System of Exchange Rates: Until June 1981, a single exchange rate existed in Argentina. The currency market was divided into financial and commercial segments from June 22 through December 23, 1981, and from July 8 through October 31, 1982, and a dual exchange rate was in effect for foreign trade which created two exchange markets, one for commercial and the other for financial. The currency market was unified during the period for which we are measuring subsidization, and it has again been unified effective November 1, 1982. Therefore, we determine that this program is suspended. If this program is reactivated, the Department will review its application to wool exporters in the annual reviews required under section 751 of the Act.

III. Program Determined To Be Terminated

Government Assistance to Wool Producers in Patagonia: We determine that the assistance to wool producers in Patagonia program is terminated and it is currently not available to producers, manufacturers, or exporters of wool in Argentina.

This program provides emergency interim support payments to Patagonian wool producers.

The petitioner alleged that the government of Argentina is providing bounties or grants to wool producers. In the questionnaire response and in a supplemental letter, the government of Argentina states that wool producers in the Patagonian Zone received a compensation per kilogram of wool sold during the 1979/80, 1980/81, and 1981/82 wool harvests. The government of Argentina terminated this program as of October 20, 1982 by Decree No. 936.

Although wool producers received benefits under this program during the period of which we are measuring subsidization, the benefits ceased to be available after October 20, 1982. Wool accorded benefits under this program is not likely to enter the United States on or after January 14, 1983, the date of suspension of liquidation of entries of the merchandise.

We verified that wool producers use the payments received under this program for current operating expenses, and that such payments are expended in the year received.

If this program is reactivated, the Department will review its application to wool exporters in the annual reviews required under section 751 of the Act.

IV. Programs Determined Not to be Used

We determine that the programs listed below are not being used by the manufacturers, producers, or exporters in Argentina of wool.

A. Pre-financing of Exports Through Dollar-Indexed Pesos: This program provides pre-export funds to exporters at an interest rate of one percent on peso loans denominated in U.S. dollars. We verified that wool exporters did not use the pre-financing of exports program.

B. Financial Reorganization Aids: The petitioner alleged that in July 1982, the government of Argentina through the Central Bank of Argentina changed all debts to five-year loans at 6 percent interest and offered subsidized interest rates on new loans. We verified that the wool producers and exporters have not received these types of loans.

Respondent's Comment: The government of Argentina appears to

argue that the export duties paid on wool exports are an offset under section 771(6) of the Act to the incentive payment for wool shipped through the southern ports of Argentina.

DOC Position: The wool covered by this investigation is currently charged export duties ranging from 15 percent to 22 percent. Payments currently in effect for wool shipped through these southern ports ranged from 4 percent to 8 percent.

There is no connection between the incentive program for wool exports shipped through the southern ports, which is a regional development program, and the export duties on wool, which is a revenue raising program. Separate laws and decrees govern the export duty and incentive payment programs. In addition, separate ministries administer the two programs. There is no linkage or relationship between the two programs.

The Department has determined that export duties paid on wool exports do not qualify as an offset under section 771(6) of the Act to the incentive payment applicable to wool shipped through the southern ports of Argentina.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection on manufacturers' operations and records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). No request for a public hearing was received in this investigation. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered. The suspension of liquidation ordered in our preliminary affirmative countervailing determination shall remain in effect until further notice. The net bounty or grant for shipments of the subject merchandise made prior to January 1, 1983 is 5.58 percent *ad valorem*. The net bounty or grant for shipments of the subject merchandise made on or after January 1, 1983 is 4.65 percent *ad valorem*. In both instances, the net bounty or grant is larger than the estimated bounty or grant determined in the preliminary determination.

As required by section 706(a)(3), we are directing the United States Customs

Service to require cash deposits in the amounts indicated above for each entry of the subject merchandise entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register* and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

The Department intends to conduct administrative reviews within 12 months of publication of this determination, as provided in section 751 of the Act.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: March 28, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration

[FR Doc. 83-6639 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-25-M

Non-Rubber Footwear From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade
Administration, Commerce.

ACTION: Notice of preliminary results of
Administrative review of countervailing
duty order.

SUMMARY: The Department of
Commerce has conducted an
administrative review of the
countervailing duty order on non-rubber
footwear from Spain. The review covers
the period January 1, 1980 through
December 31, 1980. As a result of the
review, the Department has
preliminarily determined the amount of
the net subsidy to be 4.91 percent of the
f.o.b. invoice price of the merchandise.
Interested parties are invited to
comment on these preliminary results.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT:
Charles Anderson or Joseph A. Black,
Office of Compliance, International
Trade Administration, U.S. Department of
Commerce, Washington, D.C. 20230;
telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1974, the
Department of the Treasury
("Treasury") published in the *Federal
Register* (T.D. 74-235, 39 FR 32904) an
affirmative final countervailing duty
determination regarding non-rubber
footwear from Spain. The notice stated
that the Government of Spain had
provided bounties or grants on the
manufacture, production or exportation
of such merchandise within the meaning

of section 303 of the Tariff Act of 1930
("the Tariff Act").

On January 1, 1980, the provisions of
title I of the Trade Agreements Act of
1979 ("the TAA") became effective. On
January 2, 1980, the authority for
administering the countervailing duty
law was transferred from Treasury to
the Department of Commerce ("the
Department"). The Department
published in the *Federal Register* of May
13, 1980 (45 FR 31455), a notice of intent
to conduct administrative reviews of all
outstanding countervailing duty orders.
As required by section 751 of the Tariff
Act, the Department has now conducted
an administrative review of the order on
non-rubber footwear from Spain.

Scope of Review

The merchandise covered by the
review is non-rubber footwear, imported
directly or indirectly from Spain. Such
imports are currently classifiable under
items 700.0500 through 700.4575, 700.5605
through 700.5673, 700.7220 through
700.8380, and 700.9515 through 700.9545
of the Tariff Schedules of the United
States Annotated.

The review covers the period January
1, 1980 through December 31, 1980, and
the following programs: (1) A rebate
upon exportation of indirect taxes,
under the *Desgravacion Fiscal a la
Exportacion* ("the DFE"); and (2) an
operating capital loans program.

Analysis of Programs

(1) *Desgravacion Fiscal a la
Exportacion.* Spain employs a cascading
tax system. Under this system, the
government levies a turnover tax
("IGTE") on each sale of a product
through its various stages of production,
up to (but not including) the final sale in
Spain. Upon exportation of the product,
the government, under the DFE, rebates
both accumulated IGTE indirect taxes
and certain final stage taxes.

Although the Spanish government
rebates upon exportation all indirect
taxes paid under the cascading tax
system, the Tariff Act allows the rebate
of only the following: (1) Taxes borne by
inputs which are physically
incorporated in the exported product
(see Annex 1.1 of part 355 of the
Commerce Regulations); and (2) indirect
taxes levied at the final stage (see
Annex 1.2 of part 355 of the Commerce
Regulations). If the payment upon export
exceeds the total amount of allowable
indirect taxes described above, the
Department considers the difference to
be an overrebate of indirect taxes and,
therefore, a subsidy.

Physical incorporation is a question of
fact to be determined for each product
in each case. In this case, the physically

incorporated inputs are the raw
materials previously allowed by
Treasury. The rebate of two final stage
taxes, the parafiscal tax on export
licenses and the tax on freight and
insurance, is also allowable when
calculating whether or not there is an
overrebate of indirect taxes under the
DFE.

In its questionnaire response, the
Spanish government submitted a cost
structure for non-rubber footwear which
also estimated the incidence in the final
product of indirect taxes on both
physically incorporated and non-
physically incorporated inputs. During
verification, we discovered that the cost
structure submitted overstated the
proportion of the value attributable to
physically incorporated raw materials.
Consequently, the tax burden
attributable to physically incorporated
inputs was also overstated. We have
therefore relied on information gathered
during verification to construct a
weighted-average cost structure for
Spanish footwear exporters during the
period of review, and have used those
data to calculate the total incidence of
allowable indirect taxes. Also allowing
for the rebate of the two final stage
taxes, we preliminarily determine that
an overrebate upon export equal to 4.50
percent *ad valorem* existed in Spain
during the period of review.

As of July 1, 1981, the Spanish
government increased the IGTE turnover
tax rate on business transactions from
2.4 to 3.8 percent while maintaining the
previous rate for the export rebate. On
January 1, 1982, this rate was further
increased to 4.6 percent, while once
again the DFE remained unchanged. As
a result of these changes, we
preliminarily determine, for purposes of
cash deposits of estimated
countervailing duties, that the
overrebate has been reduced to 0.66
percent *ad valorem*.

(2) *Operating Capital Loans.* The
Spanish government requires banks to
set aside funds to provide short-term
operating capital loans. These loans are
granted for a period of less than one
year. To calculate the subsidy
attributable to the operating capital
loans program, we compared the
interest rate on operating capital loans
to the interest rate on comparable
commercial loans. For 1980, the Spanish
government fixed the interest rate for
such loans at 8 percent, which was 1.5
percent below the legally established
commercial interest rate of 9.5 percent.
Using verified information on the actual
level of usage, we preliminarily
determine the net subsidy attributable to

this program to be 0.41 percent *ad valorem*.

Effective March 1, 1981, the Spanish government increased the interest rate on operating capital loans from 8 to 10 percent while eliminating the interest rate ceiling on comparable short-term commercial loans. To determine the interest rate on comparable commercial loans for purposes of calculating a deposit rate, we took the average national prime interest rate for loans of comparable length, added the prevailing interest charge over prime facing borrowers of average creditworthiness, and added the legally established fees and commissions.

The Spanish government is currently phasing out its operating capital loans program. Since 1981, the maximum annual amount footwear manufacturers can borrow under this program has been reduced from 40 percent to 20 percent of their previous year's exports.

Using the interest rate differential prevailing in 1982 (9.38 percent), and assuming, in the absence of knowledge of current usage levels, that the Spanish footwear manufacturers borrowed the maximum amount to which they were legally entitled as of January 1, 1983, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that the net subsidy attributable to this program has increased to 1.88 percent *ad valorem*.

Verification

We verified the information used in reaching these preliminary results through examination of Spanish laws and documents and company books and records. Documents examined included production and export records, company financial statements and cost structure records.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the aggregate net subsidy conferred during 1980 by the two programs is 4.91 percent *ad valorem*. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 4.91 percent of the f.o.b. invoice price on all shipments of Spanish non-rubber footwear entered, or withdrawn from warehouse, for consumption on or after January 1, 1980, and exported on or before December 31, 1980.

The provisions of T.D. 74-235 (39 FR 32904), T.D. 78-165 (43 FR 25814), or T.D. 79-23 (44 FR 3477) and section 303(a)(5) of the Tariff Act, prior to the enactment of the TAA, apply to all entries made prior to January 1, 1980. Accordingly, the Customs Service shall assess

countervailing duties on unliquidated entries of non-rubber footwear which were entered, or withdrawn from warehouse, for consumption prior to January 1, 1980, at the applicable rates set forth in T.D. 74-235, T.D. 78-165, or T.D. 79-23.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.54 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. If requested, a hearing will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 29, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-8641 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-25-M

Yarns of Polypropylene Fibers From Mexico; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination.

SUMMARY: We have determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers as described in the "Scope of Investigation" section of this notice. The net bounty or grant is 4.28

percent *ad valorem*. The Department of Commerce and Industrias Polifil, S.A. de C.V., the only known manufacturer and exporter of yarns of polypropylene fibers in Mexico, have entered into a suspension agreement (47 FR 5581). However, we continued the investigation at the request of the petitioner. The suspension agreement will remain in force, and we will not issue a countervailing duty order.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Paul H. Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1273 or 377-0186.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation and in accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act), we have determined that the government of Mexico provided certain benefits which constitute bounties or grants within the meaning of section 303 of the Act to manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers as described in the "Scope of Investigation" section of this notice. We determine the net bounty or grant to be 4.28 percent *ad valorem*.

The Department of Commerce and Industrias Polifil, S.A. de C.V., the only known manufacturer and exporter of yarns of polypropylene fibers in Mexico, have entered into a suspension agreement. Pursuant to section 704(f)(3)(B) of the Act, the agreement will remain in effect and we will not issue a countervailing duty order as long as the conditions of the agreement are met.

Case History

On August 26, 1982, we received a petition from Quaker Textile Corporation of Fall River, Massachusetts, on behalf of the U.S. industry producing yarns of polypropylene fibers. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the act are being provided, directly or indirectly, on the manufacture, production, or export in Mexico of yarns of polypropylene fibers.

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and yarns of polypropylene fibers are dutiable, the domestic industry is not required to

allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to the U.S. industry in question.

We reviewed the petition, and on September 21, 1982, determined that an investigation should be initiated (47 FR 41609).

We presented a questionnaire concerning the allegations to the government of Mexico at its embassy in Washington, D.C. On November 1, 1982, we received a partial response to the questionnaire. Additional information was supplied on November 18, 1982, covering the CEPROFI and FOMEX pre-export financing programs. This supplemental response was not received in sufficient time for consideration in our preliminary determination. We have, however, used this information in our final determination.

On November 26, 1982, we issued our preliminary determination in the investigation (47 FR 53443). We preliminarily determined that the government of Mexico provides certain benefits which constitute bounties or grants within the meaning of section 303 of the Act on the manufacture, production, or export in Mexico of yarns of polypropylene fibers. The programs preliminarily determined to bestow countervailable benefits were the preferential financing program under the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) and tax credits under the Certificates of Fiscal Promotion (CEPROFI) Program. Since Polifil's supplemental response was not filed in sufficient time for inclusion in our preliminary determination, we relied on best available information to preliminarily determine the estimated benefits conferred by the CEPROFI and FOMEX pre-export financing programs.

On February 1, 1983, Industrias Polifil and the Department of Commerce signed a suspension agreement, as provided for by section 704 of the Act (48 FR 5581). Under the agreement, Polifil voluntarily renounced all countervailable benefits under the CEPROFI, FOMEX and CEDI programs.

Scope of Investigation

The merchandise covered by this investigation is yarns of polypropylene fibers from Mexico. It is currently classifiable under items 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038, and 310.8000 of the *Tariff Schedules of the United States Annotated*. The major industrial raw materials for these yarns are man-made fibers of staple, continuous filament and

bulk continuous filament made from polypropylene resin.

The period for which we are measuring subsidization is the first half of 1982.

Analysis of Programs

In its responses, the government of Mexico provided data for the applicable periods.

Based upon our analysis of the petition, the responses to our questionnaire and our verification, we determine the following:

I. Program Determined to Confer Bounties or Grants

We have determined that bounties or grants were being provided to Polifil under the programs listed below:

Preferential Financing Programs: FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions. The financial institutions establish contracts for lines of credit with manufacturers and exporters of merchandise.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation. Polifil received FOMEX loans at rates below the maximum rates.

We found that FOMEX loans are available on terms inconsistent with commercial considerations to producers, manufacturers, and exporters of yarns of polypropylene fibers for two purposes: Pre-export (production) financing or export financing.

We have used as benchmarks for the commercial rate of interest in Mexico the national average rate for comparable short-term peso and dollar-

denominated loans during the first half of 1982. We have determined that during the first six months of 1982, comparable peso-denominated loans were available at 46.95 percent, and comparable dollar-denominated loans were available at 18.03 percent. The peso rate was determined from information supplied by the Department of the Treasury and the dollar rate was determined from information supplied by the Federal Reserve Board.

For those FOMEX loans obtained by Polifil on yarns of polypropylene fibers exported to the United States during the period January 1, 1982-June 30, 1982, we computed the difference in interest expense between the FOMEX loans and that which would have been incurred had the loans been made at the benchmark commercial rates of interest. We allocated the amount of the benefits over the value of exports of yarns of polypropylene fibers to the United States during the same period. The reason we allocated FOMEX benefits over exports to the United States was because Polifil was able to show which loans were associated with merchandise exported to the United States.

We determine the net amount of the benefit for loans granted for pre-exports to be 1.91 percent *ad valorem* and the net amount of the benefit for export financing to be 2.37 percent *ad valorem*, for a total bounty or grant under the two programs of 4.28 percent *ad valorem*.

II. Program Determined Not To Confer Bounties or Grants on Product Under Investigation

The CEPROFI Program: In 1979 the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which sets forth broad economic goals for the country. Tax credits, which are called CEPROFIs, are used to promote the NIDP goals, which include increased employment, the promotion of regional decentralization, and industrial development particularly of small and medium sized firms.

CEPROFI certificates are non-transferable tax certificates of a set value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in priority industrial regions of the country, as well as for investments that are available to all companies on equal terms. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plant and equipment, or the value of purchases of capital goods produced in Mexico. The

government's supplemental response to the Department's questionnaire indicated that the Mexican producer of the merchandise under investigation received one CEPROFI during the period for which we are measuring subsidization. We verified that this CEPROFI was granted for the acquisition of new Mexican-made capital goods. Since CEPROFIs for new Mexican-made capital goods are not limited to a specific industry, group of industries, or to industries located in specific regions of the country, we do not consider this type of CEPROFI provided for this purpose to be countervailable.

III. Program Determined To Be Suspended

CEDI Program: We determine that the CEDI program which was described in the notice of "Initiation of Countervailing Duty Investigation" is countervailable. Additionally, we determine that the CEDI program is suspended and has not been used recently by manufacturers, producers, or exporters in Mexico of yarns of polypropylene fibers.

The CEDI is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are used, a percentage of the c.i.f. value of the exported product. The Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published. Exporters are required to apply for each CEDI by providing to the Ministry of Commerce (SECOFIN) documentation with respect to each individual shipment of qualifying exports. SECOFIN processes the application and, on approval, instructs the Ministry of Treasury to issue the CEDIs in the amount specified. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended the eligibility of the products under investigation for CEDI tax rebates by an executive order published on August 25, 1982, in the *Diario Oficial de la Federacion* (Official Gazette). The order abrogates prior executive orders which contained the lists of products eligible to receive CEDI certificates. Suspension of the eligibility to apply for the CEDI was effective one day after publication of the executive order in the *Diario Oficial*.

Although the exporter of the merchandise under investigation received benefits under the CEDI

program during the period for which we are measuring subsidization, the CEDIs ceased to be available after August 25, 1982. Because the exporter used the CEDI certificates on a current basis, the yarns of polypropylene fibers that were accorded benefits under this program were not likely to enter the United States on or after the date of the suspension of liquidation of the merchandise, which was issued after the preliminary determination. If this program were to be reactivated, the Department will review its application to respondents in the annual reviews under section 751 of the Act.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of Polifil's operations and records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). No request for a public hearing was received in this investigation. Also, no written comments were received after the investigation was suspended.

In the event the suspension agreement is violated, the Department, in accordance with section 704(j) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of yarns of polypropylene fibers and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published in accordance with section 705(d) of the Act.

Dated: March 25, 1983.

Lawrence J. Brady,

Assistant Secretary for Trade Administration,

[FR Doc. 83-8637 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-25-M

Cotton Yarn From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the

countervailing duty order on cotton yarn from Brazil. The review covers the period January 1, 1981 through December 31, 1981. As a result of the review, the Department has preliminarily determined the amount of the net subsidy to be 12.27 percent of the f.o.b. invoice price of the merchandise. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Laura Kneale or Edward Haley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 15392) the final results of its last administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089, March 15, 1977) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The merchandise covered by the review is cotton yarn, imported directly or indirectly from Brazil. Such imports are currently classifiable under items 300.6000 through 302.9800 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981, and three programs found countervailable in the original investigation: Preferential financing for exports, income tax exemptions for export earnings, and the IPI export credit premium. The review also covers eight programs that, although not included in the original investigation, are alleged by the petitioner to confer subsidies on exports of cotton yarn from Brazil.

The review is based on information covering four firms whose shipments represented 70 percent of Brazilian cotton yarn exports to the United States during 1981.

Analysis of Programs

(1) Preferential Financing For Exports

Under this program companies are declared eligible by the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") to receive working capital loans. These loans have a

duration of up to one year. Each firm producing cotton yarn can obtain preferential financing for up to 30 percent of the value of its previous year's exports.

We calculated the subsidy under this program by multiplying the value of loans outstanding under the program during 1981 by the differential between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, only that portion extending past January 1, 1981 was included in our calculation. We similarly prorated loans extending past December 31, 1981.

The commercial rate for short-term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because information provided by the Government of Brazil indicates that working capital is normally raised within the Brazilian financial system through the sale of accounts receivable. The commercial rate includes the tax on financial transactions, from which loans under the preferential financing program are exempt, and varied from 33.48 to 66.50 percent during the period January 15, 1980 through December 31, 1981.

During 1981, firms exporting cotton yarn had loans outstanding under Resolutions 515 (effective February 8, 1979), 602 (effective March 5, 1980), and 674 (effective January 22, 1981) of the Banco Central do Brasil. The effective annual rate for loans granted under these resolutions ranged from 8.70 percent to 44 percent and the differential between the commercial and preferential rates ranged from 7.09 percent to 24.78 percent. We calculated the benefit conferred by the program for 1981 to be 4.13 percent *ad valorem*.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1981, and found a weighted-average use rate of 24.48 percent. We then multiplied the current 32.6 percent differential between the benchmark commercial and preferential interest rates by the weighted-average loan use rate to find a potential benefit under this program of 7.98 percent *ad valorem*.

(2) Income Tax Exemptions for Export Earnings

Exporters of cotton yarn are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount

of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We therefore preliminarily determine the benefit from this program to be 3.06 percent *ad valorem* for 1981.

(3) IPI Export Credit Premium

The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981. The Brazilian government instituted an offsetting tax on exports of cotton yarn to the U.S. on June 28, 1981. Therefore, cotton yarn exporters received a benefit under this program for three months during 1981. We divided the value of IPI credits received during that period by 1981 exports and found an *ad valorem* benefit of 3.53 percent.

Currently, the tax collected on exports of cotton yarn to the U.S. fully offsets the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

(4) Fiscal Benefits for Special Export Programs

Under Decree Law 1219 of May 15, 1972, any firm that produces manufactured products is eligible to receive benefits from the Commission for the Granting of Fiscal Benefits for Special Export Programs ("BEFIEIX"), as long as the company makes an appropriate export commitment. Under Decree No. 77,065, a company can receive a reduction of 70 percent to 90 percent of the import duties and IPI tax on the import of machinery and equipment necessary to meet the approved export commitment. Cotton yarn exporters are eligible for benefits under this program, and one of the exporters for which we have data received benefits during 1981. We divided the amount of the benefits received by total 1981 exports covered by the response, and found an *ad valorem* benefit under this program of 1.52 percent during 1981.

(5) Preferential Export Financing Under CIC-CREGE 14-11

CIC-CREGE 14-11 is a program operated by the Banco do Brasil which provides preferential financing to exporters, who are then required to maintain a minimum fixed level of foreign exchange contracts with the Banco do Brasil. Exporters of cotton yarn participated in this program in 1981.

The Government of Brazil, in its questionnaire response, claims that the Banco do Brasil operates this program as a commercial endeavor by which it

can make a profit and ensure access to foreign currency, satisfying its government-mandated foreign exchange obligations. However, the Brazilian government has not yet provided the Department with sufficient evidence to enable us to determine whether this program is operated in a manner consistent with commercial considerations. Therefore, we preliminarily determine this program to confer a subsidy.

To calculate the amount of benefit conferred under the program, we multiplied the prorated value of loans outstanding during 1981 by the differential between the commercial and preferential interest rates on each loan. Using the preferential rate for each loan (provided by the Brazilian government) and again using the rate for discounting accounts receivable as the commercial rate, we found that the differential between the commercial and preferential rates ranged from 6.98 to 11.50 percent. We preliminarily determine the benefit conferred by the program to be 0.03 percent *ad valorem*.

(6) Other Programs

We also examined the following programs and preliminarily find them not to have been used by exporters of cotton yarn during 1981.

A. Tax Reductions on Equipment Used in Export Production ("CIEIX")

B. Fundo de Democratizacao do Capital das Empresas

C. Gold Draft of Exportation

D. Preferential Export Financing under Resolution 68 of the National Council for Foreign Commerce

E. Preferential Financing for the Storage of Merchandise Destined for Export (Resolution 330)

F. Incentives for Trading Companies (Resolution 643)

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the aggregate net subsidy conferred during 1981 is 12.27 percent *ad valorem*. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 12.27 percent of the f.o.b. invoice price on all shipments of Brazilian cotton yarn exported on or after January 1, 1981 and on or before December 31, 1981.

Further, as provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 12.59 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or

after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication of the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 29, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-8882 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Intent to Conduct an OMB Circular No. A-76 Cost Comparison Study

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given pursuant to Office of Management and Budget Circular No. A-76 and Department of Commerce Administrative Order 201-41 that the National Bureau of Standards (NBS) intends to conduct a comparison study of the cost of the Government's operation of certain janitorial services performed at NBS versus the cost of a private contractor performing the same tasks.

A contract may or may not result from the cost comparison study. Results of the study will be made available to bidders, offerors and all interested parties.

DATES: Solicitations for bids or proposals are scheduled for after April 20, 1983. The study is expected to end by November 30, 1983.

Anyone having any questions regarding this item is invited to contact Robert S. Johnson, Deputy Chief, Facilities Services Division, National

Bureau of Standards, Washington, DC 20234, (301) 921-2525.

Ernest Ambler,
Director.

[FR Doc. 83-8884 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Assistant Administrator for Fisheries has determined that the following nations which purse seined for yellowfin tuna in the eastern tropical Pacific Ocean in 1981 remain in conformance with Marine Mammal Protection Act regulations regarding the protection of porpoises and may continue to export yellowfin tuna to the United States until December 31, 1983 provided prohibitions are not imposed under other U.S. statutes. These nations are: Bermuda, Canada, Cayman Islands, Costa Rica, Ecuador, El Salvador, the Netherlands Antilles, Panama, Portugal and Venezuela. The following nations have either not supplied the information required by regulation prior to this date or are already under a Marine Mammal Protection Act embargo and may not export yellowfin tuna to the United States: Mexico, the U.S.S.R. and Peru. Spain remains under an embargo imposed by the Tuna Convention Act and may not export yellowfin tuna to the United States if the tuna was caught in the eastern tropical Pacific.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. K. R. Hollingshead, Protected Species Division, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235. Telephone: 202/634-7529.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) published regulations in the Federal Register on December 23, 1977 (42 FR 64548-64560) governing the taking of marine mammals incidental to commercial fishing operations. These regulations were repromulgated on October 31, 1980 (45 FR 72178-72196). Included in these regulations are provisions concerning the importation of yellowfin tuna and tuna products from

nations known to be involved in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean (ETP). Effective January 1, 1978, these importation provisions made the importation of yellowfin tuna and tuna products from nations known to be involved in the ETP fishery contingent upon certain findings by the Assistant Administrator for Fisheries. The Assistant Administrator must find: (a) that the fishing operations of the nation concerned " * * * are conducted in conformance with U.S. regulations and standards * * * " or (b) that " * * * although not in conformance with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S. fishing operations under these regulations * * * " (see 50 CFR 216.24(e)(5)). These findings would then be subject to an annual review in which the information items listed in § 216.24(e)(5)(ii) are updated for the previous calendar year.

In 1981, fourteen nations, not including the United States, were known to be purse seining in the ETP. During 1982, information was requested from six of these nations: The Cayman Islands, Costa Rica, Ecuador, El Salvador, Panama and Venezuela. All have now responded and have been determined to be fishing in accordance with the requirements of section 216.24(e) and may therefore continue to export yellowfin tuna to the United States until December 31, 1983. Bermuda and Canada, whose purse seine vessels are smaller than those known to effectively fish on porpoises; the Netherlands Antilles, whose fleet was sold; and Portugal, whose two vessels which were experimentally fishing for a short time in the ETP and have since been removed, may also continue to export yellowfin tuna to the United States.

Mexico and Peru are prohibited from exporting yellowfin tuna to the United States under the Marine Mammal Protection Act and during 1982 did not submit information requesting a new finding of conformance. Spain remains under an embargo imposed by the Tuna Conventions Act and may not export yellowfin tuna to the United States if the tuna was caught in the ETP. Finally, the U.S.S.R. which began purse seining operations in the ETP during 1981 and currently has two vessels fishing there, has not submitted information requesting a finding of conformance and therefore yellowfin tuna may not be exported to the United States from this nation.

These findings expire on December 31, 1983, and yellowfin tuna and tuna products from the Cayman Islands, Costa Rica, Ecuador, El Salvador, Mexico, Panama, Spain, the U.S.S.R. and Venezuela (all nations purse seining in the ETP in 1982 with vessels greater than 400 tons carrying capacity) may not be exported to the United States after that date unless a new Notice of Determination finding that these nations are in conformance with U.S. regulations regarding the protection of porpoises has been published herein. In order to be included in this Notice, the information items listed in 50 CFR 216.24(e)(5)(ii) must be completely addressed and received prior to September 1, 1983.

Dated: March 29, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-6081 Filed 4-1-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 21, 1983

The USAF Scientific Advisory Board AD Hoc Committee on Denser-Than-Air Gases will meet at Scott AFB, Illinois on April 20 and 21, 1983 from 9:00 a.m. to 5:00 p.m. each day. The meeting will be held to evaluate the adequacy of existing Air Weather Service atmospheric dispersion models to deal with gas densities greater than air.

The morning session for 9:00 a.m. to 12:30 p.m. on April 20 will be open to the public. The afternoon session on April 20 and all day on April 21, will be closed to the public. These sessions concern matters listed in Section 552(b)(3) 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.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 83-6702 Filed 4-1-83; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Privacy Act of 1974; Amendments and Deletion of Systems of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of amendments and deletion of systems of records.

SUMMARY: The U.S. Marine Corps proposes to amend the notices for three systems of records in its inventory of systems of records subject to the Privacy Act of 1974 and delete the notice for system of records. The amended systems are set forth below.

DATES: The proposed action will be effective without further notice on May 4, 1983, unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to the system managers identified in the system notices.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: 202/694-1452.

SUPPLEMENTARY INFORMATION: The Marine Corps systems notices for records systems subject to the Privacy Act of 1974 Title 5 U.S.C. 552a (Pub. L. 93-579; 88 Stat. 1896, *et seq.*) were published in the Federal Register as follows:

FR Doc. 81-897 (46 FR 6639) January 21, 1981
FR Doc. 82-674 (47 FR 2629) January 18, 1982
FR Doc. 82-2408 (47 FR 4328) January 29, 1982
FR Doc. 82-9405 (47 FR 14939) April 7, 1982
FR Doc. 82-18001 (47 FR 28964) July 2, 1982

These changes do not require an altered system report as prescribed in 5 U.S.C. 552a(o).

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense.

March 29, 1983.

Amendments

MIL00001

System name:

Assignment and Occupancy of Family Housing Records (46 FR 6650) January 21, 1981

Changes:

Authority for maintenance of the system:

Add the following phrase: "Title 10, U.S. Code 5031."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute the following:

"See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the Federal Register. Additionally, the following routine uses apply.

School Districts—By officials of school district boards of education in performance of their duties under local and/or state compulsory education laws."

MMN00006

System name:

Marine Corps Military Personnel Records (OQR/SRB) (47 FR 14943 April 7, 1982

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute the following:

"See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the Federal Register. Additionally, the following routine uses apply.

By officials and employees of the Coast Guard and National Guard in the performance of their official duties relating to screening members who have expressed a positive interest in an interservice transfer, enlistment, appointment or acceptance.

By agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

By private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

By officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

By officials and employees of the Sergeant at Arms of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

State, local and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with

litigation, law enforcement, or other matters under the jurisdiction of such agencies.

MMN00046

System name:

Recruit Incident System (46 FR 6693) January 21, 1981

Changes:

Authority for maintenance of the system:

Add the following phrase: "Title 10, U.S. Code 5031."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entry and substitute the following:
"See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register**."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

At the end of the sentence delete the words "and on magnetic tapes and discs."

Safeguards:

Delete the entry and substitute the following:
"Records are maintained in areas accessible only to authorized personnel during normal working hours. After normal working hours, rooms are locked and the buildings are controlled by security guards."

Retention and disposal:

Delete the second sentence in its entirety.

MIL00001

SYSTEM NAME:

Assignment and Occupancy of Family Housing Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. 301; Title 10, U.S.C. 5031.

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

See the blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register**. Additionally, the following routine uses apply.

School Districts—By officials of school district boards of education in performance of their duties under local

and/or state compulsory education laws.

MMN00006

SYSTEM NAME:

Marine Corps Military Personnel Record (OQR/SRB)

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

See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register**. In addition to the Blanket Uses, the following routine uses apply.

By officials and employees of the Coast Guard and National Guard in the performance of their official duties relating to screening members who have expressed a positive interest in an interservice transfer, enlistment, appointment or acceptance.

By agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

By private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

By officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

By officials and employees of the Sergeant at Arms of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

State, local and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

MMN00046

SYSTEM NAME:

Recruit Incident System

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. 301, Departmental Regulations; Title 10, U.S.C. 5031.

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

See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The file is stored in hard back binders.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel only during normal working hours. After normal working hours, rooms are locked and the buildings are controlled by security guards.

RETENTION AND DISPOSAL:

Information in hard back binders maintained three years from the recruit incident and then destroyed.

Deletions

MAA00003

System name:

Naval Aviation/Naval Flight Officer Reporting Management System (NANFORMS) (46 FR 6641) January 21, 1981.

Reason:

This system has been discontinued.

[FR Doc. 83-8996 Filed 4-1-83; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Correction of a System of Records

AGENCY: Department of the Navy, Defense.

ACTION: Correction of a Notice for a System of Records.

SUMMARY: The Department of the Navy corrects the notice for a system of records subject to the Privacy Act of 1974 by deleting the exemption for the system. The corrected notice is set forth below.

DATE: The correction will be effective May 4, 1983.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B1P), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy inventory of systems of records subject to the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93-579; 44 Stat. 1896 *et seq.*), has been published in the *Federal Register* at:

FR Doc. 81-674 (47 FR 2574) January 18, 1982
FR Doc. 81-9204 (47 FR 14944) April 7, 1982
FR Doc. 82-9844 (47 FR 15636) April 12, 1982
FR Doc. 82-12593 (47 FR 20018) May 10, 1982
FR Doc. 82-15596 (47 FR 25041) June 9, 1982
FR Doc. 82-23533 (47 FR 37948) August 27, 1982
FR Doc. 82-27420 (47 FR 44134) October 5, 1982
FR Doc. 82-27692 (47 FR 44381) October 7, 1982
FR Doc. 82-28879 (47 FR 46879) October 21, 1982
FR Doc. 82-29834 (47 FR 49067) October 29, 1982
FR Doc. 82-30255 (47 FR 50069) November 4, 1982
FR Doc. 82-32787 (47 FR 54138) December 1, 1982
FR Doc. 83-805 (48 FR 1338) January 12, 1983
FR Doc. 83-1207 (48 FR 2584) January 20, 1983
FR Doc. 83-3098 (48 FR 5291) February 4, 1983

This correction does not require an altered system report in accordance with 35 U.S.C. 552a(o).

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense,
March 29, 1983.

N0500-2

System name: Legal Records System (42 FR 2693) January 18, 1982

Change:

System exempted from certain provisions of the Act:

Delete the entire entry and substitute with the word: "None."

N0800-2

System name: Legal Records System

System exempted from certain provisions of the Act:

None.

[FR Doc. 83-8696 Filed 4-1-83; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Election Devices (AGED) will meet in closed session on 3 May 1983 at Headquarters, Air Force Weapons Lab, Kirtland AFB, Albuquerque, NM.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended, [5 U.S.C. App. 1 section 10(d) (1976)], it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,
OSD Federal Register Liaison Office,
Department of Defense,
March 30, 1983.

[FR Doc. 83-8698 Filed 4-1-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Supercomputer Applications; Advisory Committee Meeting

The Defense Science Board Task Force on Supercomputer Applications will meet in open session on May 3, 1983 at DARPA Headquarters, 1400 Wilson Boulevard, Arlington, Virginia 22209.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on May 3, 1983 the Defense Science Board Task Force on Supercomputer Applications will conduct review of the Defense Department's programs to apply the emerging capacity of computers to contribute to military programs and issues. It will attempt to identify areas

where the expected many orders of magnitude improvement in computing power can be of aid to the Defense establishment.

Persons interested in attending should contact Commander R. B. Ohlander, Task Force Executive Secretary, Telephone: (202) 699-5051. Space will be awarded on a first come first served basis.

M. S. Healy,
OSD Federal Register Liaison Officer,
Washington Headquarters Service,
Department of Defense,
March 30, 1983.

[FR Doc. 83-8687 Filed 4-1-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Revision to the List of Nationally Recognized Accrediting Agencies and Associations

AGENCY: Department of Education.

ACTION: Notice—Revisions to the List of Nationally Recognized Accrediting Agencies and Associations.

SUMMARY: The Secretary of Education publishes revisions to the Secretary's list of nationally recognized accrediting agencies and associations. This list of revisions includes only those agencies that have been added to the list and those agencies whose scopes of recognition have changed since publication of the complete list of recognized accrediting agencies and associations.

FOR FURTHER INFORMATION CONTACT: Barbara Binker, Agency Evaluation Section, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, S.W., (Room 3522, ROB-3), U.S. Department of Education, Washington, D.C. 20202. Telephone (202) 245-2810.

SUPPLEMENTARY INFORMATION: The Higher Education Act and other legislation, including the Veterans' Readjustment Assistance Act and Public Health Service Act, require the Secretary to publish a list of nationally recognized accrediting agencies that the Secretary has determined to be reliable authorities concerning educational quality. The list includes the general scope of recognition of each accrediting body. It is used in the process of determining institutional eligibility for certain programs under the legislation authorizing the list. The Secretary recently acted to make additions to the list and to modify the scopes of recognition of some of the accrediting agencies that are listed as nationally

recognized accrediting bodies. Since some of the changes affect the eligibility for funding process, they are being published at this time. These revisions modify the list previously published by the Secretary on June 14, 1982, 47 FR 25563-25566. An earlier list of changes to that list was published on November 2, 1982, 47 FR 49699-49700 and corrected on December 16, 1982, 47 FR 56385.

National Institutional and Specialized Accrediting Agencies and Associations

Additions

NURSE-MIDWIFERY

American College of Nurse-Midwives, Division of Accreditation (basic nurse-midwifery education programs)

THEATRE EDUCATION

National Association of Schools of Theatre, Commission on Accreditation (institutions and units within institutions offering degree-granting and/or non-degree-granting programs in theatre and theatre-related disciplines)

Change in Scope of Recognition

ART

National Association of Schools of Art and Design, Commission on Accreditation and Membership (degree-granting schools and departments, and non-degree-granting schools, that are predominantly organized to offer education in art, design, or art/design related disciplines)

COSMETOLOGY

National accrediting Commission of Cosmetology Arts and Sciences (schools and departments of cosmetology arts and sciences)

ENGINEERING

Accreditation Board for Engineering and Technology, Inc. (first professional degree programs in engineering, and associate and baccalaureate degree programs in engineering technology)

LANDSCAPE ARCHITECTURE

American Society of Landscape Architects, Landscape Architectural Accrediting Board (undergraduate and graduate degree programs in landscape architecture)

MUSIC

National Association of Schools of Music (institutions and units within institutions offering degree-granting or non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting institutions offering education in music)

Accrediting Agencies and Associations Recognized for Their Preaccreditation Categories

National Institutional and Specialized Accrediting Agencies and Associations

Reclassification to Category of Accreditation

National Association of Schools of Art and Design, Commission on Accreditation and Membership (Candidacy Status)

Dated: March 29, 1983.

T. H. Bell,
Secretary of Education.

[FR Doc. 83-3591 Filed 4-1-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA83-1-20-008]

Algonquin Gas Transmission Co.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

March 30, 1983.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 14, 1983, tendered for filing Third Substitute 60th Revised Sheet No. 10 and Alternate Third Substitute 60th Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1.

Algonquin Gas states that Third Substitute 60th Revised Sheet No. 10 and Alternate Third Substitute 60th Revised Sheet No. 10 are being filed to track revised rates filed by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin Gas requests that the Commission accept the tariff sheets effective March 1, 1983, synchronizing its rates with the underlying tariff sheets of Texas Eastern.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1983. 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.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-0042 Filed 4-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-54-008]

Colorado Interstate Gas Co.; Proposed Change in Rates

March 30, 1983.

Take notice that on March 23, 1983, Colorado Interstate Gas Company (CIG) submitted for filing as part of Original Volume No. 1 of its FERC Gas Tariff the following tariff sheets:

Second Substitute Replacement Second Alternate

Thirteenth Revised Sheet No. 7

Second Substitute Replacement Second Alternate

Thirteenth Revised Sheet No. 8

Second Substitute Replacement Alternate Second

Revised Sheet No. 463

Second Substitute Replacement Alternate Second

Revised Sheet No. 544

Such tariff sheets are to be effective September 29, 1982.

CIG also submitted for filing pursuant to the March 10 letter order the following tariff sheets:

Second Substitute Replacement Fourteenth

Revised Sheet No. 7

Second Substitute Replacement Fourteenth

Revised Sheet No. 8

These sheets are to be effective October 1, 1982.

CIG states that the March 10 letter order accepted CIG's settlement agreement in Docket No. RP82-54 and modified the Commission's January 10, 1983 letter order to provide that the settlement tariff rates be made applicable to all of CIG's customers. The tariff sheets contained in this filing comply with that provision of the March 10 letter order.

On February 24, 1983, CIG made a rate filing pursuant to its tariff purchased gas adjustment (PGA) provisions at Docket No. TA83-2-32. That filing proposed a rate decrease effective April 1, 1983, but maintained base tariff rates at the levels prescribed by the Commission's January 10, 1983 letter order. Therefore, in order to further comply with the March 10 letter

order, CIG submitted for filing the following tariff sheets:

Substitute Fifteenth Revised Sheet No. 7
Substitute Fifteenth Revised Sheet No. 8
These tariff sheets are proposed to be effective April 1, 1983.

CIG states that since this is a filing in response to and in compliance with the Commission's March 10 letter order, good cause exists for whatever waivers of the Commission's regulations as may be required to accept this filing in its present form. CIG requests such waiver.

CIG states that copies of the filing were served on all parties and all customers and public bodies served with the original rate filing in this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with the sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6643 Filed 4-1-83; 6:45 am]
BILLING CODE 6717-01-M

[Docket No. TA83-1-21-004 (PGA83-2a, IPR83-1, AP83-1)]

**Columbia Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

March 30, 1983.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 18, 1983, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, as follows:

Substitute Eighty-sixth Revised Sheet No. 16
Substitute First Revised Sheet Nos. 16B through 16D
Substitute Twenty-eighth Revised Sheet No. 64

Columbia states that the foregoing tariff sheets, to be effective March 1, 1983, are being filed in compliance with Ordering Paragraph B of the Commission's Order issued February 28, 1983, directing Columbia to file revised

tariff sheets reflecting the elimination of pipeline supplier rates not in effect as of March 1, 1983. This elimination results in (1) a revised Purchased Gas Cost Applicable to Sales Rate Schedules in the amount of \$93,490,971, which is \$1,695,968 less than that filed on January 28, 1983, and (2) a revised Purchased Gas Cost Surcharge Applicable to Rate Schedule SCES in the amount of \$549,648, which is \$2,536 less than that filed on January 28, 1983.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered by the

Sheet No.	Current adjustment	Cumulative adjustment	Surcharge adjustment	Effective date
42nd revised sheet No. 3A	(Base) \$(0.3472) (Excess) \$(0.3233)	2.4450 2.4769	.6694 .6694	Apr. 23, 1983.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's sole supplier, Northwest Central Pipeline Corporation. The filing also reflects a surcharge adjustment in accordance with Commercial's PGA.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 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 April 7, 1983. 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.

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6644 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA83-2-44-000]

**Commercial Pipeline Co., Inc., PGA
Filing**

March 30, 1983

Take notice that on March 24, 1983, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 42nd Revised Sheet No. 3A, superseding Second corrected 41st Revised Sheet No. 3A reflecting Purchased Gas Adjustments and effective dates as set forth below.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6645 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket GP83-23-000]

**Commonwealth of Pennsylvania,
Section 108 NGPA Determination, J & J
Enterprises, Inc., R & P No. 9 Well,
FERC J.D. No. 82-20075; Petition To
Reopen Final Well Category
Determination and Request for
Withdrawal**

Issued: March 30, 1983.

On March 14, 1983, the Division of Oil and Gas of the Commonwealth of Pennsylvania (Pennsylvania) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen, and a request to withdraw, its determination that natural gas from J & J Enterprises, Inc.'s (J & J) R & P No. 9 Well located in Jefferson, Pennsylvania qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1982). The subject determination became final on April 8, 1982, in conformance with

NGPA section 503(d) and 18 CFR 275.202(a).

Under NGPA section 108(b)(1)(A), a necessary condition for stripper well natural gas qualification is that production of gas from the applicant's well not exceed an average of 60 Mcf/Day during the qualifying 90-day production period. Pennsylvania requests that the subject determination be reopened, and, contingent upon such reopening, that J & J be allowed to withdraw the instant application, based upon production records submitted by J & J on January 13, 1983, which indicate that the R & P No. 9 Well produced gas subsequent to the qualifying 90-day production period in excess of the 60 Mcf/Day limit.

Notice is hereby given that, in the event the subject determination is reopened, the question of whether the Commission will require refunds, plus interest computed under § 154.102(c) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the *Federal Register*, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6646 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES83-34-000]

Iowa-Illinois Gas and Electric Co.; Application

March 30, 1983.

Take notice that on March 4, 1983, Iowa-Illinois Gas and Electric Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to \$70,000,000 principal amount of notes and commercial paper with final maturities of not later than June 30, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14,

1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6647 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA83-1-47-000]

MIGC, Inc.; Purchased Gas Adjustment Clause

March 30, 1983.

Take notice that on March 16, 1983 MIGC, Inc. tendered for filing copies of Twenty-Sixth Revised Sheet No. 32 and Third Revised Sheet No. 32A to its FERC Gas Tariff Original Volume No. 1, as required under the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Twenty-Sixth Revised Sheet No. 32 and Third Revised Sheet No. 32-A provide for a Purchased Gas Adjustment rate decrease of 6.28¢ per MMBtu, effective May 1, 1983, in order to: (1) Provide for a current gas cost adjustment to permit MIGC to reflect the higher cost of gas purchases which it is currently incurring (Table II), (2) provide for an adjustment to MIGC's Unrecovered Purchased Gas Cost Account as of January 31, 1982 and January 31, 1983 (Table III), (3) to recover a carrying surcharge as permitted under FERC Order No. 47 (Table VI) as set forth in MIGC's First Revised Sheet No. 31-A, (4) to set forth projected incremental pricing surcharges to become effective May 1, 1983 (Third Revised Sheet No. 32A). The effective rates also reflect a surcharge to permit MIGC to receive production related charges pursuant to FERC Order No. 94-A. CFR 271.110, *et seq.*

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6648 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TC83-5-000]

Mississippi River Transmission Corp.; Proposed Change in Rates

March 30, 1983.

Take notice that on March 15, 1983, Mississippi River Transmission Corporation (Mississippi) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the below-listed tariff sheets to become effective April 15, 1983:

Seventh Revised Sheet No. 35
Eighth Revised Sheet No. 36
Seventh Revised Sheet No. 38
Eighth Revised Sheet No. 39

The instant filing is being made to reflect changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements to be effective during the period April 15 through October 31, 1983, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan.

A copy of this filing has been mailed to Mississippi's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6649 Filed 4-1-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA83-1-27-001 (RP73-8 and RP82-132)]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 30, 1983.

Take notice that North Penn Gas Company (North Penn) on March 21, 1983 tendered for filing substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to be effective March 1, 1983.

The substitute tariff sheets are being filed to comply with ordering paragraphs (B) and (C) of the Federal Energy Regulatory Commission's (Commission) order of March 4, 1983 in the above dockets.

Substitute Seventy-Second Revised Sheet No. PGA-1 contains a decrease of 0.247¢ per Mcf to the rates contained in Seventy-Second Revised Sheet No. PGA-1. Such rates reflect a current gas cost adjustment based on the appropriate underlying gas costs in RP82-132 (Appendix A) as requested by ordering paragraph (B) of the Commission's March 4, 1983 order.

Substitute Fourth Revised Sheet No. 15C is being filed pursuant to ordering paragraph (C) of the Commission's March 4, 1983 order. Ordering paragraph (C) directed North Penn to file a revised tariff sheet to its PGA Clause which clarifies that its estimated rates for field line purchases are consistent with § 154.38(d)(4)(iv)(a) of the Commission's regulations.

In all other respects this filing remains the same as filed February 4, 1983 in the above dockets.

While North Penn believes that no waiver of the Commission's Rules and Regulations are required to permit Substitute Seventy-Second Revised Sheet No. PGA-1 and Substitute Fourth Revised Sheet No. 15C to become effective March 1, 1983 as proposed, it respectfully requests waiver of any of the Commission's Rules and Regulations as may be required.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested state commissions, and to all parties in Docket No. RP82-132.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 11, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6650 Filed 4-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-43-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 30, 1983.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on March 22, 1983, tendered for filing First Revised Sheet Nos. 6, 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Central states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to reduce its rates effective April 23, 1983, to reflect:

- (1) A decrease in the Cumulative Adjustment due to decreases in Northwest Central's average cost of purchased gas; and
- (2) A decreased Surcharge Adjustment to amortize the Deferred Purchased Gas Cost Account balance.

This filing reflects the adoption of a pattern of gas purchases designed to produce a purchased gas cost at a level which will permit gas to be sold competitively in Northwest Central's markets.

Northwest Central states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket No. RP82-114-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6651 Filed 4-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18907-002]

Valero Interstate Transmission Company (South Texas Natural Gas Gathering Company); Filing

March 30, 1983.

Take notice that on March 17, 1983, Valero Interstate Transmission Company (Vitco) (formerly South Texas Natural Gas Gathering Company), pursuant to Section 4(d) of the Natural Gas Act, 15 U.S.C. 717c(d), § 154.63 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 154.63, and the Commission's November 22, 1960 order in *Texaco Inc., et al.*, 24 FPC 979 (1960), Vitco submitted for filing Supplement No. 118 to Vitco's FERC Gas Rate Schedule No. 2. Vitco's FERC Gas Rate Schedule No. 2 is Vitco's gas sales contract with Transcontinental Gas Pipe Line Corporation (Transco) which was approved by the Commission as a part of the certificate of public convenience and necessity issued in the above-cited order. Supplement No. 118 dedicates additional gas to the Transco sale under Article XVI of the gas sales contract. Vitco requests that the date of filing be made the effective date.

A copy of the filing was served upon Transco.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-6652 Filed 4-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT83-13-000]

Washington Natural Gas Company, as Project Operator; Revised Tariff Sheet

March 30, 1983.

Take notice that on March 8, 1983, Washington Natural Gas Company (Washington Natural), 815 Mercer Street (P.O. Box 1869) Seattle, Washington 98111, in its capacity as Project Operator of the Jackson Prairie Storage Project (Storage Project), tendered for filing First Revised Sheet No. 11 to its Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 1, for effectiveness on May 1, 1983.

Washington Natural states that the Storage Project is located adjacent to the mainline facilities of Northwest Pipeline Corporation (Northwest) near Chehalis, Lewis County, Washington and the storage facility is owned in equal and undivided interests by Washington Natural, Northwest and The Washington Water Power Company (Water Power). The Storage Project provides the storage capability enabling Northwest to render a winter peaking service under its Rate Schedule SGS-1, FERC Gas Tariff, First Revised Volume No. 1 and also provides a margin of operational flexibility for Northwest in force majeure events and system outages. Washington Natural states that it operates the Storage Project on behalf of the three owners, at levels of seasonal storage capabilities and daily delivery rates certificated by the Commission. According to Washington Natural, the operations of the Storage Project are conducted under the provisions of the Gas Storage Project Agreement which comprises Washington Natural's Rate Schedule S-1 on file with the Commission.

According to Washington Natural, Water Power has released a portion of its storage capacity as an owner to British Columbia Hydro and Power Authority and applications relating to the utilization of the released storage capacity for the account of British Columbia Hydro have been filed by Northwest at Docket Nos. CP83-213-000 and CP83-214-000. Washington Natural further states that the purpose of First Revised Sheet No. 11, in connection with the foregoing proposal, is to amend a provision of the Gas Storage Project Agreement to provide explicitly that the owners may release storage capacity to other parties. As stated by Washington Natural, the revision in the Project Agreement will have no effect on the Storage Project's currently authorized levels of seasonal working gas, cushion gas or daily delivery rates and the operation of the Storage Project, as

authorized in outstanding certificates issued by the Commission, will not be otherwise changed by the proposed revision in the Project Agreement.

Washington Natural requests that First Revised Sheet No. 11 be made effective May 1, 1983, and further states that copies of its filing have been served upon Northwest and Water Power.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1983. Protests will 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 the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8653 Filed 4-3-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRL 2336-7]

Agency Forms Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the Federal Register a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:**Toxic Programs**

- Title: Case/Control Study of Cancer and Formaldehyde Association (EPA ID 1030).

Abstract: EPA designed this case/control study to examine possible

relationships between nasal/pharyngeal cancers and formaldehyde exposures.

Respondents: General public with/without nasal cancers.

Water Programs

- Title: Survey of Nonferrous Metals Forming Industry (EPA ID 1017). (This is a resubmission with a revised questionnaire.)

Abstract: EPA is surveying the industry on production processes, wastewater characteristics, and wastewater treatment technologies and costs. The Agency will use the information to develop effluent limitation regulations as required by the Clean Water Act.

Respondents: Owners and operators of businesses involved in the deformation of nonferrous metals to produce mill products, except aluminum, copper and their alloys: SIC Codes 335, 336, 349.

Agency Forms Cleared by OMB Between February 19 and March 22, 1983

- EPA ID 0178, Application for Permit to Discharge Wastewater, was cleared on March 8 (OMB #2000-0023).

- EPA ID 0226, Application for Permit to Discharge Wastewater—Form B, was cleared on March 8 (OMB #2000-0060).

- EPA ID 0227, Application Form 1—General Information, was cleared on March 8 (OMB #2000-0474).

- EPA ID 0238, Application for Permit to Discharge Wastewater—Form 2C, was cleared on March 8 (OMB #2000-0059).

- EPA ID 0662, NSPS—Volatile Organic Compound: Fugitive Emission Sources, SOCMI, was cleared on February 28 (OMB #2000-0012).

- EPA ID 0814, Information Requirements for Hazardous Waste Storage and Treatment Facilities, was cleared on February 28 (OMB #2050-0009).

- EPA ID 0875, Application for Federal Assistance—Continuing Environmental Programs, was cleared on February 25 (OMB #2000-0137).

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, SW., Washington, D.C. 20460

and

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: March 28, 1983.

John Warren,

Acting Statistical Policy Staff.

[FR Doc. 83-8330 Filed 4-1-83; 8:45 am]

BILLING CODE 6560-50-M

[AAA-FRL 2337-7]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA master list of debarred, suspended, or voluntarily excluded persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the Federal Register each calendar quarter, the names of, and other information concerning, those individuals and firms debarred, suspended, or voluntarily excluded from participation in EPA assisted programs. Assistance recipients and contractors under an EPA award may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided

for informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive updated list is available in each Region Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Office for Grants Administration in your Region.

DATE: This short list is current as of March 21, 1983.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier of the EPA Compliance Staff, Grants Administration Division, at (202) 755-9140.

Harvey G. Pippen, Jr.,
Director, Grants Administration Division.

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status ¹	From	To	Grounds	Agency
Ashland-Warren, Inc. (McMinnville, TN)	82-0401	D	Sept. 22, 1982	May 6, 1985	Section 32.200(a)(e)	FHWA
Carpenter, Frank (Monroe, NC)	82-0403	VE	Sept. 23, 1982	Open	Section 32.200(a)(b)	EPA
Crowell Constructors, Inc. (Fayetteville, NC)	82-0405	D	Nov. 29, 1982	Apr. 27, 1983	Section 32.200(a)(b)(e)(f)	FHWA
Crowell, William W. (Fayetteville, NC)	82-0405	D	Nov. 29, 1982	Apr. 27, 1983	Section 32.200(a)(b)(e)(f)	FHWA
Crowder, Otis (Charlotte, NC)	82-0402	VE	Sept. 23, 1982	Open	Section 32.200(a)(b)	EPA
Dees, Wilber E. (Fayetteville, NC)	82-0405	D	Oct. 22, 1982	Apr. 27, 1983	Section 32.200(a)(b)(e)(f)	FHWA
Dickerson Group, Inc. ² (Monroe, NC) (see footnote)	82-0403	VE	Mar. 14, 1983	Sept. 13, 1983	Section 32.200(b)	EPA
Herbert G. Whyte, Associates, Inc. (Gary, IN)	82-0501	D	Oct. 20, 1982	Oct. 10, 1985	Section 32.200(b)(e)	EPA
Houston, Arnold E., Jr. (Fayetteville, NC)	82-0404	VE	Oct. 21, 1982	Open	Section 32.200(a)(b)(f)	FHWA
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0901	S	Oct. 7, 1982	Open	Section 32.200(b)(c)(e)(i)	EPA
Newman, Fred M. (Vernon, VA)	82-1101	S	Dec. 21, 1982	Open	Section 32.200(b)	EPA
Whyte, Herbert G. (Gary, IN)	82-0501	D	Oct. 20, 1982	Oct. 10, 1985	Section 32.200(b)(e)	EPA
Wirt, David (Douglasville, GA)	82-0601	S	Oct. 7, 1982	Open	Section 32.200(b)(c)(e)(i)	EPA
Wirt, Gordon D. (Douglasville, GA)	82-0408	S	Dec. 7, 1982	Open	Section 32.200(c)(e)(i)	EPA
Wirt, Judith C. (Douglasville, GA)	82-0408	S	Dec. 7, 1982	Open	Section 32.200(c)(e)(i)	EPA

¹ D=Debarred; S=Suspended; VE=Voluntarily excluded.

² Call 202-755-9140 for list of eligible subsidiaries.

[FR Doc. 83-8478 Filed 4-1-83; 8:45 am]

BILLING CODE 6560-50-M

[W-9-FRL 2338-3]

Draft General NPDES Permits for Oil and Gas Operations in Portions of the Gulf of Mexico; Public Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice of Draft General NPDES Permits.

SUMMARY: The Regional Administrator of Region VI is proposing to reissue three general NPDES permits for certain dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. When reissued, these permits will allow permitted facilities now operating in the Gulf of Mexico to maintain compliance with effluent limitations, standards, prohibitions and other conditions established in the general NPDES permits issued on April 3, 1981 at 46 FR 20264. Because the three final general NPDES permits issued on April 3, 1981, will expire on April 29, 1983, the Regional Administrator is

proposing to reissue the three general permits for the same geographic areas. These permits will continue the authorization to discharge from facilities located in the Gulf of Mexico seaward of the inner boundary of the territorial seas off the States of Louisiana and Texas and located west of 87°40' West Longitude exclusive of certain potentially productive or unique biological areas identified in Part III.B. of each permit.

The draft general permits proposed today contain the same effluent limitations and operating conditions as the expiring permits.

These draft general permits contain an expiration date of June 30, 1984 to allow the Agency time to complete the assessments necessary to issue full five-year term permits.

Consistent with the current permits, these draft general permits will not authorize discharges into the territorial seas of Mississippi or Alabama, or from

facilities defined in 40 CFR Part 435 as "Onshore" or "Coastal." Nor will the draft general permits cover facilities defined in 40 CFR § 122.3 as "new sources." Copies of the draft general permits may be obtained from the address below.

DATES: Interested persons may submit comments on the draft general permits to the address below no later than May 4, 1983.

ADDRESSES: Comments should be sent to the Regional Administrator, Region VI, U.S. Environmental Protection Agency, 1201 Elm Street, First International Building, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Mark Satterwhite (6W-PS), U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, First International Building, Dallas, Texas 75270. Telephone (214) 767-2765.

SUPPLEMENTARY INFORMATION:

I. Background

On April 3, 1981, the Regional Administrator of Region VI issued three general NPDES permits authorizing discharges from certain facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. The general permits established effluent limitations, standards, prohibitions and other conditions on discharges from oil and gas facilities operating in the following geographic areas:

1. Lease blocks located seaward of the respective outer boundaries of the territorial seas off the States of Louisiana and Texas and located west of 87°40' West Longitude, exclusive of lease blocks identified in Part III.B. of the permit (Permit No. TX0085642);

2. Texas lease blocks located landward of the outer boundary of the territorial seas of the State of Texas, exclusive of lease blocks identified in Part III.B. of the permit (Permit No. TX0085651); and

3. Louisiana lease blocks located landward of the outer boundary of the territorial seas of the State of Louisiana, exclusive of lease blocks identified in Part III.B. of the permit (Permit No. LA00060224).

These permits, together with a fact sheet and response to comments, were published on April 3, 1981 at 46 FR 20264.

The published fact sheet discussed the significant factual, legal and policy questions considered in issuing the general permits, including the two-year term of the permits. Although NPDES permits may be issued for five-year terms, the Regional Administrator decided, for several reasons, that the permits should be issued for two-year terms. First, as discussed in the fact sheet, the Regional Administrator concluded that the discharges from facilities operating within the scope of the permits would not cause unreasonable degradation of the marine environment. This conclusion was based on a consideration of the ocean discharge criteria (published October 2, 1980 at 45 FR 65952) and an extensive analysis of the available information on the fate and effects of drilling mud discharges. At the time the permits were issued, the available scientific information did not warrant the same conclusions for operations over an extended period of time. Second, the Agency anticipated that both new information on the effects of the discharges (including information on impacts associated with multiple wells at fixed sites, impacts on benthic communities, and bioaccumulation

studies) and new regulations specifying additional technology-based limitations would be available at the end of the two-year term. For these reasons, the Agency concluded that it would be appropriate to reevaluate the permit conditions at the end of the two-year terms. The Agency is now developing effluent guidelines for the offshore subcategory of the oil and gas extraction point source category including new source performance standards (NSPS) and best available technology economically achievable (BAT). In addition, the Agency is developing a more comprehensive evaluation of the effects of the discharges on the marine environment pursuant to the ocean discharge criteria. The development of these guidelines and additional information on the effects of the discharges will enable the Agency to propose and issue five year term general permits on or before June 30, 1984.

II. Proposed Permits

The three draft general permits are being proposed today in order to allow permitted facilities in the Gulf of Mexico to maintain compliance with the Clean Water Act for the period of time in which the Agency is completing the assessments necessary to issue full five-year term permits. The draft permits cover the same geographic areas and contain the same effluent limitations and operating conditions as the current general permits. The geographic areas, the nature of activities and discharges from these facilities and the basis for the effluent limitations and operating conditions are described in the fact sheet and supplementary information published on April 3, 1981 at 46 FR 20264. Briefly, the effluent limitations are based upon the final effluent limitations guidelines for the offshore subcategory of the oil and gas extraction point source category (40 CFR Part 435) and represent the application of best practicable control technology currently available (BPT). The monitoring and reporting conditions in the permits remain unchanged from the current permits.

III. Public Comment Period

The purpose of this notice is to receive comments from interested persons. Copies of the draft general permits may be obtained by writing the above address. The administrative record (with the exception of material readily available at Region VI or published material that is generally available) is on file in the Administrative Branch, Region VI, at the above address and may be inspected and copied at \$0.20 per page at any time between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Interested persons may submit comments on the draft general permits to the Regional Administrator at the above address no later than May 4, 1983. All persons who believe that any of the conditions of draft general permits are not appropriate, or that the tentative decision to reissue these general permits is not appropriate, have an obligation to raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material, by the close of the comment period. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already a part of the administrative record or consist of State or Federal regulations, EPA documents of general applicability, or other generally available reference materials.

During the public comment period, any interested person may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

EPA will consider the issuance of final general permits following any public hearings and the close of the comment period. All comments timely submitted by interested persons in response to this notice and statements and other evidence properly submitted at any public hearings, will be considered by the Regional Administrator in the formulation of his final decision.

Any person who submits timely written comments will receive notice of the Regional Administrator's final decision.

Further information concerning EPA's permitting procedures may be found in 40 CFR Part 124.

IV. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these draft general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. The final general permits will explain how its information collection requirements respond to any OMB or public comments.

V. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these draft general permits will not have a significant

impact on a substantial number of small entities. Moreover, they reduce a significant administrative burden on regulated sources.

Dated: March 15, 1983.

Frances E. Phillips,

Acting Regional Administrator, Region VI.

[FR Doc. 83-8894 Filed 4-1-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 83-19]

Farrell Lines Inc. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Farrell Lines Incorporated against Sea-Land Service, Inc. was served March 22, 1983. Complainant alleges that respondent has filed rates on military cargo in the trades between the U.S. East Coast and the Western Mediterranean so unreasonably low as to be in violation of section 18 (b)(5) of the Shipping Act, 1916 and that these rates were established in concert in violation of section 15 of the Act.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 83-8661 Filed 4-1-83; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 83-20]

Rates Applicable to Ocean Shipment of AABCO, Inc.; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by AABCO, Inc., a military household goods forwarder, to remove uncertainty as to the underlying ocean tariff rates applicable to certain shipments of household goods. The alleged controversy arises from the asserted existence of two different rates in

carrier tariffs for military cargoes. In this particular case, United States Lines is cited as the involved carrier but it is alleged that the problem is industry-wide.

Interest persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L St., N.W., Room 11101. Participation in this proceeding by persons not named in the petition will be permitted only upon grant of intervention pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

Petitions to intervene shall be accompanied by intervenors complete reply in the matter. Such petitions and any replies to the petition for declaratory order shall be filed with the Secretary on or before April 29, 1983. An original and fifteen copies shall be submitted and a copy served on all parties. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition for declaratory order.

Francis C. Hurney,

Secretary.

[FR Doc. 83-8660 Filed 4-1-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2562]

Rosa Lopez (d.b.a. R.L. International Freight Forwarder); Order of Revocation

On March 21, 1983, Rosa Lopez (d.b.a. R.L. International Freight Forwarder), c/o Playa Roqueta #210 BLS, "Colonia Marte", Mexico D.F. C.P. 08830, surrendered her Independent Ocean Freight Forwarder License No. 2562 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2562 issued to Rosa Lopez (d.b.a. R.L. International Freight Forwarder) be revoked effective March 21, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Rosa Lopez

(d/b/a R.L. International Freight Forwarder).

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-8662 Filed 4-1-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 526]

Charles D. Sciaroni (d.b.a. Charles D. Sciaroni Co.); Order of Revocation

On March 21, 1983, Charles D. Sciaroni (d.b.a. Charles D. Sciaroni Co.), 111 Pine Street, San Francisco, California 94111, surrendered his Independent Ocean Freight Forwarder License No. 526 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 526 issued to Charles D. Sciaroni (d.b.a. Charles D. Sciaroni Co.); be revoked effective March 21, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Charles D. Sciaroni (d.b.a. Charles D. Sciaroni Co.), Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-8663 Filed 4-1-83; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14836-A]

Alaska Native Claims Selection

The propose of this decision is to modify the Decision to Issue Conveyance (DIC) dated February 10, 1983, and published in the Federal Register, February 11, 1983, on pages 6416-6418.

The DIC dated February 10, 1983, reserved certain easements according to the memorandum dated September 28, 1982, concerning final easements for the village of Barrow.

On February 28, 1983, an amendment to the memorandum of September 28, 1982, was issued which deleted an easement within the Barrow conveyance area. Therefore, the DIC is modified to

delete the reservation of the following easement:

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

d. (EIN 12 C4) an easement fifty (50) feet in width for an existing trail from road EIN 1a C5, E in Sec. 32, T. 23 N., R. 18 W., Umiat Meridian, extending southerly to public lands.

Except as modified by this decision, the decision of February 10, 1983, stands as written.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the *Federal Register* and once a week, for four (4) consecutive weeks, in the *FAIRBANKS DAILY NEWS-MINER*.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until May 4, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office,

Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Ukeagvik Inupiat Corporation, P.O. Box 427, Barrow, Alaska 99723.

Ann Johnson,
Chief, Branch of ANCSA, Adjudication.

[FR Doc. 83-0627 Filed 4-3-83; 8:45 am]

BILLING CODE 4310-84-M

[AA-42912]

Alaska Native Claims Selection; Chugach Natives, Inc.

In accordance with departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976) (ANCSA)) and Sec. 1429 of the Alaska National Interest Lands Conservation Act of December 2, 1980 (94 Stat. 2371, 2530), will be issued to Chugach Natives, Inc., for approximately 12,891 acres. The lands involved are within:

Seward Meridian, Alaska (Unsurveyed)

T. 2 S., R. 11 E.
T. 3 S., R. 11 E.
T. 1 S., R. 12 E.
T. 2 S., R. 12 E.
T. 3 S., R. 12 E.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the *CORDOVA TIMES* upon issuance of the decision. For information on how to obtain copies, contact Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send

the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 4, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Chugach Natives, Inc., 903 West Northern Lights Boulevard, Suite 201, Anchorage, Alaska 99501.

Ann Johnson,

Chief, Branch of ANCSA, Adjudication.

[FR Doc. 83-0628 Filed 4-3-83; 8:45 am]

BILLING CODE 4310-84-M

[F-73307]

Alaska Native Claims Selection; NANA Regional Corp., Inc.

In accordance with departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976) (ANCSA)) and Sec. 1418 of the Alaska National Interest Lands Conservation Act of December 2, 1980 (94 Stat. 2371, 2501), will be issued to NANA Regional Corporation, Inc., for approximately 22,176 acres. The lands involved are within:

Kateel River Meridian, Alaska (Unsurveyed)

T. 30 N., R. 18 W
T. 31 N., R. 18 W
T. 30 N., R. 19 W

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES upon issuance of the decision. For information on how to obtain copies, contact Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 4, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

NANA Regional Corporation, Inc., P.O. Box 49, Kotzebue, Alaska 99752.
State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7-005, Anchorage, Alaska 99510.

B. LaVelle Black,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 8629 Filed 4-1-83; 8:45 am]

BILLING CODE 4310-84-M

(AA-14015)

Alaska Native Claims Selection; Sealaska Corp.

In accordance with departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976) (ANCSA)), will be issued to Sealaska Corporation for approximately 1,120 acres. The lands involved are within T. 80 S., R. 83 E., Copper River Meridian.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the *Southeast Alaska Empire* (Juneau) upon issuance of the decision. For information on how to obtain copies, contact Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 4, 1983 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal is: Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, Alaska 99801.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-0630 Filed 4-1-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Concurrent Jurisdiction—Lake Mead National Recreation Area

Notice is hereby given that the Honorable Bruce Babbitt, Governor of Arizona, by letter dated June 16, 1982, has approved the request of the National Park Service to convey concurrent jurisdiction over lands within the boundaries of Lake Mead National Recreation Area in the State of Arizona. Jurisdiction was accepted by National Park Service Director, Russell E. Dickenson, by letter dated October 20, 1982.

John Cherry,

Acting Regional Director, Western Region.

[FR Doc. 83-0663 Filed 4-1-83; 8:45 am]

BILLING CODE 4310-70-M

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held

beginning 8:30 a.m. (EST), on Thursday, April 28, 1983, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff-4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. R. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. Update on Trails Planning
2. Land Protection Plans
3. Pond Management

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141, telephone (216) 650-4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: March 22, 1983.

Randall R. Pope,
Deputy Regional Director, Midwest Region.

(FR Doc. 83-8684 Filed 4-1-83; 8:45 am)

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on April 27, 1983, at the Jefferson Parish Council Chambers, 3330 North Causeway Boulevard, Metairie, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 96-265, Section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the development and implementation of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

- Cooperative agreements
- Land protection plans
- Status report on construction program

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park c/o Municipal Auditorium, 1201 St. Peter's Street, New Orleans, Louisiana 70116, telephone, area code 504 589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: March 21, 1983.

Robert I. Kerr,
Regional Director, Southwest Region.

(FR Doc. 83-8686 Filed 4-1-83; 8:45 am)

BILLING CODE 4310-70-M

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:30 p.m., Tuesday, April 19, 1983, at the Federal Building, 727 E. Durango, Room A612, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

- Park Operations Update
- Activation of Park
- Private Sector Initiative
- Land Acquisition
- Volunteers in Park

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park. Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229-6000.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: March 21, 1983.

Robert Kerr,
Regional Director, Southwest Region.

(FR Doc. 83-8685 Filed 4-1-83; 8:45 am)

BILLING CODE 4310-70-M

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget's Interior Desk Officer on (202) 395-7340.

Title: Glacier Bay National Park and Preserve Protection of Humpback

Whales, 36 CFR 13.65

Bureau Form Number: None

Frequency: Annually

Description of Respondents: Charter and fishing companies

Annual Responses: 339

Annual Burden Hours: 201

Bureau Clearance Officer: Russell K. Olsen on (202) 523-5133

Russell K. Olsen,

Chief, Administrative Services Division.

March 28, 1983.

[FR Doc. 83-8587 Filed 4-1-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of meeting sponsored by the Advisory Committee on Voluntary Foreign Aid which will be held April 11, 1983, in the Board Room of the Cooperative League of the USA (CLUSA), 1828 L Street, N.W., Suite 1100, Washington, D.C.

This will be an informal briefing for the PVO community and will concentrate on the Congressional Budget Process and activities of the U.S. Congress in relation to the PIK legislation and Section 416.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty copies.

There will be an AID representative at the meeting. It is suggested that those desiring further information contact Martha McCabe (202) 872-0550 or by mail c/o the Advisory Committee on Voluntary Foreign Aid, Agency for International Development, Washington, D.C. 20523.

Dated: March 22, 1983.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 83-8585 Filed 4-1-83; 8:45 am]

BILLING CODE 6116-01-M

International Development Cooperation Agency

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized guaranties of a loan or loans to the National Housing Authority of Thailand (Borrower) as part of A.I.D.'s development assistance program. The proceeds of these loans, amounting to

Fifteen Million Dollars (\$15,000,000), will be used to finance shelter projects for low income families residing in Thailand. The following is the name, address, telex number and telephone number of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers:

Thailand

Project: 593-HG-003—\$15,000,000
Fiscal Policy Office, Ministry of Finance,
Royal Grand Palace, Bangkok 10200,
Thailand, Telex: 82823 MINANCE TH,
Telephone: 2228186-90, 2210803,
2218202-4, 2223845

Investors should contact the Borrower as soon as possible and indicate their interest in providing financing for this Housing Guaranty project. Following its discussions with interested investors, the Borrower will decide upon a procedure for selecting an investor and will inform interested investors of the procedure to be followed.

Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty covering the loans. Disbursements under the loans will be subject to certain conditions required of the Borrower by A.I.D. as set forth in an implementation agreement between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to the authority of Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room

625, SA-12, Washington, D.C. 20523.
Telephone: (202) 632-9637.

Dated: March 28, 1983.

John T. Howley,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 83-6724 Filed 4-1-83; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review By Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell, (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3001 NEOB, Washington, DC 20503, (202) 395-7313.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Special application for authority to sell securities without competitive bidding

OMB Form No.: 3120-0109

Agency Form No.: OPF-210

Frequency: On occasion

Respondents: Privately owned rail carriers

No. of Respondents: 15

Total Burden Hrs.: 230

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Certificate of notification under 49 USC 11301(c)(1)—Issuance of short term notes

OMB Form No.: 3120-0108

Agency Form No.: OPF-230

Frequency: On occasion

Respondents: Privately owned regulated carriers

No. of Respondents: 93

Total Burden Hrs.: 279

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Issuance of securities or assumption of obligations

OMB Form No.: 3120-0110

Frequency: On occasion

Respondents: Privately owned regulated carriers

No. of Respondents: 200

Total Burden Hrs.: 2,000
 Type of Clearance: Extension
 Bureau/Office: Office of Compliance & Consumer Assistance
 Title of Form: Moving service questionnaire
 OMB Form No.: 3120-0057
 Agency Form No.: OCP-100-A
 Frequency: Nonrecurring
 Respondents: Consumers who employ interstate household goods motor carriers to move their personal effects
 No. of Respondents: 10,000
 Total Burden Hrs.: 834
 Type of Clearance: Extension
 Bureau/Office: Bureau of Accounts
 Title of Form: Quarterly report of results of operations QFR
 OMB Form No.: 3120-0002
 Agency Form No.: QFR
 Frequency: Quarterly
 Respondents: Class I Common Carriers and Class II Instruction 27 Carriers and Class I Household Goods Carriers
 No. of Respondents: 1,328
 Total Burden Hrs.: 22,576
 Agatha L. Mergenovich,
 Secretary.
 [FR Doc. 83-8588 Filed 4-1-83; 8:45 am]
 BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 83-5988 beginning on page 9961 in the issue of Wednesday, March 9, 1983, make the following correction:
 On page 9965, first column, MC 139006 (Sub-42), Rapier Smith, the name of the representative was omitted from the 4th line. The entry should read "Representative: Robert H. Kinker".

BILLING CODE 1505-01-M

Motor Carriers; Notice of Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemptions.

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 L.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on May 4, 1983. Petitions for reconsideration must be filed by April 25, 1983. Petitions for stay must be filed by April 14, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

Decided: March 28, 1983.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.
 Agatha L. Mergenovich,
 Secretary.

MC-F-15036. SAM KOVACEVICH, JR.—Continuance in control exemption—TRANSPORT AMERICA, INC., and CHICAGO-ST. LOUIS TRANSPORT CO. Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Representative: James C. Hardman, Suite 2108, 33 North La Salle Street, Chicago, IL 60602. Pleadings should refer to MC-F-15036. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the continuance in control by Sam Kovacevich, Jr. of Transport America, Inc., (No. MC-163680 and subnumbers thereunder) and Chicago-St. Louis Transport Co. (No. MC-134493 and subnumbers thereunder).

No. MC-F-15044. JPB CORPORATION—control exemption—NORTH ALABAMA EXPRESS, INC., and INTERAMERICAN CARRIER CORPORATION. Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Representative: Thomas M. O'Brian, 180 North Michigan Ave., Suite 1700, Chicago, IL 60601. Pleadings should refer to MC-F-15044. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the acquisition by JPB Corporation and its majority stockholder James P. Byrne, of control of North Alabama Express, Inc. (MC-97260) and Interamerican Carrier Corporation (MC-162702). JPB also controls Clark Transport, Inc. (MC-106647) and Car Carriers, Inc. (MC-133324) pursuant to the Commission's prior approval.

MC-F-15064. GREAT WEST TRANSPORTATION, INC.—purchase

exemption—SHOEMAKER TRUCKING COMPANY (Loren Wetzel, trustee in bankruptcy). Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Pleadings should refer to MC-F-15064. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the purchase by Great West Transportation, Inc. (MC-146360) of those operating rights of Shoemaker Trucking Company (MC-138875) found in paragraph (28) of Sub-No. 312X, namely *chemicals and related products*, between points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, on the one hand, and, on the other, points in the United States in and west of Montana, Wyoming, Colorado, and New Mexico (except Alaska and Hawaii), and, in addition, Shoemaker's underlying certificate, Sub-No. 284F.

[FR Doc. 83-8655 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the

quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-250

The following applications were filed in Region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 144610 (Sub-1-1TA), filed March 10, 1983. Applicant: C. ALLEN TRUCKING, INC., 1 Nenninger Lane, East Brunswick, NJ 08816. Representatives: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier: irregular routes: Metal products between Chester, NY, Kenilworth, NJ, New Orleans, LA and Pawtucket, RI, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Marine Industrial Cable Company, New Orleans, LA; Chester Cable Company, Chester, NY. Supporting shipper(s): Marine Industrial Cable Company, Old Gentilly Hwy., New Orleans, LA; Chester Cable Company, Chester, NY.*

MC 134806 (Sub-1-56TA), filed March 9, 1983. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier: irregular routes: Awnings between Elmsford, NY, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY, under continuing contract(s) with Architectural Concepts, Inc., Division of John Boyle & Co., Inc., Elmsford, NY. Supporting shipper: Architectural Concepts, Inc., Division of John Boyle & Co., Inc., P.O. Box 533, 3 Westchester Plaza, Elmsford, NY 10523.*

MC 134806 (Sub-1-57TA), filed March 9, 1983. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier: irregular routes: Sporting goods between Medford, MA, on the one hand, and, on the other, Compton, CA, under continuing contract(s) with Harvard Table Tennis, Inc., Medford, MA. Supporting shipper: Harvard Table Tennis, Inc., 970 Fellsway, Medford, MA 02155.*

MC 116661 (Sub-1-2TA), filed March 9, 1983. Applicant: BRIDAL VEIL TOURS, INC., 9470 Niagara Falls Boulevard, Niagara Falls, NY 14304. Representative: John L. Trigilio, Esq., Robert D. Gunderman, P.C., Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Passengers and their baggage, in special operations, in round-trip sightseeing tours, limited to the transportation of not more than 14 passengers in any one vehicle, but not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats, beginning and ending at Niagara Falls, NY and points in Niagara County, NY within 6 miles thereof, and extending to ports of entry on the US/CD Boundary line at Niagara Falls and Lewiston, NY. Supporting shipper: The Bel-Aire Motel, 9470 Niagara Falls Blvd., Niagara Falls, NY 14304.*

MC 152575 (Sub-1-1TA), filed March 10, 1983. Applicant: CARLTON TRUCKING CO., INC., 83 Southgate Street, Worcester, MA 01603. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Iron and steel articles between points in CT, DE, DC, ME, MD, MA, NH, NJ, NC, RI, SC, VT, VA and WV on the one hand, and on the other, points in AL, CT, DE, DC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. Supporting shipper(s): There are seven statements of support with this application which may be examined at the Regional Office of the ICC in Boston, MA.*

MC 158133 (Sub-1-3TA), filed March 10, 1983. Applicant: CONTRACT TRANSPORTATION SERVICE, INC., 1711 South 2nd Street, Piscataway, NJ 08854. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier: irregular routes: Metal products, Mortar, Bricks and Refractory products between Hillside, NJ and Woodbury, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Kaiser Aluminum & Chemicals Corporation, 200 Route 22, Hillside, NJ 07205.*

MC 44370 (Sub-1-1TA), filed March 10, 1983. Applicant: E. M. LERIT, INC., 404 North Avenue, P.O. Box 306, Dunellen, NJ 08812. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Telephone supplies and materials, and scrap between the Commercial Zones of Philadelphia, PA and New York, NY on the one hand, and, on the other, points in CT, DE, MA, MD, NJ, NY, PA, SC and VA. Supporting shipper(s): Metal Bank*

of America, 6801 State Road, Philadelphia, PA 19135.

MC 111729 (Sub-1-13TA), filed March 10, 1983. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, NW., Washington, D.C. 20036. *General commodities (except Classes A and B explosives, household goods and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with Wal-Mart Stores, Inc. of Bentonville, AR. Supporting shipper: Wal-Mart Stores, Inc., Bentonville, AR 72712.*

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 166139 (Sub-II-1TA), filed February 8, 1983. This was first published in the *Federal Register* dated February 28, 1983. Applicant: A.W.T. CORP., 2815 N. 17th St., Philadelphia, PA 19132. Representative: Charles M. Rand, 1200 E. Marlton Pike, Barclay House, Suite No. 7, Cherry Hill, NJ 08034. *Furniture between points in PA, NJ, NY, DE, VA and MD. Supporting shipper(s): JAL Associates, 2216 E. Allegheny Ave., Phila., PA 19134; Custom Craftsmen, 700 Creek Rd., Bellmawr, NJ 08031; Bernstein Office Machine Co., 2833 Street Rd., Bensalem, PA 19030. The purpose of this re-publication is to show the State of MD which was not shown in the previous publication.*

MC 150183 (Sub-II-5TA), filed March 22, 1983. Applicant: CASSCO REFRIGERATED TRANSPORT, Division of Cassco Corporation, P.O. Box 546, Harrisonburg, VA 22801. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312. *Foodstuffs, and materials and supplies used in the manufacture and distribution of foodstuffs (except in bulk) from the facilities of or utilized by Golden West Foods, Inc. at or near Harrisonburg, VA to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper(s): Golden West Foods, Inc., a subsidiary of McCormick & Co., 11350 McCormick Rd., Hunt Valley, MD 21031.*

MC 163825 (Sub-II-2TA), filed March 23, 1983. Applicant: G & B ANDERSON, INC., 11574 Franchester Rd., West Salem, OH 44287. Representative: Joseph A. Mamone, No. 520, 75 Public Square, Cleveland, OH 44113. *Contract Irregular: Steel, aluminum, and alloyed steel products in the form of sheets, plates, structurals and bars; and*

aluminum, steel, and alloyed steel products between points in OH, MI and PA under continuing contract(s) with Wayne Steel, Inc., Wooster, OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wayne Steel, Inc., 1070 W. Liberty Street, Wooster, OH 44691.

MC 163028 (Sub-II-2TA), filed March 23, 1983. Applicant: JASON ENTERPRISES, INC., P.O. Box 116, Vinton, VA 24179. Representative: Michael S. Ferguson, 1919 Electric Rd. SW., Roanoke, VA. *New and used construction, mining and industrial equipment and machinery and parts and components thereof, between points in the U.S.* An underlying ETA seeks 120 days authority. Supporting shipper(s): Shelton-Witt Equipment Corp., P.O. Drawer 828, Salem, VA 24153; The Ironpeddlers, Inc., Rt. 91, Box 496, Monroe, NC 28110.

MC 107012 (Sub-II-278TA), filed March 21, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between points in the U.S. under continuing contract(s) with Zayre Corporation of Framingham, MA, its subsidiaries and divisions, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Zayre Corporation, 235 Old Connecticut Path, Framingham, MA 01701.

MC 119401 (Sub-II-1TA), filed March 18, 1983. Applicant: SPENCER TRANSFER, INC., P.O. Box 622, Petersburg, VA 23803. Representative: J. Gray Spain (same address as applicant). *Malt beverages and equipment, materials and supplies used in the manufacture, sale and distribution of the above commodities between points in VA, on the one hand, and, on the other, points in KY and IN.* An underlying ETA seeks 120 days authority. Supporting shipper(s): Coury Distribution, Inc., 1605 E. Washington St., Petersburg, VA 23803; Commonwealth Dist. Co., 1710 Mactavish Ave., Richmond, VA 23230.

MC 153918 (Sub-II-4TA), filed March 18, 1983. Applicant: TRANSPORTATION & CONSOLIDATION CENTERS, INC., P.O. Box 1524, Harrisburg, PA 17105. Representative: Ernest A. Jones, Jr., P.O. Box 4168, Cherry Hill, NJ 08003. *General commodities (except class A and B explosives, commodities in bulk, household goods and articles of unusual and excessive value), between points in PA, NJ, NY, MA, MD, DE, VA, WV, and DC, on the one hand, and, on the other,*

points in OH, IN, MO, IL, KS, TX, and CA. An underlying ETA seeks 120 days authority. Supporting shippers: Ratliff and Associates, 114 Brunner St., Hummelstown, PA 17036; American Air Filter Co., Inc., 3407 North 6th St., Harrisburg, PA 17105; Commercial Warehouse, 2920 S. 19th Ave., Broadview, IL 60153; Fisher Corporation, Fisher Park, Milroy, PA 17063.

MC 166946 (Sub-II-1TA), Filed March 22, 1983. Applicant: PAUL E. BITTING, d.b.a., TRANSPORTATION SERVICES, 10 Bellview Rd., Marysville, PA 17053. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375. Contract, irregular: *flour* from the facilities of the Ulmann Company-Standard Milling Division, located at or near Highspire, PA, to points in MA NJ, NY, and Baltimore, MD, under continuing contract(s) with The Ulmann Company-Standard Milling Division of Highspire PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Ulmann Company-Standard Milling Division, Second and Race Sts., Highspire, PA 17034.

MC 166589 (Sub-II-1TA), Filed March 21, 1983. Applicant: WARD COMPANY, INC., 904 N. Lincoln St., Arlington, VA 22201. Representative: Stephen Sale, 1825 Eye St. NW., Suite 1200, Washington, DC 20006. *Such commodities as are dealt in or used by collectors, distributors and exhibitors of fine arts objects and antiques of extraordinary value between points in CT, DE, MD, NJ, NY, PA, VA and DC.* An underlying ETA seeks 120 days authority. Supporting shipper(s): There are nine supporting shippers statements to this application which may be examined at the Phila. Regional office.

MC 148421 (Sub-II-2TA), Filed March 15, 1983. Applicant: WYATT TRANSFER, INC., 716 E. 7th St., Richmond, VA 23224. Representative: Charles C. Chewing, Jr. (same address as applicant). Contract, irregular: *General commodities (except Classes A & B explosives, motor vehicles, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Richmond, VA, on the one hand, and, on the others, points in and east of the MS River, under continuing contract(s) with Acme Fixture Co. An underlying ETA seeks 120 days authority. Supporting shipper(s): Acme Fixture Co., 900 Dinwiddie Ave., Richmond, VA 23224.*

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300,

1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 166894 (Sub-3-1TA), filed March 21, 1983. Applicant: CHILDERS TRUCKING CO., INC. Route 2, Turkey Creek, South Williamson, KY 41570. Representative: Leon K. Oxley, P.O. Box 1004, Huntington, WV 25713. *Contract carrier, irregular routes; beer and soft drinks, between Williamson, WV and Columbus, OH, Albany, GA, Atlanta, GA, Edon, NC, Williamsburg, VA.* Supporting shipper: Mingo Bottling Co., Inc., 277 East Third Ave., Williamson, WV.

MC 149133 (Sub-3-28TA), filed March 11, 1983. Applicant: DIST/TRANS MULTI-SERVICES, INC. d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Boulevard, Post Office Box 7191, Charlotte, NC 28217. Representative: Charles L. Garrison (same as above). *Contract carrier, irregular routes; General Commodities, except household goods, commodities in bulk, and Classes A and B explosives, Between points in AL, CT, GA, NC, SC, FL, VA, TN, MD, PA, NY, NJ, MA, RI and WV. Restricted to service performed under a continuing contract or contracts with Armstrong World Industries, Inc. of Lancaster, Pennsylvania. Supporting Shipper: Armstrong World Industries, Inc. of Lancaster, Pennsylvania.*

MC 117577 (Sub-3-2TA), filed March 21, 1983. Applicant: A. C. WIDENHOUSE, INC., P.O. Box 10, Concord, NC 28025. Representative: Robert E. Born, Suite 508, 1447 Peachtree St., NE, Atlanta, GA 30309. *Asphalt, in bulk, in tank vehicles, from Salisbury, NC to points in Bland, Patrick, Smyth, Taxwell, Washington, and Wythe Counties, VA. Supporting shippers: Maymead Lime Co., Drawer M, Mountain City, TN 37683; Propst Construction Co., Box 888, Concord, NC 28025; and Chevron U.S.A., Inc., P.O. Box 1955, Baltimore, MD 21203.*

MC 156778 (Sub-3-8TA), filed March 17, 1983. Applicant: 7 HILLS TRANSPORT, INC., P.O. Box 6205, Rome GA. 30161. Representative: Don Moore (same address as applicant). *Contract carrier, irregular routes; Textile Products, from the facilities of Benchmark Carpet Mills, Inc., Cartersville, GA, to points in the U.S. (except AK & HI), under continuing contract(s) with Benchmark Carpet Mills, Inc., Cartersville, GA. Supporting Shipper: Benchmark Carpet Mills, Inc., P.O. Box 667, Cartersville, GA. 30120.*

MC 140902 (Sub-3-22TA), filed March 21, 1983. Applicant: DPD, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same

address as applicant). *Contract*: irregular; *General Commodities (except household goods and commodities in bulk)* between Memphis, TN; Brownsville, TX; Chicago, IL; Dumas, AR; Coshatta, LA; Denmark, SC; & Holly Springs, MS on the one hand and on the other points in the United States (except AK & HI) under continuing contract(s) with Sunbeam Appliance Company. Supporting Shipper: Sunbeam Appliance Company, 2001 S. York Road, Oak Brook, IL 60521.

MC 152658 (Sub-3-3TA), filed March 21, 1983. Applicant: HUCKS PIGGYBACK SERVICE, INC., 618 Atando Avenue, Charlotte, NC 28206. Representative: Joseph L. Steinfeld, Jr., 915 Pennsylvania Building, 425 13th Street, NW., Washington, D.C. 20004. *Contract carrier*, irregular: *machinery and transportation equipment*, between Charlotte, NC, Knoxville and Chattanooga, TN, Birmingham, AL, Macon and Atlanta, GA, and Lexington, KY, and points in their commercial zones, under continuing contracts(s) with Southern Railway System of Charlotte, NC. Supporting shipper: Southern Railway System, 312 Liddell Street, Charlotte, NC 28206.

MC 161553 (Sub-3-2TA), filed March 22, 1983. Applicant: JOHN L. SHADD TRUCKING, INC., 220 West Main St., Lake Butler, FL 32054. Representative: John L. Shadd (address same as applicant). *Commodities in bulk, fertilizer and lumber*, between points in FL, GA, and AL. Supporting Shippers: M. C. Anderson Construction Co., P.O. Box 7034, Garden City, GA 31406; Lake Butler Farm Center, Inc., P.O. Box 538, Lake Butler, FL 32054; Owens Illinois, Inc., P.O. Box 68, Lake Butler, FL 32054.

MC 166977 (Sub-3-1TA), filed March 21, 1983. Applicant: ED KIMBALL & SONS, P.O. Box 1302, 300 N. Krome Ave., Homestead, FL 33090-1302. Representative: Jerry Breclnik (same as applicant). *Bananas, Plantains and Tropical Products* from FL to all States on the east of the MS River and TX. Supporting Shipper: Banana Services, Inc., 33 Giralda, Suite 404, Coral Gables, FL 33114.

MC 159519 (Sub-3-2TA), filed March 21, 1983. Applicant: R.W. JOYCE TRUCKING CO., P.O. Box 1201, 237 Starlite Road, Mt. Airy, NC 27030. Representative: Joseph L. Steinfeld, Jr., 915 Pennsylvania Building, 425 13th Street, NW, Washington, DC 20004. *General commodities (except classes A and B explosives, household goods, and commodities in bulk)*, over irregular routes, between the facilities of Hercules Incorporated, at points in VA, on the one hand, and, on the other

points in the U.S. (except AK and HI). Supporting shipper: Hercules Incorporated, 910 Market Street, Wilmington, DE 19899.

MC 166889 (Sub-3-1TA), filed March 21, 1983. Applicant: BRANNAM & VINSON, INC., 700 East Union Street, Jacksonville, FL 32206. Representative: O. C. Beakes, 836 Riverside Avenue, Jacksonville, FL 32204. *General commodities (except classes A and B explosives)* between points in FL and points in GA, SC, NC, AL and TN. There are 11 shippers supporting affidavits attached to the application which may be reviewed at the Regional Office of the Interstate Commerce Commission in Atlanta, Georgia.

MC 161850 (Sub-3-2TA), filed March 21, 1983. Applicant: CARSON ROBERT CURLEE, Route 7, Box 810, Salisbury, NC 28144. Representative: Carson Robert Curlee (same as above). *Passengers*; between Rowan, Cabarrus, and Mecklenburg Counties, NC, on the one hand, and, on the other, Catawba Project, York County, SC. Supporting shippers: There are five statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 159138 (Sub-3-2TA), filed March 21, 1983. Applicant: LELAND J. CREEL d.b.a. PORT CITY DRAYAGE CO., 115 Bluewood Drive, Biloxi, MS 39532. Representative: LELAND J. CREEL (same as above). *General Commodities (except class A & B explosives)*, between points in LA, TX, MS, AL, FL, GA, SC, NC, AR, TN, AZ, and MO, on the one hand, and, on the other, points in the U.S. (excluding AK and HI), in Ocean Carrier furnished equipment having prior or subsequent moves by water or rail. Supporting shippers: Care Shipping, Inc., 419 Rue Decatur, New Orleans, LA.

MC 145408 (Sub-3-6TA), filed March 18, 1983. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, SC 29550. Representative: Robert L. McGeorge, Esquire, 1000 Potomac Street, N.W., Suite 501, Washington, D.C. 20007. *General commodities, (except for Classes A & B explosives and hazardous materials)*, (1) Between points in the states of ME, NH, VT, NY, MA, RI, CT, NJ, DE, PA, MD, DC, VA, WV, NC, SC, GA, FL, AL, TN, KY, OH, MI, IN, IL, WI, MN, IA, MO, AR, TX, LA and MS (except AK and HI); and, (2) between points in the states listed in (1) above, on the one hand, and, on the other, points in the U.S. Supporting shipper(s): There are 30 statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 110567 (Sub-5-12 TA), filed March 21, 1983. Applicant: SOONER TRANSPORT CORPORATION, 866 Grand Avenue, Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304. *Contract*, irregular; *general commodities (except classes A and B explosives, household goods and commodities in bulk)*, between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract with Cub Foods of Green Bay, WI.

MC 125000 (Sub-5-2TA), filed March 21, 1983. Applicant: CHARLES D. BALDWIN d.b.a. BALDWIN TRUCKING, 7702 Broadway, Amarillo, TX 79108. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768-2207. *Food and Related Products* between points in TX, on the one hand, and, on the other, points in AZ, CA, WA and Salt Lake City, UT. Supporting shippers: Lone Star Transportation Service, Dallas, TX, PYA/Monarch, Amarillo, TX, N B Distribution, Amarillo, TX, Time Chemical & Janitor Supply, Amarillo, TX.

MC 141293 (Sub-5-4TA), filed, March 21, 1983. Applicant: J.R.R.W. TRANSPORT, INC., P.O. Box 470, Iowa City, IA 52244. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Contract, Irregular Food and Related Products*; Between points in Macon County, IL, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with A.E. Staley Manufacturing Company of Decatur, IL. Supporting shipper: A.E. Staley Manufacturing Company, Decatur, IL.

MC 147368 (Sub-5-2TA), filed March 22, 1983. Applicant: RICHARD LOCKHART, P.O. Box 551, South Sioux City, NE 68776. Representative: Melvin C. Hansen, 610 Service Life Building, Omaha, NE 68102. *Contract*: Irregular. *Meat, meat products and articles distributed by meat packing houses (except hides and commodities in bulk)*, between Sioux City, IA and CA, under contract with Swift Independent Packing Co. Supporting shipper: Swift Independent Packing Co., Chicago, IL.

MC 151383 (Sub 5-15TA), filed March 21, 1983. Applicant: NICKELL TRUCKING CO., 4901 West 51st Street, Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305 Reunion Center, 9 East Fourth Street, Tulsa, OK 74103.

Contract, Irregular: *iron and steel articles*; between points in the U.S. (except AK and HI) under continuing contract(s) with Van Pelt Corporation, Russell Steel Division of Tulsa, OK. Supporting shipper: Van Pelt Corporation, Russell Steel Division, Tulsa, OK.

MC 164095 (Sub-5-4TA), filed March 21, 1983. Applicant: BIG RED EXPRESS, INC., 7911 L Street, Omaha, NE 68127. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Plastic bottles*, from Centralia, Des Plaines and Vandalia, IL to the facilities of Dorsey Laboratories at Lincoln, NE. Supporting shipper: Dorsey Laboratories, Lincoln, NE.

MC 166389 (Sub-5-3TA), filed March 21, 1983. Applicant: R & R Fertilizer, Inc., R. R. No. 1, Box 180, St. Ansgar, IA 50472. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Dry fertilizer and fertilizer materials, liquid fertilizer and anhydrous ammonia, in bulk*, from Winona, MN, Bellevue and Belmond, IA and Chicago Heights, IL to points in IA, IL, MN and WI. Supporting shipper: USS Agri-Chemicals Division of United States Steel Corporation, Atlanta, Ga.

MC 166433 (Sub-5-1TA), filed March 21, 1983. Applicant: Netex Frozen Foods, Inc., 1000 O'Tyson Street, Mount Pleasant, TX 75455. Representative: M. Robert Heller, Box 67, Eleva, WI 54738. *Contract irregular; in mink feed and beef or poultry by-products used in manufacturing pet food*, between points in the MN counties of Rice and Winona and the WI counties of Barron, Rusk and Trempealeau, under a continuing contract with Netex Pet Foods, Inc. of Eleva, WI and Northwest Mink Ranch, Inc. of Bruce, WI.

MC 166908 (Sub-5-1TA), filed March 21, 1983. Applicant: CARWELL ELEVATOR CO., INC., P.O. Box 187, Cherry Valley, AR 72324. Representative: Thomas A. Stroud, 109 Madison Avenue, Memphis, TN 38103. *Urea and anhydrous ammonia, in bulk, in dump or tank trailers*, from the facilities of Agrico Chemical Co. at or near Blytheville, AR, to points in MO, KY, TN and MS. Supporting shipper: Agrico Chemical Co., Inc., Tulsa, OK.

MC 166917 (Sub-5-1TA), filed March 21, 1983. Applicant: Hoff Brothers, Rte. 3, Perryville, MO 63775. Representative: Herman W. Huber, P.C., 101 East High Street, Jefferson City, MO 65101. *Anhydrous ammonia, in bulk, in tank vehicles* from Jefferson County MO to points in AR, IL, KY and TN. Supporting shipper: USS Agri-Chemicals Division of US Steel Corp., Atlanta, GA.

MC 166926 (Sub-5-1TA), filed March 22, 1983. Applicant: ZILA MOTOR FREIGHT, 10701 East Ute, Tulsa, OK 74169. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375. (1) *paint* between the facilities of Ennis Paint Manufacturing Co., Inc., located at or near Ennis, TX, and the facilities of Traffic Paint Manufacturing Co., Inc., located at or near Saverton, MO, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, MN, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI and WV; and (2) *footstuffs* between the facilities of Diplomacy Foods, Inc., located at or near Dallas, TX, on the one hand, and, on the other, points in AR, AZ, CA, GA, IL, LA, MN, NJ, NM, NY, OK and WI. Supporting shippers: Ennis Industries, Saverton, MO and Diplomacy Foods, Inc. Dallas, TX.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 166943 (Sub-6-1TA), filed March 22, 1983. Applicant: FARNAN BROTHERS TRUCKING COMPANY, P.O. Box 250, Kettle Falls, WA 99141. Representative: James E. Wallingford, P.O. Box 11841, Spokane, WA 99214. *Lumber, Wood Products, Metal Products, and Paper Products*, between points CA, ID, IL, MN, MT, ND, OR, SD, WA, and WI for 270 days. Supporting shippers: There are five, their statements may be examined at the regional office stated above.

MC 41098 (Sub-6-23TA), filed March 22, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. *Contract carrier, irregular routes, Household goods* between points in the U.S. under continuing contract(s) with Combined Insurance Company of America of Northbrook, IL and its affiliated companies for 270 days. Supporting shipper: Combined Insurance Company of America, 707 Skokie Boulevard, Northbrook, IL 60062.

MC 164925 (Sub-6-2TA), filed March 22, 1983. Applicant: ARVIN J. SWASEY d.b.a C & R TRUCKING, 1600 Manzanita Dr., Salt Lake City, UT 84107. Representative: Lee Redman, P.O. Box 639, Bountiful, UT 84010. *Alcoholic beverages* and related products, between points in Los Angeles, San Mateo, and Marin Counties, CA, Jefferson County, CO, Elko and White Pine Counties, NV, and Thurston County, WA, for a period of 270 days,

restricted to service for the account of Joseph E. DiGrazia Wholesale Distributing, Inc., Wells, NV. An underlying ETA seeks 120 days authority. Supporting shipper: Joseph E. DiGrazia Wholesale Distributing, Inc., 422 7th St., Wells, NV 89835.

MC 41098 (Sub-6-22TA), filed March 22, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. *Contract carrier, irregular routes, Household goods* between points in the U.S. under continuing contract(s) with ITT-Grinnell Corp. of Providence, RI and its subsidiaries for 270 days. Supporting shipper: ITT-Grinnell Corp., 250 West Exchange St., Providence, RI 02904.

MC 148791 (Sub-6-23TA), filed March 22, 1983. Applicant: TRANSPORT-WEST, INC., 1850 S. 1100 W., Woods Cross, UT 84087. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84116. *Contract Carrier, Irregular routes: Disposable medical and/or surgical supplies*, from El Paso, TX to Arlington, and Grand Prairie, TX, for the account of Surgikos, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Surgikos, Inc., P.O. Box 1227, Arlington, TX 76010.

MC 153263 (Sub-6-5 TA), filed March 22, 1983. Applicant: ANGELYNES, INC., P.O. Box 563, Loveland, CO 80539. Representative: Robert D. Brown, 401 E. 50th St., Loveland, CO 80537. *Mobile homes, sectional homes, modular homes and relocatable office buildings and relocatable commercial structures*; between CO and NM. For 270 days. Supporting shipper: Central-Homes, Inc., 237 22nd St., Greeley, CO 80631.

MC 166909 (Sub-6-1 TA), filed March 21, 1983. Applicant: DON ADAMS LIVESTOCK TRUCKING, INC., P.O. Box 31076, Billings, MT 59107. Representative: Charles A. Murray, Jr., 2822 Third Ave. N, Billings, MT 59101. *Meats, meat products and meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* from Yellowstone County, MT, to Caldwell, ID; Spokane, WA; and Nephi, Hyrum and Murray, UT for 270 days. Supporting shipper: Yellowstone Beef Products, Inc., Laurel Road, Laurel, MT 59044.

MC 104583 (Sub-6-1TA), filed March 21, 1983. Applicant: BIG PINE TRUCKING COMPANY, INC., Route 4, Box 1, Bishop, CA 93514. Representative: John C. Russell, 1545 Wilshire Boulevard (Suite 606), Los Angeles, CA. *Common*

carrier, Regular route, General commodities (except Classes A & B Explosives, household goods, and commodities in bulk) between an area defined by the city limits of Reno and Sparks, NV and Bishop, CA, from Reno/Sparks, NV over U.S. Hwy 395 to Bishop, CA and return over the same route, serving all intermediate points and all off-route points in Inyo County, CA, for 270 days. Supporting shippers: There are seven supporting shippers. Their statements may be examined at the Regional Office listed.

MC 166910 (Sub-6-1TA), filed March 21, 1983. Applicant: MELVIN BURNS AND GREGORY BURNS A PARTNERSHIP, d.b.a. BURNS AND SONS, Rt. 2, Box 287, Clovis, NM 88101. Representative: Melvin D. Burns (same as applicant). *Contract Carrier, Irregular Routes: Intermediate Dextrose Syrup* from Dimmitt, TX, to a complex of Alcohol Manufacturing plants east of Clovis, NM in Curry County for 270 days. Supporting shipper: Process Management Company, Inc., P.O. Box 1606, Joplin, MO 64802, and Clovis, NM 88101.

MC 166905 (Sub-6-1TA) filed March 18, 1983. Applicant: CHEAM TRANSPORT LTD., P.O. Box 518, Abbotsford, B.C., CD V2S 5Z5. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Contract, irregular; Fly Ash*, from Centralia, WA to ports of entry on the U.S.-CD International boundary line located in WA under continuing contract(s) with Pozzolan International Inc. of Vancouver, B.C., CD for 270 days. Supporting shipper: Pozzolan International Inc., 1244 West 77th Ave., Vancouver, B.C. V6P 3A8.

MC 42487 (Sub-6-7TA) filed March 17, 1983. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O.B. 3062, Portland, OR 97208. *Contract carrier, irregular routes: General commodities* (except Classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI) under continuing contract(s) with Mobay Chemical Corporation, for 270 days. Supporting shipper(s): Mobay Chemical Corporation, Penn Lincoln Parkway West, Pittsburgh, PA 15205.

MC 164001 (Sub-6-3TA) filed March 17, 1983. Applicant: A. FRANK COWAN, d.b.a. FRANK COWAN TRUCKING, 5891 Kingston Way, Murray, UT 84107. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. *Contract carrier, irregular routes, Food and related products*, between

points in and west of ND, SD, NE, KS, OK, and TX except AK and HI under a continuing contract(s) with South Omaha Fruit Market, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: South Omaha Fruit Market, 3232 H St., Omaha, NE 68107.

MC 166911 (Sub-6-1TA) filed March 21, 1983. Applicant: ROY V. WEEDMAN d.b.a. COWBOY TRANSPORT, 12217 S.E. 22, Milwaukie, OR 97222. Representative: (Same as applicant). *Contract carrier, irregular routes: Plumbing products*, between points in the U.S. (except AK and HI), under contract with Sunrise Pipe & Supply Ltd. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sunrise Pipe & Supply Ltd., 554 N. Columbia Blvd., Portland, OR 97217.

MC 166913 (Sub-6-1TA) filed March 21, 1983. Applicant: HAPPY TIME EXPRESS LTD., 4990 Paradise RR, Las Vegas, NV 89119. Representative: Bernard Gilman (same as applicant). *Passengers* in special and charter operations between NV and points in AZ, CA, NV, UT and CO for 270 days. There are 5 shippers. These statements may be examined at the regional office listed above.

MC 166861 (Sub-6-1TA) filed March 17, 1983. Applicant: ARTURO RIOSECO, d.b.a. INTERNATIONAL CONTRACT CARRIERS, 750 Pierce Ave., Calexico, CA 92231. Representative: Arturo Rioseco, 825 Second St., Calexico, CA 92231. *Contract Carrier, irregular routes: Wheel rims, centers and shop supplies*, between Harbor City, CA and the U.S. Border at Calexico, CA for the account of Appliance Industries, Inc. for 270 days. Supporting shipper: Appliance Industries, Inc., 23920 S. Vermont Ave., Harbor City, CA 90710.

MC 166912 (Sub-6-1TA) filed March 21, 1983. Applicant: MTF TRANSPORTATION LTD., 2555 Gilmore Ave., Burnaby, B.C., CD V5C 4T6. Representative: John S. Chapman (same address as applicant). *Contract carrier, irregular routes. Tractor units and glider kits* in driveway service between points in U.S. (except HI) under contract with Western Star Trucks, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western Star Trucks, Inc., 2076 Enterprise Way, Kelowna, B.C., CD V1Y6H8.

MC 164388 (Sub-6-2TA) filed March 18, 1983. Applicant: FRANK O. WRIGHT, d.b.a. "PARKINSON T & T," 240 King St., Delta, CO 80416. Representative: Kissinger & Lansing, P.C., 50 South Steele St., Suite 330, Denver, CO 80209. *General commodities*

(except Classes A and B explosives, commodities in bulk, and hazardous materials) between points in Mesa, San Miguel, and Ouray Counties, CO for 270 days. Supporting shippers: There are six supporting shippers. Their statements may be examined at the Regional Office listed.

MC 166611 (Sub-6-1TA) filed March 21, 1983. Applicant: STEVEN E. P. SOARES and SANDRA J. MARTINDALE, d.b.a. STEVE'S TRUCKING AND MATERIALS, 1877 Sioux Dr., Fremont, CA 94539. Representative: (Same as applicant). *Contract carrier, irregular routes, general commodities* (excluding Classes A and B explosives, household goods and commodities in bulk), between points in the U.S. for the accounts of Hanson Concrete Products, Inc. and Borchers Bros. for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Hanson Concrete Products, Inc., One Hanson Ct., Milpitas, CA; Borchers Bros., 5965 Dougherty Rd., Dublin, CA.

MC 151878 (Sub-6-11TA) filed March 18, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Dr., Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th St., NW., Suite 800, Washington, D.C. 20036. *Contract, irregular, general commodities (except Classes A and B explosives and commodities in bulk)* between points in the U.S. under continuing contract with Moore Systems, Inc. Supporting shipper: Moore Systems, Inc., 1730 Technology Drive, San Jose, CA 95115.

MC 151878 (Sub-6-12TA), filed March 18, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Dr., Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th St., N.W., Suite 800, Washington, D.C. 20036. *Contract, irregular, General commodities (except Classes A and B explosives and commodities in bulk)* between points in the U.S. under continuing contract with Fairchild, a Schlumberger Corporation. Supporting shipper: Fairchild MOS Division of Fairchild Camera & Instrument, 101 Bernal Rd., San Jose, CA 95119.

MC 151225 (Sub-6-13TA), filed March 21, 1983. Applicant: DON WARD, INC., 241 West 56th Ave., Denver, CO 80216. Representative: (Same as applicant). *Acid & Chemicals*, between points in AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, UT and WY, for 270 days. Supporting shippers: Industrial Chemicals Corp., 4711 West 58th Ave., Arvada, CO 80002. B. J. Hughes, Inc., Box 536, Brighton, CO 80601.

MC 162413 (Sub-6-2TA), filed March 17, 1983. Applicant: PRIMO CORPORATION, 4817 Alcoa Ave., Vernon, CA 90058. Representative: Curtis Lorenz (address same as applicant). *Contract Carrier, Irregular routes: Plastic Materials, viz: Flakes, Granules, Lumps, Pellets, Powder or Solid Mass.* Between Vernon, CA and points in AZ, NV, NM, OR, WA and TX for 270 days. Supporting shipper: H. Muehlstein & Co., Inc., 2411 W 8th St., Los Angeles, CA 90057.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8657 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

[AB 36 SDM]

Rail Carriers; Oregon Short Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Oregon Short Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 36 SDM. The Commission on March 14, 1983, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the maps may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 36 SDM.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8590 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Seaboard System Railroad, Inc.; Amended System Diagram Map

[AB 55 SDM]

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Seaboard System Railroad, Inc. has filed with the Commission its amended color-coded system diagram map in docket No. AB 55 SDM. The Commission on March 25, 1983, received a certificate of publication as required by said regulation which is considered the

effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 55 SDM.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8590 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

[AB 225 SDM]

Rail Carriers; Portland Traction Company; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Portland Traction Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 225 SDM. The Commission on February 18, 1983, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 225 SDM.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8591 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30125]

Rail Carriers; Hickman River City Development Corporation—Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Hickman River City Development Corporation from 49 U.S.C. Subtitle IV.

DATES: This exemption is effective on April 4, 1983. Petitions to reopen the

proceeding must be filed by April 25, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30125 to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Timothy A. Langford, P.O. Box 167, Hickman, KY 42050.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (D.C. Metropolitan Area) or toll free (800) 424-5403.

Decided: March 28, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre was absent and did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8592 Filed 4-1-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1983 Aggregate Production Quotas.

SUMMARY: This notice establishes 1983 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

EFFECTIVE DATE: April 4, 1983.

FOR FURTHER INFORMATION CONTACT:

Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration in accordance with § 0.100 of Title 28 of the Code of Federal Regulations.

On Wednesday, December 1, 1982, a notice of the proposed 1983 aggregate production quotas for certain controlled substances in Schedules I and II was published in the Federal Register (47 FR 54191). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before January 3, 1983. Three comments were received. One comment was received from Knoll Pharmaceutical Company of Whippany, New Jersey. Knoll stated that they will likely request an increase in the aggregate production quota for hydromorphone sometime in 1983. Knoll will supply DEA with information to support their proposed quota increase and this information can be used by DEA when the revised aggregate production quotas are determined in the spring of 1983. Knoll further requested that DEA issue a final order and implement its proposed hydromorphone quota immediately to assure an uninterrupted medical supply of hydromorphone early in 1983. This final order implements the hydromorphone aggregate production quota for 1983. DEA will consider any requests for an increase in the hydromorphone quota when that request, along with relevant supportive documentation, is received.

A second comment was received from Aerojet Strategic Propulsion Company of Sacramento, California. Aerojet questioned whether tetrahydrocannabinol (THC) was erroneously listed in Schedule II in 47 FR 56956. This final order correctly lists tetrahydrocannabinol in Schedule I. Aerojet also commented that based on their scheduled and projected needs for THC, the proposed THC aggregate production quota is insufficient. DEA has reviewed the data submitted by Aerojet as well as newly available information concerning the projected needs for THC in 1983. Based on this information, DEA is changing the 1983 aggregate production quota for tetrahydrocannabinols to 30.0 kilograms. DEA anticipates further information becoming available concerning the medical need for THC in the near future and will evaluate all such information when the overall review of aggregate production quotas takes place in the spring of 1983. Any necessary adjustments to the THC aggregate production quota will be made at that time.

A third comment was received from E. I. de Nemours and Company of Wilmington, Delaware concerning the proposed aggregate production quota for thebaine. Dupont stated that they have submitted new drug applications for

several oral nalbuphine products to the Food and Drug Administration (FDA) and anticipate introducing these products during 1984. In order to prepare for this introduction, Dupont states that the nalbuphine must be obtained in 1983. Nalbuphine is prepared from thebaine. Dupont estimates that the amount of thebaine required to satisfy the domestic and international needs for oxycodone, hydrocodone and nalbuphine products exceeds the proposed 1983 aggregate production quota for thebaine.

At this time is uncertain when the nalbuphine new drug application will be approved by the FDA. Until more specific information is available to DEA, no increase in the thebaine aggregate production quota is necessary.

No other comments and no requests for a hearing were received. In accordance with § 1303.11(c) of Title 21 of the Code of Federal Regulations, the Acting Administrator of the Drug Enforcement Administration has determined that no hearing relative to the comments received is necessary at this time.

Pursuant to Sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Acting Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Acting Administrator of the Drug Enforcement Administration hereby orders that the 1983 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic class	Established 1983 quota
Schedule I:	
2,5-Dimethoxyamphetamine	9,000,000
Tetrahydrocannabinols	30,000
Schedule II:	
Alphaprodine	32,000

Basic class	Established 1983 quota
Amobarbital	2,728,000
Amphetamine	510,000
Cocaine	1,000,000
Codeine (for sale)	56,452,000
Codeine (for conversion)	4,081,000
Desoxyephedrine	1,491,000
(1,348,000 grams for the production of levodexyephedrine for use in a noncontrolled, non-prescription product, and 143,000 grams for the production of methamphetamine).	
Dextropropoxyphene	53,345,000
Dihydrocodeine	1,425,000
Diphenoxylate	1,100,000
Diprenorphine	94
Ecgonine (for conversion)	800,000
Ethylmorphine	13,000
Etorphine hydrochloride	42
Fentanyl	5,014
Hydrocodone	1,056,000
Hydromorphone	131,000
Levorphanol	18,200
Mepidine	9,382,000
Methadone	1,400,000
Methadone Intermediate (4-cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,750,000
Methamphetamine (for conversion)	1,900,000
Methaqualone	0
Methylphenidate	1,062,000
Mixed Alkaloids of Opium	14,000
Morphine (for sale)	985,000
Morphine (for conversion)	61,686,000
Opium (tinctures, extracts, etc. expressed in terms of U.S.P. powdered opium)	1,919,000
Oxycodone (for sale)	1,800,000
Oxycodone (for conversion)	8,500
Oxymorphone	4,000
Pentobarbital	13,000,000
Phenmetrazine	1,638,000
Pethidine Intermediate A	6,708,000
Secobarbital	5,435,000
Thebaine (for sale)	2,275,000
Thebaine (for conversion)	1,580,000

DEA will review the above-established quotas in the early spring of 1983 to take into consideration actual 1982 sales and actual December 31, 1982 inventories, as well as other information which might be available to DEA at that time.

Dated: February 28, 1983.

Francis M. Mullen, Jr.,
Acting Administrator.

[FR Doc. 83-8001 Filed 4-1-83; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 15, 1982, and published in the Federal Register on December 27, 1982, (47 FR 57584), Endo Laboratories Inc., 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 28, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 83-8578 Filed 4-1-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-41]

Monroe Gordon Piland, III, M.D., Winston-Salem, North Carolina; Notice of Hearing

Notice is hereby given that on November 24, 1982, the Drug Enforcement Administration, Department of Justice, issued to Monroe Gordon Piland, III, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on March 23, 1982.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, April 14, 1983, in Courtroom 3-B, Room 309, United States Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: March 29, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-8580 Filed 4-1-83; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-34]

Ray Roy, M.D., Chicago, Illinois; Notice of Hearing

Notice is hereby given that on September 28, 1982, the Drug Enforcement Administration, Department of Justice, issued to Ray Roy, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, dated August 31, 1982 for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, April 13, 1983, in Courtroom 3-B, Room 309, United States Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: March 29, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-8579 Filed 4-1-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (83-27)]

National Environmental Policy Act; Finding of No Significant Impact

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of finding of no significant impact.

SUMMARY: The sixth flight of the Space Shuttle (STS-6) with a crew of four astronauts is currently scheduled for early April 1983 from the Kennedy Space Center, Florida. This flight represents the initial flight of the Shuttle Orbiter Challenger and the first use of the light-weight Solid Rocket Boosters and External Tanks. Also, STS-6 will launch the first Shuttle-transported Inertial Upper Stage (IUS). The primary purpose of the STS-6 mission is to deliver the initial Tracking and Data Relay Satellite (TDRS-A), together with the IUS which is needed to transport the TDRS-A to geosynchronous equatorial orbit from the Shuttle's low orbit. Secondary STS-6 mission objectives are: (1) To carry and operate seven research payloads which will be returned to Earth at Edwards Air Force Base, California, upon conclusion of the flight; and (2) to conduct tests and collect technical information on Shuttle vehicle systems and supporting equipment.

The Tracking and Data Relay Satellite will initiate a major improvement in NASA's tracking and data relay capabilities. The improved capabilities are needed for NASA and other government spacecraft operations, and the support of future manned mission activity. Three TDRS geosynchronous orbit satellites are planned to be launched by 1984 to support NASA's Tracking and Data Relay Satellite

System (TDRSS). Once operational with two TDRSS satellites in position (the third is an on-orbit spare). The TDRSS will significantly increase the time available for transmission of data to and from orbiting satellites/spacecraft and the ground. The time available is increased because of the satellite/spacecraft transmission of data directly to the orbiting TDRS and subsequent relay to one ground station located at White Sands, New Mexico. This improved data transmission capability will increase the value of many spacecraft, as well as providing increased safety for the Space Shuttle crew. The transition to TDRSS will permit NASA to phase out ten existing ground stations around the world. The estimated net change in employment at NASA ground stations is a decrease of approximately 100 employees.

The TDRSS is being developed for NASA under a lease arrangement by the Space Communications Company (Spacecom), a jointly-owned subsidiary of Western Union Space Company, Inc., Fairchild Industries, and Continental Telephone Company. Under this arrangement, NASA will lease the service from Spacecom, who purchases the spacecraft from the manufacturers and Space Transportation System (STS) launch services from NASA.

The TDRS spacecraft is manufactured by TRW, Inc., and the Boeing Company builds the IUS. The masses of the TDRS and IUS are approximately 2,300 kg and 12,800 kg, respectively. When integrated and installed in the Shuttle's payload bay, they occupy 63 m³, or about 20 percent of the total volume available. Two solid rocket motors are used by the IUS. They contain a total of approximately 12,500 kg of hydroxyl-terminated polybutadiene (HTPB) based solid propellant. The IUS also carries 112 kg of hydrazine propellant for reaction control. The TDRS carries 605 kg of hydrazine propellant to provide attitude control and station keeping for its planned 10-year life on orbit. The transport of these propellants on the Shuttle is the largest payload contribution to the risk of possible loss of the Shuttle vehicle and crew as well as other adverse environmental effects. Rigorous NASA and Department of Defense (DOD) safety procedures are applied to the STS and its payloads to preclude risk of catastrophic accidents.

Seven research payloads are classified as either Get-Away Special (GAS) payloads or as Mid-Deck payloads. Three small self-contained GAS payloads will be located in the Shuttle's payload bay. The payloads do not use Shuttle utilities (e.g., power) and

the only attention required by the Shuttle's crew is to turn them on and off by remote control. GAS payloads are being flown on the Shuttle as part of a NASA program intended to encourage new uses of space. Payloads are currently limited to a volume of 0.15 m³ or 5 ft³. The three GAS payloads planned for STS-6 are: (1) Crystal Growth of Artificial Snow, (2) Seed Experiment Payloads, and (3) Project Scenic Fast.

The *Crystal Growth of Artificial Snow* experiment is sponsored by the Asahi Shimbun Company of Japan and will examine growth of snowflakes under zero-gravity conditions. The Asahi Shimbun Company is a major Japanese newspaper which is sponsoring this experiment as the result of a competition for readers who proposed experiments which could be flown on the Shuttle within the constraints for GAS payloads.

The *Seed Experiment Payload* is sponsored by the George W. Park Seed Company to expose packaged seeds of many common vegetables and flowers to the space environment. After return to Earth, tests for seed coat integrity, germination, dormancy, increased mutation rate, and vigor or performance will indicate the best packaging method for space transportation of seeds. The test-flown seeds will be compared with control seeds held at the Kennedy Space Center and at the company.

Project Scenic Fast is sponsored by the United States Air Force Academy and contains six different student experiments. These are: (a) *Metal Beam Joiner* to demonstrate the soldering of two brass beams under zero-gravity conditions; (b) *Immiscible Alloy* to determine whether tin spiked with gallium (23 grams) will exhibit improved conductivity when the two elements are melted together in a zero-gravity environment; (c) *Foam Metal* will produce a sample of lead foamed by sodium bicarbonate in an evacuated glass tube; (d) *Crystal Purification* will test the effectiveness of the zone refining method of purification in zero-gravity using an 8-cm rod of lead-tin solder sealed in a glass tube; (e) *Electroplating* will determine how evenly copper plating is deposited on a copper rod in zero-gravity; and (f) *Effects on a Micro-organism* will determine the effects of weightlessness and space radiation on the development of non-pathogenic micro-organisms (*Sarcena lutea*).

Four Mid-Deck research payloads will be located within the crew cabin. These payloads use Shuttle utilities and require crew attention while the payload is active. These payloads, which are

either sponsored or cosponsored by NASA, are the Monodisperse Latex Reactor (MLR), the Continuous Flow Electrophoresis System (CFES), the Night-Day Optical Sensor of Lightning (NOSL), and Shuttle Glow.

The *Monodisperse Latex Reactor* (MLR) will carry about 400 ml of a water-latex solution. The purpose of this experiment is to effect this solution so that small, very uniformly spherical particles of latex are formed in the zero-gravity environment. These spheres will be used later as laboratory standard to measure pore size in membranes. The understanding of pore size effects on the permeability of membranes is expected to lead to economic applications, since many valuable separations of mixtures and solutions can be accomplished with a better understanding of membrane properties.

The *Continuous Flow Electrophoresis System* (CFES) has as its objective the determination of the effectiveness of electrophoresis methods in zero-gravity. Electrophoresis techniques are used to separate and concentrate biochemical compounds by utilizing slight differences in the compounds' electrical properties. The CFES experiment is intended to provide information about the feasibility of developing a pharmaceutical manufacturing and purification system.

The *Night-Day Optical Sensor of Lightning* (NOSL) is designed to observe and record data from electrical discharges in the atmosphere, especially thunderstorms. The information is expected to lead to a better understanding of electrical processes in storms and to prediction of their effects.

The *Shuttle Glow* experiment is designed to obtain information on the glow which surrounds the Shuttle while in orbit. This glow could interfere with sensitive optical instruments such as telescopes, which will be flown on future Shuttle missions. It is currently uncertain whether the glow is due to the residual atmosphere, or to offgassing from the Shuttle, or to a combination of these possibilities. The information to be gathered will assist in determining the cause of this glow and may lead to a method of controlling the glow.

The seven basic scientific payloads (GAS and Mid-Deck) to be flown on STS-6 have been determined not to be hazardous, and will not have any impact upon the environment.

STS-6 also will perform various development tests (e.g., space suits). The major purpose of these tests is to provide information for use by the Space Shuttle Program, and is not directly related to the payloads previously

discussed. The tests will have no environmental impact.

Possible alternatives to the Shuttle-integrated payloads on STS-6 (the proposed action) are: (1) No Action and (2) Use of Expendable Launch Vehicles (ELV's).

The No Action alternative is defined as continuing and possibly expending the current low capability tracking and data reception methods using existing or near NASA ground stations throughout the world. Ten existing ground stations, requiring additional NASA employment, would need to be retained to maintain the coverage for spacecraft at the current 15 percent level. Additional ground stations would be needed to provide the 85 percent coverage level to be initiated by the proposed action. Since NASA is presently unable to provide coverage in many remote locations (over oceans) the potential to achieve near world-wide coverage of spacecraft with this method would not be practical. The research experiments could not be accomplished under the No Action alternative. There is no known way to conduct experiments in the terrestrial environment requiring more than very short periods (2-5 minutes) of weightlessness. The NOSL requires the synoptic view of the Earth which can only be obtained from orbit. The Shuttle Glow experiment is specific to the Shuttle. Thus, the No Action alternative implies higher NASA ground station costs for a limited capability tracking and data acquisition network, and no benefits from the proposed research experiments.

For the Expendable Launch Vehicle (ELV) alternative, the TDRS would be flown on either of two Titan vehicle configurations. With a few minor modifications, the TDRS could be flown on a Titan III/Centaur vehicle. This particular configuration is no longer in production, having been phased-out in the 1970's. With some extensive modifications to the TDRS, which would have to be reduced in mass by 20 percent, a spacecraft with less capability could be flown on a Titan 34D/IUS vehicle. In either case, substantial additional funding would be required to use either of these vehicles. Use of the Space Shuttle, however, provides an opportunity to check the satellite while it is still in Low Earth Orbit. If it cannot be repaired in orbit, it can be returned to Earth, repaired, and launched again on another flight. ELV's cannot perform this function. While the research payloads have not been designed for use on an ELV or sounding rocket, conceptually, they can be adapted and flown. The Shuttle,

however, provides the user with lower costs and a safer return of the experiment to earth. The ELV would either be the Titan used for the TDRS, or a small ELV such as the Scout. In either case, the vehicle with a reentry and recovery system would be more expensive than if flown on the STS. Given current funding trends, it is doubtful that many of the experiments would be funded if the Shuttle were not available. There are also strong indications that if any of the experiments lead to space-manufactured products, they would be economical only if the Shuttle's return capability is available. Thus, while there are possible alternatives for the proposed action of the TDRS launch on the Shuttle, the alternatives for supporting the research payloads are questionable from either the technical or economic grounds.

For the proposed action, the only measurable long-term adverse environmental impact from the normal placement of these payloads is the addition of two expended solid rocket motors on the IUS, and the ultimately abandoned TDRS to an already large population, human-made space debris. The major concern associated with this debris is an increasing probability of collision with spacecraft. While the current debris accumulation poses little threat to the terrestrial environment, there is a low probability of a collision with an active spacecraft. This collision would likely destroy the spacecraft with its fragments adding to the long-term debris population. If the spacecraft were manned, it is possible that a direct hit by debris would result in the loss of life.

If the TDRS spacecraft were launched by a Titan ELV, the Titan Core II stage would also become part of the space debris population in addition to the spent upper stages. For either alternative, the potential collision risk from their addition to the space debris population is currently minimal. The net reduction in ground station employment of about 100 is not considered to be a significant adverse socioeconomic impact.

For both TDRS placement alternatives, there is a low probability of a catastrophic accident caused by either the major payload or by the launch vehicle. NASA and DOD safety procedures for design and operations will eliminate most of the risk of payload-caused accidents. In the case of the Shuttle, such an accident would very likely result in loss of the crew's lives. The Titan is unmanned. Accident consequences have been examined and have been determined to result in only local and temporary effects to the

environment. Launch system accidents and detailed descriptions of their potential consequences are provided in the final Environmental Impact Statements for the Space Shuttle Program and for the Expendable Launch Vehicle Program. The STS-6 payload contribution to potential consequences is considered to be very small when compared to the launch vehicle itself.

The research experiments are intended to be returned to the Earth and will have no interaction with the environment. These experiments have undergone safety reviews to provide as much assurance as possible that both the experiments and their ancillary equipment (such as batteries) cannot fail in a manner which would result in a hazard to the Shuttle mission. No synergistic hazards have been found for these payloads.

For the proposed action and alternatives, ground-based installations are needed. The construction operation and maintenance of these installations represents most of the direct impact on the human environment. For launch of TDRS by either the Shuttle or Titan, the ground-based installation is the same. For the No Action alternative, many additional stations would be needed to provide coverage equivalent to the TDRSS. Resource use would be the lowest for launch of the payloads on ELV's, and the all ground-based system would be the highest.

The short-term temporary environmental impact of the ELV launches would be less than one Space Shuttle launch in terms of noise and rocket-exhaust effluents. For the No Action alternative, the ground-based tracking and data relay system would have a larger impact on the terrestrial environment than a space-based system. This increased impact, however, would be dispersed geographically.

The conclusion of all analyses is that the environmental effects of the proposed action are not significant.

EFFECTIVE DATE: April 4, 1983.

ADDRESS: National Aeronautics and Space Administration, Code MCB-7, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Ott, (202) 755-2354.

SUPPLEMENTARY INFORMATION: The environmental assessment for this proposed project was completed by the National Aeronautics and Space Administration in January 1983.

Conclusion: The launch of STS-6 payloads will not result in any significant adverse environmental

impacts. No environmental impact statement is required for this launch.

March 30, 1983.

Ann P. Bradley,

Deputy Associate Administrator for Management.

[FR Doc. 83-8581 Filed 4-1-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL MEDIATION BOARD

Appointment of Members to the Performance Review Board

Notice is hereby given in accordance with 5 USC § 4314 of the membership of the National Mediation Board's Performance Review Board for the position of Executive Secretary. The members are as follows:

Mr. Walter C. Wallace, Member, National Mediation Board, Washington, D.C.

Mr. Howard W. Solomon, Executive Director, Federal Service Impasses Panel, Washington, D.C.

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C.

EFFECTIVE DATE: March 29, 1983.

FOR FURTHER INFORMATION CONTACT:

Mr. Rowland K. Quinn, Jr., Executive Secretary, 1425 K Street, NW., Washington, D.C. 20572, (202) 523-5950.

By direction of the National Mediation Board.

Rowland K. Quinn, Jr.,
Executive Secretary.

[FR Doc. 83-8631 Filed 4-1-83; 8:45 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on April 14-16, 1983, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the *Federal Register* on March 23, 1983.

The agenda for the subject meeting will be as follows:

Thursday, April 14, 1983

8:30 a.m.-8:45 a.m.: Opening Remarks (Open).

The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

8:45 a.m.-12:30 p.m. and 1:30 p.m.-7:30 p.m.: Clinch River Breeder Reactor (Open)

The members will hear and discuss the report of the ACRS project subcommittee and consultants who may be present regarding the request for a Construction Permit for this facility.

Members of the NRC Staff and representatives of the Applicant will make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project.

Friday, April 15, 1983

8:30 a.m.-12:00 Noon—Seabrook Nuclear Station Units 1 and 2 (Open)

The members will hear the report of the ACRS subcommittee and consultants who may be present regarding the request for an Operating License for this nuclear power station.

Members of the NRC Staff and representatives of the applicant will make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project.

12:00 Noon-12:30 p.m.: Future ACRS Activities (Open)

The members of the Committee will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

1:30 p.m.-2:00 p.m.: Recent Operating Experience (Open)

The members will hear and discuss a report from representatives of the NRC Staff regarding recent circuit breaker malfunctions in nuclear power stations.

2:00 p.m.-5:30 p.m.: Yankee Nuclear Power Station (Open)

The members will hear the report of its subcommittee and consultants who may be present regarding the SEP/IPSAR for this station.

Members of the NRC Staff and representatives of the Applicant will make presentations and respond to questions regarding this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project.

5:30 p.m.-7:00 p.m.: Proposed ACRS Report to NRC (Closed)

The members of the Committee will discuss their report to the NRC regarding proposed construction of the Clinch River Breeder Reactor.

This session will be closed to discuss information which will be involved in an adjudicatory proceeding.

Saturday, April 16, 1983

8:30 a.m.-12:00 Noon: Proposed ACRS Reports to NRC (Open/Closed)

The members of the Committee will discuss proposed reports to the NRC regarding the Seabrook Nuclear Power Station, the Yankee Nuclear Power Station, proposed regionalization of NRC Staff activities and proposed regulatory reform legislation.

Portions of this session will be closed as necessary to discuss information which will be involved in an adjudicatory proceeding and information which relates solely to the internal rules and practices of the NRC.

1:00 p.m.-4:00 p.m.: ACRS Subcommittee Activities (Open)

The members will hear and discuss the reports of subcommittee activity related to safety-related matters including proposed DOE guidelines for selection of high-level radioactive waste disposal sites, nuclear incident precursor evaluation, licensee event reporting requirements, proposed regulatory reform administrative changes, and restart of the TMI-1 nuclear plant.

4:00 p.m.-4:30 p.m.: ACRS Procedures (Open)

The members will discuss proposed procedures for Committee participation in NRC rule making and policy making activities.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 1, 1982 (47 FR 43474). 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. Persons desiring to make oral statements should notify the ACRS Executive Director 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 Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of

the possibility that the schedule for ACRS 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.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)), information which will be involved in an adjudicatory proceeding (5 U.S.C. 552 b(c)(10)) and information that relates solely to the internal personnel rules and practices of the agency (5 U.S.C. 552 b(c)(2)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 a.m. and 5:00 p.m. e.s.t.

Dated: March 30, 1983.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 83-8967 Filed 4-1-83; 6:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on General Electric Water Reactors; Meeting

The ACRS Subcommittee on General Electric Water Reactors will hold a meeting on April 21 and 22, 1983, at The Inn at Santa Monica, 530 Pico Blvd., Santa Monica, CA. The Subcommittee will review the application of the General Electric Company for a final design approval of the GESSAR II (a General Electric 238 Nuclear Island).

In accordance with the procedures outlined in the *Federal Register* on October 1, 1982 (47 FR 43474), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those

sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act exemption 4.) To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, April 21, 1983

8:30 a.m. *Until the Conclusion of Business*

Friday, April 22, 1983

8:30 a.m. *Until the Conclusion of Business*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: March 29, 1983.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 83-0668 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313 and 50-368]

**Arkansas Power and Light Co.;
Issuance of Amendments to Facility
Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 73 and 41 to Facility Operating Licenses Nos. DPR-51 and NPF-8, issued to Arkansas Power

and Light Company (the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Units Nos. 1 and 2, respectively (the facilities), located in Pope County, Arkansas. The amendments are effective as of the date of issuance.

The amendments impose requirements relating to the annual reporting of challenges of safety and relief valves on both units.

The Application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see: (1) The application for amendments dated February 25, 1983, (2) Amendment No. 73 to License No. DPR-51 and Amendment No. 41 to License No. NPF-8, and (3) and Commission's letter dated March 25, 1983. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Tech University, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 25th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Clark,
Chief, Operating Reactors Branch No. 3,
Division of Licensing.

[FR Doc. 83-0669 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

**Connecticut Yankee Atomic Power
Co.; Availability of Draft Integrated
Plant Safety Assessment Report for
the Haddam Neck Plant**

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) has published its Draft

Integrated Plant Safety Assessment Report related to Connecticut Yankee Atomic Power Company's Haddam Neck Plant, located in Middlesex County, Connecticut.

The report documents the review completed under the Systematic Evaluation Program (SEP). The SEP was initiated by the NRC to review the design of older operating nuclear reactor plants to reconfirm and document their safety. The review has provided for: (1) An assessment of the significance of differences between current technical positions on selected safety issues and those that existed when Haddam Neck was licensed, (2) a basis for deciding on how these differences should be resolved in an integrated plant review, and (3) a documented evaluation of plant safety. Equipment and procedural changes have been identified as a result of the review.

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the NRC's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457 for inspection and copying. Single copies of this report (Document No. NUREG-0826) may be requested from the U.S. Nuclear Regulatory Commission, Director, Division of Technical Information and Document Control, Washington, D.C. 20555, Attention: Publications Unit.

Dated at Bethesda, Maryland this 16th day of March 1983.

For the Nuclear Regulatory Commission.
Dennis M. Crutchfield,
Chief, Operating Reactors Branch No. 5,
Division of Licensing.

[FR Doc. 83-0670 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

**Duquesne Light Co., Ohio Edison Co.
and Pennsylvania Power Co.; Notice of
Issuance of Amendment to Facility
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Facility Operating License No. DPR-86 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance, and shall be fully implemented on January 1, 1984.

The amendment to the Technical Specifications will (1) implement the requirements of Appendix I to 10 CFR Part 50, (2) establish new limiting conditions for operation (LCO) for the quarterly and annual average release rates, and (3) revise environmental monitoring programs to assure conformance with Commission regulations.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The application for amendment dated October 22, 1982, (2) Amendment No. 66 to License No. DPR-66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of March 1983.

For the Nuclear Regulatory Commission,
David Wigginton,

Acting Branch Chief, Operating Reactors
Branch No. 1, Division of Licensing.

[FR Doc. 83-8671 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides

are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, and IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-S12, "Radiation Protection Aspects in Nuclear Power Plant Siting," has been developed. An IAEA working group, consisting of Mr. A. Gonzales from Argentina, Mr. R. K. Kapoor from India, Mr. C. Madelmont from France, Mr. L. Namestek from Czechoslovakia, and Mr. R. E. Utting from Canada, developed this guide from an IAEA collation. The working group draft was modified by the IAEA Technical Review Committee, and we are now soliciting public comment on this draft (Rev. 1, 9/10/82). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by May 18, 1983, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 29th day of March 1983.

For the Nuclear Regulatory Commission,
Robert B. Minogue,
Director, Office of Nuclear Regulatory
Research.

[FR Doc. 83-8672 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 63 and 57 to Facility Operating License Nos. DPR-42 and DPR-60 issued to Northern States Power Company (the licensee), which revised Technical Specifications for operation of Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 (the facilities) located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications (TS) concerned with Containment Purge issue B-24 and NUREG-0737 Item I.E.4.2, Addition of new Snubbers, and Event Monitoring Instrumentation, Nureg-0737, Items I.F.1.1 and I.F.1.2.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see: (1) The application for amendments dated October 29, 1982, (2) Amendment Nos. 63 and 57 to License Nos. DPR-42 and DPR-60, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental Conservation Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2)

and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of March 1983.

For the Nuclear Regulatory Commission,

Robert A. Clark,

Chief, Operating Reactors Branch No. 3,
Division of Licensing.

[FR Doc. 83-0675 Filed 4-1-83; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Revision of Systems of Records

AGENCY: Small Business Administration (SBA).

ACTION: Final Notice.

SUMMARY: On August 12, 1982, SBA published a notice at 47 FR 35056-35059 that pursuant to Section 3 of the Privacy Act, 5 U.S.C. 552a(e)(4), it changed the description of and combined records systems SBA 360 and 365 maintained by its Office of Inspector General (OIG), and designated the combined system as SBA 360, SBA Investigation Files; pursuant to section 552a(e)(11), gave notice of intended routine uses for SBA 360 and SBA 315, Personnel Security Files; pursuant to Section 552(j), gave notice of its intention to exempt the records systems; and pursuant to Section 552(k) gave notice of its intention to redescribe the existing Section 552(k)(2) and (k)(5) exemptions of the records systems. No comments were received from members of the public. The proposals to exempt records systems SBA 315 and SBA 360 pursuant to Section 552(j)(2) and to redescribe the existing Section 552(k)(5) and (k)(2) exemptions are withdrawn herein. The Section 552(k)(2) and (k)(5) exemptions for SBA 315 and SBA 360 remain as published on February 23, 1982 at 47 FR 7939 and 7943, respectively. Other changes that were proposed in the August 12 notice, as summarized below, are adopted:

(1) A routine use pursuant to Section 552a(b)(3) is described for SBA 315, Personnel Security Files, with respect to disclosures to the Office of Personnel Management in accordance with that agency's authority to evaluate Federal personnel management, to the Merit Systems Protection Board in connection with appeals of personnel actions, and to physicians conducting fitness for duty examinations.

(2) A routine use pursuant to Section 552a(b)(3), is established, for SBA 360,

SBA Investigation Files, with respect to disclosures of records to Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries preparatory thereto.

(3) A routine use pursuant to Section 552a(b)(3), is described for SBA 360 with respect to disclosures to members of the public under the Freedom of Information Act.

Dated: March 25, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-0893 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-A; Revision 3]

Redelegation of Financial Assistance

Delegation of Authority 12-A (43 FR 57207) as amended (44 FR 41000) is hereby superseded by Delegation of Authority No. 12-A (Revision 3). This revision reflects the organizational change made by the consolidation of Financial Assistance and Investment Activities.

Delegation of Authority No. 12-A (Revision 3) reads as follows:

I. Pursuant to the authority delegated by the Administrator to the Associate Administrator for Finance and Investment in Delegation of Authority No. 12 (Revision 2) (47 FR 14995) as amended (48 FR 9979), the following authority is hereby delegated to the specific positions as indicated herein:

A. Deputy Associate Administrator for Financial Assistance:

1. Financial Assistance Program:

a. To approve or decline applications for business, development company, and all other types of loans and debentures (hereinafter referred to as loans) authorized to be made by the Agency, (except for Disaster Loans, SBIC and 301(d) debentures and pollution control financing guarantees) including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

b. To cancel, reinstate, modify, and amend authorizations for loans.

c. To determine eligibility for loan applicants.

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures from time to time to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

e. To take all necessary actions in connection with the servicing,

administration, collection, and liquidation of all loans (including liquidation of loans made under the Small Business Investment Act), other obligations and acquired property, with the exception of those loans classified as in litigation.

f. To take all necessary actions in connection with the liquidation of EDA loans for the Department of Commerce.

g. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under Section 8(a) of the Small Business Act, as amended.

2. Participating Lending Institutions Program:

a. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs, including the suspension or revocation of such eligibility.

b. To take all necessary action in connection with the regulations of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act, as amended, and Title V of the Small Business Investment Act, as amended, and the Regulations thereunder as amended from time to time.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

3. Initial Placement and Secondary Market Activity:

A. To plan, direct and administer secondary market activity as it relates to loan servicing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain servicing.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the Office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

4. Investment Activities: To take any and all necessary actions in connection with the collection and sale of partially or fully disbursed loans, obligations and property (real, personal or mixed, tangible or intangible) held by or assigned to SBA and arising out of activities under the provisions of Titles I, II, III and IV (with the exception of Section 310 of Title III) of the Small Business Investment Act of 1958, as amended, and of the regulations thereunder as amended from time to

time, and, in connection therewith, to accept or reject offers of settlement or of compromise for cash, credit, or property (real, personal, or mixed tangible or intangible.)

5. Lease Guarantee:

a. To take all necessary actions in connection with the administration and servicing of direct lease rental guarantee insurance policies ("lease guarantees"), including the processing of claims for lessees' defaulted rent.

b. To take all necessary actions in connection with the defaults of all direct lease guarantees, except for matters in litigation.

6. To amend, suspend or revoke authority delegated to any position listed below.

B. Director, Office of Business Loans:

1. To approve or decline applications for business, handicapped assistance, energy loans, and all other types of loans excluding disaster loans authorized to be made by the Agency, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully or partially undisbursed loans.

3. To determine eligibility of business, handicapped assistance and all other types of loan applicants, excluding disaster loans.

C. Chief, Program Operations Division:

1. To approve or decline applications for business, handicapped assistance, energy loans, and all other types of loans excluding disaster loans, authorized to be made by the Agency, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully or partially undisbursed loans.

3. To determine eligibility of business, handicapped assistance and all other types of, excluding disaster, loan applicants.

D. Director, Office of Portfolio Management:

1. To take all necessary action in connection with the servicing, administration, collection and liquidation of all loans, direct lease guarantees (including automatic terminations provided for within the Policy), pollution control bonding, other obligations and acquired property, with the exception of those loans classified as in litigation.

2. To take all necessary actions in connection with the liquidation of SBIC's and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under Section 8(a) of the Small Business Act, as amended.

4. To plan, direct and administer secondary market activity as it relates to loan servicing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain servicing.

5. To determine and develop policy and procedures necessary for field office support of secondary market activities, and to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

E. Chief Operations Assistance Division:

1. To take all necessary action in connection with the servicing, administration, collection and liquidation of fully disbursed loans not in litigation, direct lease guarantees (including automatic terminations provided for within the policy), pollution control bonding, and other obligations and acquired property within all loan programs of the Small Business Administration.

2. To take all necessary actions in connection with the liquidation of SBIC's and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under Section 8(a) of the Small Business Act, as amended.

F. Director, Office of Lender Relations and Certification:

1. Participating Lending Institutions Program:

a. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs, including the suspension or revocation of such eligibility provided, however, final determination of eligibility, suspension or revocation of such eligibility will be retained by the Associate Administrator.

b. To take all necessary actions in connection with the regulations of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act, as amended and Title V of the Small Business Investment Act, as amended, and the Regulations thereunder as amended from time to time.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial

assistance activities as they relate to participating lending institutions.

2. Section 503 Development Company Program:

a. To approve or decline development company (Section 503) loan applications, including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

b. To cancel, reinstate, modify and amend authorizations for fully undisbursed loans. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures from time to time to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

G. Central Office Claims Review Committee:

1. This committee shall consist of the Director, Office of Portfolio Management, acting as chairman; Director, Office of Business Loans and Associate General Counsel, Office of Litigation.

2. This committee shall meet and consider reasonable and properly supported compromise proposals, including compromise proposals for lease guarantees, and make the final decision to accept or reject such proposals, provided the decision of the committee is unanimous.

II. This redelegation does not authorize anyone serving in the above positions: (except as set forth in C below)

A. To sell any primary obligations or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof.

B. To deny liability of the Small Business Administration under terms of a participation or guaranty agreement, or the initiation of a suit for recovery from a participation or guaranty agreement.

C. To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the total amount due thereon. (Compromise settlements are given to the Central Office Claims Review Committee, see paragraph I.G. above.)

III. The authority delegated herein may not be redelegated.

IV. The authority delegated herein may be exercised by any SBA employee officially designated as Acting in that position.

Effective date: April 4, 1983.

Dated: March 21, 1983.

Edwin T. Holloway,
Associate Administrator for Financial Assistance.

[FR Doc. 83-8674 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

Region II—Advisory Council; Public Meeting

The Small Business Administration Region II Advisory Council, located in the geographical area of Hato Rey, Puerto Rico will hold a public meeting at 9:00 a.m., Wednesday, April 27, 1983, at Room 401 Federico Degetau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred Benitez Robles, District Director, U.S. Small Business Administration, Federico Degetau Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey Puerto Rico, Puerto Rico 00918, (809) 753-4003.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.
March 30, 1983.

[FR Doc. 83-8675 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Birmingham Regional Advisory Council

The Small Business Administration, Region IV Advisory Council located in the geographical area of Birmingham, Alabama, will hold a public meeting at 9:00 a.m., on Friday, April 29, 1983, in the House Chambers, Alabama State Capitol, Montgomery, Alabama 36130, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 908 South 20th Street, Room 202, Birmingham, Alabama, (205) 254-1341.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.
March 29, 1983.

[FR Doc. 83-8677 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

Region VI—Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, will

hold a public meeting on Friday, May 6, 1983, from 8:30 a.m. to 4:00 p.m. in the Ready Room of the Southwestern Public Service Building located at 1120 Main Street, Lubbock, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Philip J. O'Jibway District Director, U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas 79401, (806) 762-7462.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.
March 29, 1983.

[FR Doc. 83-8678 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

Region IX—Advisory Council; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Fresno, will hold a public meeting at 9:00 a.m. on May 12, 1983, at the Fresno District Office, 2202 Monterey Street, Suite 108, Fresno, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Peter J. Bergin, District Director, U.S. Small Business Administration, 2202 Monterey Street, Suite 108, Fresno, California, 93721, (209) 487-5791.

March 29, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-8679 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

Region X—Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m., on Monday, April 11, 1983, at the Federal Building—915 Second Avenue, Room 1848, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. Talerico, Acting District Director, U.S. Small Business Administration, 1792 Federal Building, 915 Second

Avenue, Seattle, Washington 98174, (206) 442-7791.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.
March 29, 1983.

[FR Doc. 83-8676 Filed 4-1-83; 8:45 am]

BILLING CODE 8025-01-M

SYNTHETIC FUELS CORPORATION

Synthetic Fuels Projects; Amendment of Competitive Solicitation for Oil Shale Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Issuance of Amendment No. 1 to Competitive Solicitation for Oil Shale Projects.

SUMMARY: Notice is hereby given that the United States Synthetic Fuels Corporation has issued an Amendment No. 1 to the Competitive Solicitation for Oil Shale Projects issued by the Corporation on January 20, 1983.

EFFECTIVE DATE: March 24, 1983.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels Corporation, 2121 K Street, N.W., Washington, D.C. 20586, (202) 822-6436.

For copies of the amendment contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, N.W., Washington, D.C. 20586, (202) 822-6460.

Synthetic Fuels Corporation.

Jimmie R. Bowden,

Executive Vice President.

March 28, 1983.

[FR Doc. 83-8582 Filed 4-1-83; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-83-8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of

certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number

involved and must be received on or before April 19, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. —, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the

Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 28, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23562	Dresser Industries, Inc.	14 CFR 61.57(d)	To permit petitioner's pilots in command to carry passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise, without making at least three night takeoffs and landings within the preceding 90 days.
23566	Air Vegas, Inc.	14 CFR 135.113, formerly § 135.53	To permit petitioner to operate its Cessna 404 aircraft in Part 135 passenger-carrying operations with one passenger occupying a pilot seat.
23512	Accelerated Ground Training, Inc.	14 CFR 61.63(d)(2), and 61.157(d)(2)	To allow petitioner's trainees to complete a practical test for the issuance of a type rating to be added to any grade of pilot certificate that includes the items and procedures for testing in an airplane simulator. Petitioner does not have an operating certificate issued under Part 121.
21794	Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana).	14 CFR Parts 21, 43, 91, and 121	To extend Exemption 3261, as amended, to permit petitioner to operate five U.S.-registered, DC-10-15 aircraft using an FAA-approved master minimum equipment list and continuous airworthiness maintenance program.
23569	Delta Air Lines, Inc.	14 CFR 121.569(d)	To permit petitioner to operate certain of its DC-8, DC-9, L-1011, and B-727 aircraft after August 31 without having provided a means to prevent articles of baggage stowed under passenger seats from sliding sideward into the aisle.
22823	Dennis R. Anderson	14 CFR 61.155(d)(1)	Reconsideration of Denial of Exemption 3858 to allow all of petitioner's flight time logged in the rear cockpit of the USAF F-4 to be credited as second-in-command time, so that petitioner may use that time in pursuit of his airline transport pilot certificate.
23565	CIGNA Corp.	14 CFR Portions of Parts 21 and 91	To permit petitioner to operate its aircraft using an FAA-approved minimum equipment list and a continuous airworthiness maintenance program.
23510	Fischer Aviation, Inc., a/b/c William J. Simon	14 CFR 65.91(c)(1)	To permit Mr. Simon to apply for an inspection authorization even though he has not held his mechanic certificate continuously for the past 3 years.
23527	Edward Caskey	14 CFR 65.91(c)(1)	To permit petitioner to apply for an inspection authorization although he does not meet the 3-year requirements for continuously holding a mechanic certificate.
18815	Virgin Air, Inc.	14 CFR 135.243	An amendment to and an extension of Exemption 2769, as amended, which permits petitioner to operate certain aircraft in commuter air carrier operations over certain routes using pilots in command who hold commercial pilot certificates with instrument ratings. The amendment would allow petitioner to operate an additional route to and from San Juan, Puerto Rico, using its Cessna 402B aircraft.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18881	Int'l. Aerobatic Club	14 CFR 91.22(a)(1)	Extension of Exemption 2689A to permit members of the club to participate, and practice for participation, in aerobatic competitions without meeting the fuel requirements for flight under visual flight rules. Exemption 2689A terminates 3/31/83. <i>Granted 3/21/83.</i>
23556	Canadian Pacific Airlines, Ltd.	14 CFR 21.181	To permit petitioner to operate three leased, U.S.-registered Douglas DC-10-10 aircraft, N1834U, N1836U, and N1837U, utilizing an FAA-approved minimum equipment list. <i>Granted 3/22/83.</i>
23299	Bell Helicopter Textron, Inc.	14 CFR 133.1(b) and 133.45(a)(3)	To permit petitioner to operate its helicopters in external-load operations to exercise the Dallas/Ft. Worth Metroplex Helicopter Emergency Lifesaver Plan (HELP). This operation involves lifting personnel in a suspended Billy Pugh safety net. <i>Granted 3/21/83.</i>
23570	Icelandair	14 CFR 21.181	To permit petitioner to operate two leased U.S.-registered Douglas DC-8-63 aircraft, N808WA and N804WA, utilizing an FAA-approved minimum equipment list. <i>Granted 3/21/83.</i>
23468	Arabian American Oil Co. (ARAMCO)	14 CFR Parts 21 and 91	To permit petitioner to operate its U.S.-registered aircraft using a minimum equipment list. <i>Granted 3/21/83.</i>
23114	Western Airlines	14 CFR 91.307	To amend Exemption No. 3547 to add 2 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 12 B-737. <i>Granted 3/21/83.</i>
21245	New York Air	14 CFR 91.307	To amend Exemption No. 3110a to add 2 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 12 DC-9. <i>Granted 3/21/83.</i>
23411	John M. Houston	14 CFR 121.411(a)(1)	To permit petitioner to exercise the privileges of a check airman in a simulator or other training device that meets the requirements of § 121.411(a)(1) even though petitioner does not possess a valid medical certificate. <i>Denied 3/24/83.</i>

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23511	Empresa Brasileira de Aeronautica S.A. d.b.a. Embraer.	14 CFR 25.571(e)(2)	To permit type certification of the petitioner's Model EMB-120 without showing that the airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of propeller blade impact. <i>Granted 3/22/83.</i>

[FR Doc. 83-8614 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

New York Air Carrier District Office at Valley Stream, New York; Relocation

Notice is hereby given that on or about June 1, 1983, the New York Air Carrier District Office at Valley Stream, New York, will be relocated to John F. Kennedy International Airport, Jamaica, New York. It will continue to provide service to the public without interruption at the new location. Communications to the New York Air Carrier District Office should be addressed as follows: New York Air Carrier District Office, Department of Transportation, Federal Aviation Administration, Eastern Region, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

[Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354]

Issued in New York, NY on March 21, 1983.

Joseph M. Del Balzo,
Director, Eastern Region.

[FR Doc. 83-8613 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration**Environmental Impact Statement; City of Richmond and Henrico County, Virginia**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Richmond and Henrico County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to provide a four-lane divided facility from 0.38 miles

south of the intersection of Forest Hill Avenue and Chippenham Parkway (Route 150) to 1.44 miles north of the intersection of River Road and Parham Road. While the VDH&T will be constructing the majority of the proposed project, Henrico County will be constructing a section from 0.32 miles north of the intersection of River Road and Parham Road to 1.44 miles north of the intersection of River Road and Parham Road.

The proposed highway project involves in part the upgrading of existing two-lane facilities to four-lane divided roadways. The remaining part of the proposed highway project calls for a four-lane divided facility on new location. Four alternative roadway alignments within the project corridor will be investigated for this study.

The proposed project will improve transportation service in the western portion of the Richmond Metropolitan Area, will provide improved interjurisdictional access across the James River, reduce congestion on the existing Huguenot Bridge, and provide a safer traffic operation through the existing River Road-Cary Street Road-Huguenot Road intersection.

There are also five alternatives to the proposed project under consideration: (1) The "do-nothing" alternative, which projects the consequences of population and traffic growth on the presently existing road system within a specified study window; (2) the "no-build" alternative, which includes all elements of the Regional Transportation Plan with the exception of the proposed project; (3) a "full improvement" alternative, which upgrades the existing street system to respond to design year traffic demands; (4) a "limited build" alternative, which evaluates the effect of making design improvements to the critical roadway links that might offer interim transportation relief; and (5) a "transit" alternative to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local

agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: March 28, 1983.

Robert B. Welton,
District Engineer, Richmond, Virginia.

[FR Doc. 83-8594 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration**Hazardous Materials Regulations; Alcoholic Beverages; Interpretation; Correction**

In FR Doc. 83-6190, on page 10188 in the issue of Thursday, March 10, 1983, the term "ORM-E." appearing in the first sentence under the heading **SUPPLEMENTARY INFORMATION** is corrected to read "ORM-D."

Issued: March 29, 1983.

Thomas J. Charlton,
Acting Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-8598 Filed 4-1-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period March 17 through March 24, 1983 the Department of the Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0336.

Form Number: Letter 1170SC.

Title: Information Request for Group Exemption Letter.

OMB Number: N/A (new submission).

Form Number: Form CSC-10-261.

Title: Correspondence Review Followup Letter.

OMB Number: 1545-0317.

Form Number: Letter 286C.

Title: Exemption Form 4361, Ministers Waiver Disapproved.

OMB Number: N/A (new submission).

Form Number: 5498.

Title: Individual Retirement Arrangement Information.

OMB Number: 1545-0514.

Form Number: 4822.

Title: Statement of Annual Estimated Personal and Family Expenses.

OMB Number: 1545-0276.

Form Number: Letter 500-4-448.

Title: Involuntary Conversion Follow-up.

OMB Number: 1545-0364.

Form Number: Form 4669.

Title: Employee Wage Statement.

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Comptroller of the Currency

OMB Number: 1557-0104.

Form Number: None.

Title: Salary Survey.

OMB Reviewer: Richard Sheppard, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Customs Service

OMB Number: 1515-0041.

Form Number: CF 6059-B and 6059-C.

Title: Customs Declaration.

OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1983.

Floyd Sandlin,

Chief, Information Resources Management Division.

[FR Doc. 83-8596 Filed 4-1-83; 8:45 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on April 26 and 27, 1983, of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on April 26 and the preparation of a written report to the Secretary of the Treasury on April 27, 1983.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the

United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: March 29, 1983.

Roger W. Mehle,

Assistant Secretary (Domestic Finance).

[FR Doc. 83-8597 Filed 4-1-83; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1982

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1982 as required by section 44D(d)(2)(A) of the Internal Revenue Code (26 U.S.C. 44D(d)(2)(A)).

SUMMARY: The inflation adjustment factor and reference prices are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 44D of the Internal Revenue Code.

DATE: The 1982 inflation adjustment factor and reference prices apply to qualified fuels produced and sold during calendar year 1982.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor—Dennis Cox, PM:PFRR, Room 3144, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Telephone Number (202) 566-7541 (not a toll-free number).

For the reference prices—Noel J. Sheehan, CC:C:E, Room 5240, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C.

20224, Telephone Number (202) 566-4463 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The inflation adjustment factor for calendar year 1982 is 1.2676.

The reference price for qualified fuels other than gas from Devonian shale is \$28.50 per barrel for the 1982 calendar year.

Because the above reference price does not exceed \$23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 44D(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

For gas from Devonian shale, the reference price is \$6.70 per MCF for the 1982 calendar year.

Because the above reference price exceeds \$5.08 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 44D(b)(1) of the code is complete and for 1982 there is no credit for gas produced from Devonian shale.

Gerald G. Portney,

Associate Chief Counsel (Technical).

[FR Doc. 83-8577 Filed 4-1-83; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on Wednesday, April 13, 1983, in Room 600, 400 C Street, SW. From 9:45 a.m. to 12:00 the Commission will discuss the Voice of America's programming policies and proposed enhancement of its technical facilities. At 2:00 p.m., the Commission will meet with the U.S. Information Agency's Chief Inspector and then with the Director of USIA's Television Service to discuss program policies.

Mary Jane Winnett,

Management Analyst.

[FR Doc. 83-8600 Filed 11-1-83; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 65

Monday, April 4, 1983

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).

Issued: March 29, 1983.
[S-459-83 Filed 3-31-83; 10:49 am]
BILLING CODE 6570-06-M

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Mississippi River Commission	5
National Commission on Student Financial Assistance	6
Securities and Exchange Commission	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, April 5, 1983, 9:30 a.m. (eastern time).

PLACE: Commission Conference Room 200, second floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote(s);
2. A Report on Commission Operations;
3. Freedom of Information Act Appeal No. 83-1-FOIA-9-CL, concerning a request for documents contained in a closed age discrimination charge file;
4. Freedom of Information Act Appeal No. 83-1-FOIA-6-BA, concerning a request for EEO-1 data and a list of Title VII charges, if any, filed against a particular employer; and
5. Limited Scope Commissioner Charges.

Closed:

1. Litigation Authorization; General Counsel Recommendations; and
2. OFCCP's Proposed Final Rules.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From March 31st Open Meeting.

March 29, 1983.

The following item has been deleted from the list of agenda items scheduled for consideration at the March 31, 1983, Open Meeting and previously listed in the Commission's Notice of March 14, 1983.

Video—1—Title: Cablevision of Chicago's notification of aeronautical frequency usage pursuant to § 78.610 of the Commission's Rules. **Summary:** The Commission will consider whether to issue a Notice of Apparent Liability for forfeiture against Cablevision of Chicago for its use of aeronautical frequencies without authorization.

Issued: March 29, 1983.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S-463-83 Filed 3-31-83; 1:20pm]
BILLING CODE 6712-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 29, 1983.

TIME AND DATE: 2:30 p.m. Tuesday, March 28, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jones & Laughlin Steel Corporation, Docket No. PENN 81-96-R.

It was determined by a majority vote of Commissioners that Commission business required that a closed meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5632.

[S-462-83 Filed 3-31-83; 12:09 pm]
BILLING CODE 6735-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-83-16]

TIME AND DATE: 10 a.m., Wednesday, April 13, 1983.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
 - a. Certain rotary wheel printers (Docket No. 924).
 5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-464-83 Filed 3-31-83; 1:29 pm]
BILLING CODE 7020-02-M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: Beginning 1:00 p.m. and adjourning 4:30 p.m., April 25, 1983.

PLACE: 1400 Walnut Street, Vicksburg, Mississippi.

STATUS: Open to the public for observation but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the West Memphis, AR, and Vicinity Feasibility Report and Environmental Assessment.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris; telephone 601-634-5766.

[S-458-83 Filed 3-30-83; 4:19 pm]
BILLING CODE 3710-GX-M

6

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

Notice of Public Hearing

DATE: April 4, 1983.

PLACE: Room 311, Cannon House Office Building, Washington DC.

TIME: 10 a.m. to 5 p.m.

PURPOSE: To hear testimony on the real cost of the Guaranteed Student Loan Program. Specifically, the witnesses will comment on a report contracted by the Commission to Touche Ross & Co.

FOR FURTHER INFORMATION CONTACT:
Donna M. Lumla, Hearing Coordinator
(202) 724-2914.

Submitted the 18th day of March, 1983.
Richard T. Jerue,
Chief Executive Officer.

[S-461-83 Filed 3-31-83; 4:19 pm]
BILLING CODE 6820-BC-M

7

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 48 FR 12198,
March 23, 1982.

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington,
D.C.

DATE PREVIOUSLY ANNOUNCED: Friday,
March 18, 1983.

CHANGES IN THE MEETING: Additional
items. The following additional items
will be considered at a closed meeting
scheduled for Wednesday, March 30,
1983, at 10 a.m.

Report to Congress.

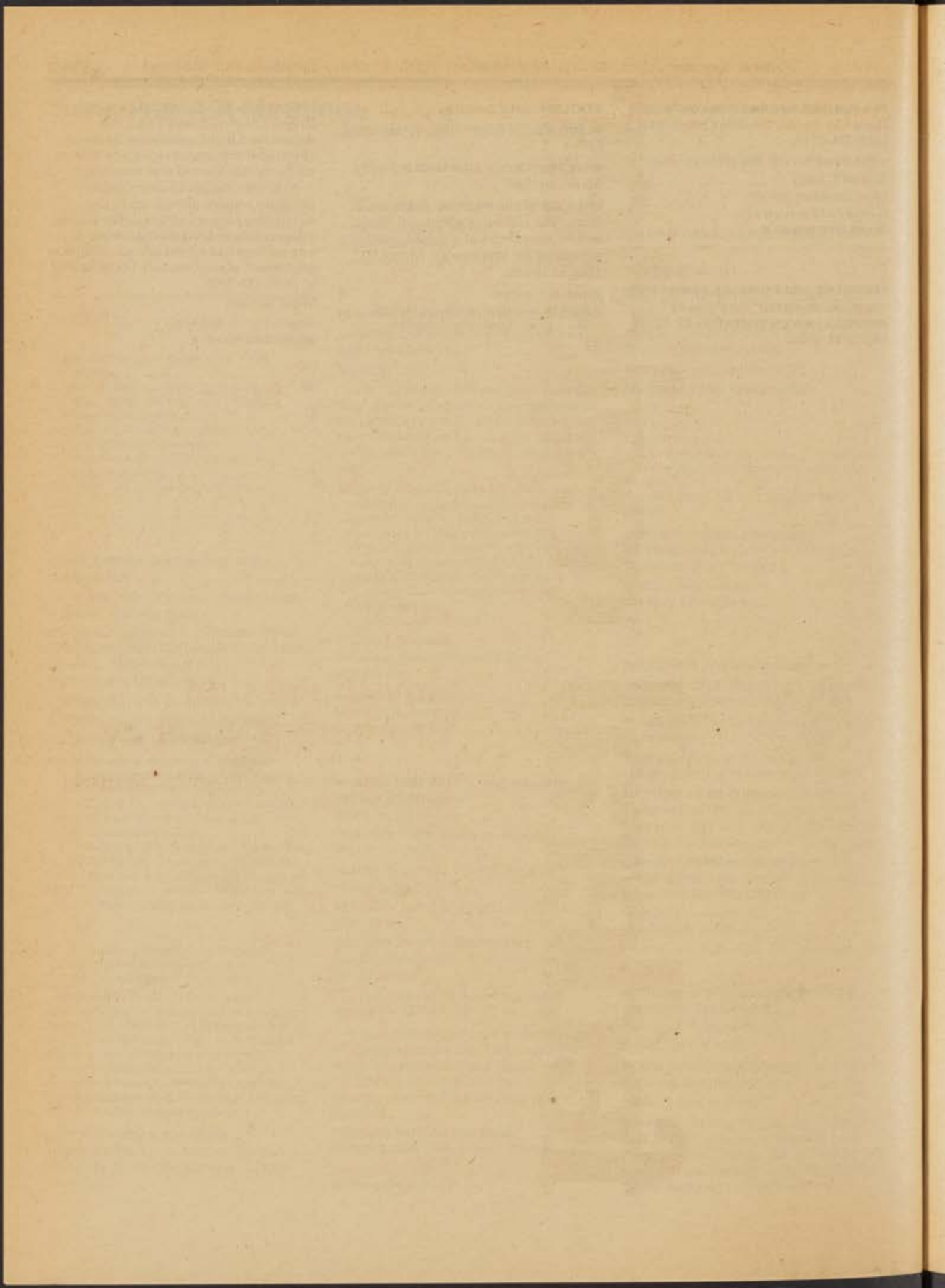
Access to investigative files by Federal,
State, or self-regulatory authorities.

Chairman Shad and Commissioners
Evans, Longstreth and Treadway
determined that Commission business
required the above changes and that no
earlier notice thereof was possible.

At times changes in Commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any matters have been added, deleted or
postponed, please contact: Steve Boehm
at (202) 272-2467.

March 29, 1983.

[S-460-83 filed 3-31-83; 10:49 am]
BILLING CODE 8010-01-M



federal register

**Monday
April 4, 1983**

Part II

Environmental Protection Agency

**Hazardous Waste Management System;
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, and 266

[SWH-FRL 2116-3]

Hazardous Waste Management System: General; Identification and Listing of Hazardous Waste; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and Standards for the Management of Specific Wastes and Management Standards for Specific Types of Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule and Request for Comment.

SUMMARY: On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), the U.S. Environmental Protection Agency (EPA) promulgated a definition of solid waste which, among other things, specifies the materials that are solid wastes when recycled. The Agency is today proposing to amend this definition in response to public comments. The proposed amendment will target the regulations more directly at those hazardous waste recycling operations which the Agency believes pose environmental and human health concerns.

In addition, the Agency is proposing general management standards for persons managing recycled hazardous waste and, in some cases, is tailoring the management standards for specific wastes and specific types of facilities or activities. The effect of these changes will be to encourage recycling of hazardous wastes while at the same time protecting human health and the environment from the improper management of recycled hazardous wastes.

DATES: EPA will accept public comments on this proposed amendment until August 2, 1983.

ADDRESSES: Comments on this proposal are welcome and may be mailed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Communications should identify the

regulatory docket number "Section 3001/Definition of Solid Waste."

The official record for this rule making is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

HEARINGS: Three public hearings—one in Washington, D.C., one in Chicago, Illinois, and one in San Francisco, California—will be held on this proposal. The schedule and location for the hearings are as follows:

June 16, 1983—Department of Health and Human Services, Auditorium, 230 Independence Avenue, S.W., Washington, D.C.

June 21, 1983—The Westin Hotel, Michigan Avenue at Delaware, Chicago, Illinois.

June 23, 1983—Golden Gate University, Auditorium—2nd floor, 536 Mission Street, San Francisco, California.

The hearings will be held in each location between 9:00 a.m. and 4:00 p.m. unless concluded earlier, with registration at 8:30 a.m. Anyone wishing to make an oral statement at the hearing should notify, in writing: Mrs. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460.

Please indicate at which hearing (location) you wish to make your oral statement. You must restrict your oral statement to ten minutes and should have written copies of your complete comments for inclusion in the official record. You may also submit your written comments at the public hearings.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Matthew A. Straus, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

Outline

Part I: Determining Which Materials Are Hazardous Wastes When Recycled

- I. EPA has authority under RCRA to regulate hazardous wastes that are recycled
- II. The Agency's strategy in exercising its authority over hazardous wastes that are recycled
- III. The Agency's existing definition of solid waste
- IV. The proposed amendment to the definition of solid waste
 - A. Changes in Overall Approach Between the Proposed and the Existing Definitions
 - B. An Overview of the Proposed Definition
 1. Materials That Are Solid Wastes
 2. Materials That Are Not Solid Wastes

3. Exemptions for Certain Recycling Activities

- C. The Agency's Decision to Reject a Standard Based on the Value of the Recycled Material
- D. Materials Burned to Recover Energy
- V. New definitions relating to burning of hazardous waste
- VI. Discussion of specific provisions of the revised definition of solid waste
 - A. Proposed § 261.1(b): Purpose and Scope
 - B. Proposed § 261.2(a)(1)
 - C. Proposed § 261.2(a)(2)(i): Wastes That Are Used in a Manner Constituting Disposal
 - D. Proposed §§ 261.2(a)(2)(ii) and 261.6(b)(1)(v): Wastes That Are Burned to Recover Energy, Are Used to Produce Fuels, or Are Contained in Fuels
 - E. Proposed §§ 261.2(a)(2)(iii), 261.2(c)(1), and 261.6(b)(1)(i) and (ii): Wastes That Are Reclaimed
 1. The Proposed Provisions
 2. The Meaning of "Reclamation"
 3. The Distinction Between "Use" and "Reclamation"
 4. Exception for Materials Reclaimed at the Plant Site and Returned to the Original Manufacturing Process
 5. The Status of Reclaimed Products
 - F. Proposed §§ 261.2(a)(2)(iv) and 261.2(c)(2): Wastes That Are Accumulated Speculatively
 - G. Proposed §§ 261.2(a)(2)(v) and 261.2(c)(3): Materials That Accumulate Without Sufficient Amounts Being Used, Reused, or Reclaimed
 - H. Proposed § 261.2(a)(3): Spent Materials, Sludges, and By-products To Be Listed as Solid Wastes
 - I. Proposed § 261.2(d): Record-keeping Provisions

Part II: Standards for Managing Hazardous Wastes That Are Recycled

- I. The Agency's existing standards for managing hazardous wastes that are recycled and the Agency's rationale for the proposed revisions
- II. An overview of the proposed regulations
- III. Discussion of specific provisions of the proposed regulation
 - A. Proposed § 261.2(a): Regulated Recyclable Materials
 - B. Proposed § 261.6(b): Exemptions
 1. Proposed §§ 261.6(b)(1)(i) and (ii), and 261.6(b)(2), and 261.6(g): Exemption of Hazardous Wastes Reclaimed by the Person Who Generates Them, or Reclaimed by a Person Other Than the Generator for That Person's Subsequent Use
 2. Proposed § 261.6(b)(1)(iii): Exemption of Regulated Recyclable Materials Used for Precious Metal Recovery
 3. Proposed § 261.6(b)(1)(iv): Exemption of Regulated Recyclable Materials Being Reclaimed Under Batch-Tolling Agreements
 4. Proposed § 261.6(b)(1)(v): Temporary Exemption of Regulated Recyclable Materials Being Burned as Fuels, Being Used to Produce Fuels, or That Are Contained in Fuels

- 5. Proposed §261.6(b)(1)(vi): Temporary Exemption of Recycled Used Oil
 - 6. Proposed §261.6(b)(1)(vii): Exemption of Used Batteries Returned to a Battery Manufacturer for Regeneration
 - C. Proposed §§ 261.6 (c) and (d): Specific Management Standards for Generators, Transporters, and Stors of Hazardous Wastes That Are Recycled
 - D. Proposed §261.6(e): Management Standards for Hazardous Wastes Used in a Manner That Constitutes Disposal
 - E. Proposed §261.6(f): and Subparts C and D of Part 266
 - 1. Proposed §§261.6(f)(1) and 266.20: Regulated Recyclable Materials Reclaimed Under Nonbatch-Tolling Agreements
 - 2. Proposed §§261.6(f)(2) and 266.30: Management Standards for Spent Lead-Acid Batteries Being Reclaimed
 - IV. Standards applicable to the various activities constituting waste management under the proposed definition of solid waste
 - V. Possible inclusion of a variance provision
 - VI. Eligibility of owners or operators of recycling facilities for interim status
- Part III: Miscellaneous*
- I. Regulatory impact
 - II. Regulatory Flexibility Act
 - III. Paperwork Reduction Act
 - IV. List of Subjects in 40 CFR Parts 260, 261, 264, 265, and 266

In implementing the hazardous waste management subtitle of RCRA, the Agency has found that "recycled" hazardous wastes pose a special problem. (Throughout this preamble, "recycling" refers generally to using, reusing, or reclaiming a waste. This term is not used in the proposed regulation itself.

We describe later on the differences between "use", "reuse", and "reclamation." On one hand, through RCRA, Congress authorized the Agency to regulate hazardous wastes that are being recycled. When improperly managed, such wastes have caused many damage incidents. On the other, RCRA is intended to encourage resource conservation and recovery, and any regulatory regime should take this goal into account to the extent that adequate control of hazardous waste management is not jeopardized. The interim final rules published on May 19, 1980, attempted to meet both of these often conflicting objectives [see 40 CFR 261.2 and 261.6]. However, the Agency now believes that this attempt was not completely satisfactory, and accordingly is proposing the revision described in this preamble.

Part I:

- Summarizes the Agency's legal authority to regulate recycled materials as hazardous wastes under Subtitle C;

- Explains why we are exercising this authority;
- Discusses the existing regulation and the reasons for amending it; and
- Describes the proposed definition, first generally, and then provision by provision. The new definition defines which materials are hazardous wastes when recycled—and the types of recycling activities deemed to constitute hazardous waste management. This part of the preamble also explains which hazardous waste recycling activities are subject to regulation, and which are exempt.

Part II:

- Explains the reorganized and revised management standards for persons managing recycled hazardous wastes.

Part III:

- Discusses the proposal's projected regulatory impact;
- Explains why the proposal does not constitute a major rule under Executive Order 12291; and
- Explains our compliance with the Regulatory Flexibility Act and the Paperwork Reduction Act.

Part I: Determining Which Materials Are Hazardous Wastes When Recycled

I. EPA Has Authority Under RCRA To Regulate Hazardous Wastes That Are Recycled

Because no material can be a "hazardous waste" without first being a "solid waste" (Section 1004(5)), a definition of solid waste is the necessary starting point for the hazardous waste management system. Solid waste is defined in Section 1004(27) of RCRA as:

any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations, and from community activities * * *

This definition does not explicitly state that a material being recycled (or destined for recycling) is a solid waste and, if hazardous, a hazardous waste. However, reading the definition in conjunction with other parts of the statute and with the legislative history (as well as with subsequent expressions of congressional intent) makes it clear that Congress indeed intended that materials being recycled or held for recycling can be wastes and, if hazardous, hazardous wastes.

In this regard, the many statutory definitions dealing with resource

recovery are particularly significant. These indicate unequivocally that recycling involves reclaiming material or energy from "solid waste", demonstrating that a material being recycled can be a solid waste within the meaning of Section 1004(27). In addition to this express statutory language, there is already a body of judicial precedent that upholds RCRA hazardous waste jurisdiction over persons engaged in recycling activities (including seventeen cases to date where courts have exercised jurisdiction in actions instituted under Section 7003 of RCRA against recycling facilities).

Not only can materials destined for recycling or being recycled be solid and hazardous wastes, but the Agency clearly has the authority to regulate recycling activities as hazardous management. EPA possesses the authority to regulate under Subtitle C the storage, treatment, and disposal of hazardous waste. Hazardous waste recycling and ancillary activities are within the statutory meanings of these terms. RCRA's legislative history likewise shows that Congress specifically intended Subtitle C regulations to control unsafe recycling of hazardous waste. In any case, it would make little sense to allow that recycled materials can be hazardous wastes under RCRA (as shown in the paragraph above) but then to deny that Congress intended these wastes to be regulated under the Subtitle C regulations.

These points are developed fully in Appendix A to this preamble. We have concluded that recycled materials can be hazardous wastes under RCRA and can be regulated under the Subtitle C regulations. This conclusion fully agrees with the statute's paramount policy objective: to control the management of hazardous waste from its generation to its final disposition.

II. The Agency's Strategy in Exercising its Authority Over Hazardous Wastes That are Recycled

To determine that recycled materials can be solid and hazardous wastes does not answer the question of precisely which materials are wastes. Sections IV., V., and VI. of the preamble explain our views as to the extent of our authority. Nor does it answer how we are to exercise our authority. We explain in this section the general considerations that shaped our thinking on this question. We also go on to refute the argument that hazardous wastes that are recycled do not require any regulation because they are inherently valuable and do not pose significant environmental risks.

The Agency is convinced that there is a compelling need to exercise the authority granted by Congress. The paramount policy objective of RCRA is to control the management of hazardous waste from point of generation to point of final disposition. Further, wastes destined for recycling can present the same potential for harm as wastes destined for treatment and disposal (see the preamble to Part 261, 45 FR at 33091, May 19, 1980). That is, in many cases, the risk associated with transporting and storing wastes is unlikely to vary whether the waste ultimately is recycled, treated, or disposed of. Similarly, using or reusing wastes by placing them directly on the land or by burning them for energy recovery may present the same sorts of hazards as actually incinerating or disposing of them.

This is not to say that hazardous waste recycling always must be regulated in the same way as other types of hazardous wastes management. There are certain types of hazardous waste recycling that pose diminished environmental risks, for example, where recycled wastes—because they are valuable—are dealt with much like raw materials.

The Agency also acknowledges the strong statutory policy to encourage recycling, and believes this policy applies even when hazardous wastes are involved. This is especially true when a recycling activity provides a reduced potential for harm. In these situations, the Agency is proposing not to regulate particular recycling activities, but to conditionally exempt those recycling activities where existing commercial or marketing incentives appear sufficient to protect against substantial environmental harm. (We explain specifically how we are doing this in sections IV and VI of this part of the preamble.) In this way, we avoid regulations that could discourage recycling without significantly increasing overall environmental protection. At the same time, we believe these proposed regulations fulfill the overriding statutory mandate to regulate hazardous waste management as may be necessary to protect human health and the environment.

Some recycling activities pose a much greater potential for harm than others, and we are proposing regulations, or are developing regulatory controls, to guard against these risks. There are three such activities: (1) Those where wastes are recycled in a manner analogous to disposal or incineration; (2) those where wastes are overaccumulated before recycling; and (3) those where recyclers

cannot guarantee an end market for their recycled materials—specifically where wastes are regenerated or recovered by reclaimers who did not generate the reclaimed material and are not themselves going to use it. The proposed regulations, for the most part, are targeted at these activities.

Some commenters, however, question whether the Agency should regulate any form of hazardous waste recycling. They maintain that recycled wastes are inherently valuable because they are not being thrown away, and so will not be mishandled. This argument goes much too far. In fact, recycling operations account for some of the most notorious hazardous waste damage incidents—including nearly one-third of the 61 imminent hazard actions filed to date under Section 7003 of RCRA, and 20 of the first 160 interim priority sites listed under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). Appendix B to this preamble summarizes the damage incidents known to the agency involving recycling of hazardous wastes, briefly describing the recycling operations, the types of wastes being recycled, and the types of contamination caused. It is important to note that these incidents did not involve sham operators who merely held themselves out as recyclers but in reality disposed of an intended to dispose of the waste received. Rather, Operators of these damage sites engaged in some recycling and meant to recycle the wastes they received.

Facilities that recycle hazardous wastes have caused serious health and environmental problems by directly placing the wastes on the land and by burning the wastes as fuels or burning waste-derived fuels. Improper storage, overaccumulation of inventory, and unsafe transport before recycling have also been recurring problems where the facilities are independent reclaimers—i.e., reclaimers who do not generate the waste and do not use the reclaimed material.¹ The resulting damages include

¹ The sources for these damage incidents are found in appendix B unless otherwise noted. In addition, certain statements are taken from allegations in the government's verified complaints in RCRA Section 7003 actions. The agency recognizes that the courts must decide ultimately whether these allegations have been proven, and we stress that in citing these allegations we are not seeking in any way to prejudice the outcome of these actions. At the same time, these statements are based upon the Agency's investigations of the sites in question, and the agency believes them to be factually accurate. In any case, we are citing these allegations to demonstrate that there is a need for regulation in this area, not to ascertain the potential liability of particular facilities.

contamination of soil, ground water, surface water, and air. In the case of indiscriminate storage of incompatible wastes (such as oxidizers and flammables, or acids and cyanides) before recycling, fires and explosions have also been a recurring circumstance. In addition, since many of these recyclers have failed to label or otherwise document their incoming materials, later cleanup efforts have been extremely difficult.

A number of these recyclers are located in metropolitan areas, resulting in a risk of immediate exposure to large numbers of people if wastes are mismanaged. Damage incidents caused by independent recycling facilities in Cleveland and Hamilton, Ohio; Gary, Indiana; and Columbia, South Carolina are examples of the Agency's concern.²

Perhaps the archetypal damage case involving an independent hazardous waste recycler is the incident involving the Chem-Dyne Corporation. Located in Hamilton, Ohio, Chem-Dyne was in the business of obtaining organic wastes and blending them to form "Chem-Fuel", a fuel substitute. Chem-Dyne also engaged in waste reclamation. The company overaccumulated huge amounts of these materials. The site constituted a dangerous fire hazard due to the improper storage of flammable organic materials, and there were in fact a number of fires at the plant. In addition, many of the accumulated drums leaked excessively. As a result, some of the chemical wastes present (including benzene, 1,2-dichloroethane, trichloroethane, and other toxic and carcinogenic wastes) contaminated both surrounding soils and the ground water. Volatilizing toxicants have polluted the air. Surface cleanup costs are estimated at \$3.5 million; ground water cleanup costs have not yet been estimated. The company is in receivership.

The cleanup costs for other incidents also are very high. Although reliable cost estimates are not yet generally available for most of the sites, costs at a number of sites already have proven considerable: \$30 million for cleanup of the Seymour site; over \$1 million at the Midca site for surface cleanup, with an unknown amount needed to complete the cleanup; \$2.9 million to date at the Silresim site; and \$1.7 million to date at the Ottati and Goss/Great Lakes Container Corp. sites. At the Laskin Greenhouse site, approximately \$1.7 million has already been spent; additional work is anticipated. Most of

² Damages and Threats Caused by Hazardous Materials Sites, U.S. Environmental Protection Agency, EPA/430/9-80/004, January 1980.

the recyclers involved in these incidents are either bankrupt or have insufficient funds to meet cleanup expenses.

We consequently have determined that some exercise of our authority is necessary to protect human health and the environment. Before explaining how we are proposing to craft these standards, however, we discuss briefly the Agency's current regulations defining which recycled materials are solid wastes, and how these materials are to be regulated.

III. The Agency's Existing Definition of Solid Waste

The key feature of the existing definition of solid waste states that certain materials are always solid wastes, *irrespective of whether they are disposed of or are destined for recycling*. These materials are garbage, refuse, sludge, materials that have served their original intended use and "sometimes (are) discarded," and manufacturing or mining by-products that "sometimes (are) discarded." (See 40 CFR 261.2 (a) and (b); see also the preamble to Part 261, 45 FR, at 33093, May 19, 1980.)

Thus, the existing regulations establish broad jurisdiction over recycled materials and recycling operations, although this is tempered by regulating quite narrowly (see 40 CFR 261.6). There are several problems with this approach.

First, materials within the terms of the existing definition are considered to be solid waste, even if they are being recycled in a manner not ordinarily thought of as waste management. For example, bottom ash from utility boilers (a by-product) being used as an ingredient in concrete is considered to be a solid waste because it is "sometimes discarded". A sludge used similarly also would be a waste because all sludges are defined without exception as solid wastes.

Second, the "sometimes discarded" test sweeps many product-like materials into the solid waste net—unless the material is never thrown away. Although the Agency never intended to call these "legitimate by-products" solid wastes, a zealous but literal reading of the regulation yields this result.

Some critics took this point even further; since all materials are eventually thrown away, everything is "sometimes discarded" and potentially a solid waste. Another criticism was that under this standard generators may have to find out how all other generators are managing the same material—an often difficult or even impossible undertaking.

Commenters also argued against regulating materials that are reused or reclaimed by their generator. The generator, they argued, can ensure that such materials are handled safely, because he will have a definite plan to use the materials productively, and can control their disposition. Unrelated parties, by contrast, cannot guarantee a final use or disposition for their reclaimed materials (such as a buyer for their reclaimed solvents) and so are more prone to overaccumulate or mishandle the wastes they take in. This argument finds empirical support in the damage cases, since most known incidents were caused by independent recyclers who accepted secondary materials for reuse or reclamation, rather than by generators accumulating secondary materials for their own reuse (although generators remain capable of overaccumulating these materials).

The Agency was aware of a number of these problems when it adopted the May 19 definition. To mitigate them, we regulated quite narrowly. (See 45 FR at 33094.) Under 40 CFR 261.6, persons engaging in recycling operations are subject to regulation as hazardous waste generators, transporters, or storage facilities only if they are handling a hazardous sludge or a material listed as hazardous in 40 CFR 261.31 or 261.32.³ At the time of promulgation, the Agency believed that all such materials were waste-like and should be regulated accordingly when recycled in any way. (*Id.*)

We were less confident, however, about materials that are hazardous wastes only by virtue of exhibiting a characteristic. The rule therefore excludes from regulation such materials (other than sludges) when they are beneficially recycled. (See 40 CFR 261.6(a).) In addition, listed wastes and sludges are regulated up to, but not including, the point of recycling. Thus, when these wastes are destined for recycling, their transportation and storage is regulated, and generators of these materials must meet the Part 262 generator standards. (See 40 CFR 261.6(b).)

Despite these mitigating features in the current regulations, the Agency would like to amend the definition of solid waste. We wish to remove materials being reused as ingredients in production processes and product-like sludges and by-products from the solid

waste category. We also wish to target the regulations more directly at the class of recycling operations that, so far as we know, present substantial environmental risks. At the same time, we wish to regulate both characteristic and listed hazardous wastes to the extent that they are recycled in a way likely to present substantial environmental concerns. As noted above, the distinction in the present § 261.6 exists only to mitigate the sweep of the current definition, not because wastes that exhibit a characteristic present less of a hazard than listed wastes or sludges.

The next sections of this preamble describe in broad outline and in detail the approach developed by the Agency to achieve these objectives.⁴

IV. The proposed Amendment to the Definition of Solid Waste

A. Changes in Overall Approach Between the Proposed and the Existing Definitions

The proposed amendment would make several important changes in the definition of solid waste. First—and perhaps most fundamental—the amended definition would no longer base a material's status as solid waste on whether it is "sometimes discarded". Instead, a recycled material's regulatory status would depend upon both what the material is and how it actually is managed—and the status could vary with the means of recycling. For example, and electroplating wastewater treatment sludge used as an ingredient in a manufacturing process would not be a solid waste, whereas the same sludge being applied directly to the land for land reclamation would be. This change in regulatory approach meets one of the chief criticisms raised in the comments.

Second, we have tailored the accompanying management standards so as to regulate only those recycling activities—or those particular aspects of recycling activities—that pose a significant potential for environmental harm. The principal example is reclamation where this activity is conducted by the generator⁵ of the

³The Agency has been assisted greatly in its efforts by petitioners and their counsel in settlement negotiations in *Shell Oil v. EPA* (D.C. Cir. No. 80-1532) (litigation challenging EPA's May 19, 1980, hazardous waste regulations). Factual material obtained during settlement discussions has been placed in the public docket.

⁴For the sake of convenience, EPA is using the term "generator" throughout this preamble to mean the person generating the waste in question. Term is not used in its regulatory sense (see § 260.10(a)).

The Regulation itself does not speak of "generators" because it applies to "persons" not merely to individual sites. "Person" is defined in 40

⁵Of course, any waste from the recycling operation is an ordinary RCRA waste, and if hazardous, is subject to regulation under all of the Subtitle C regulations. In such a case, the recycler is at least a generator, and may be a storage, treatment, or disposal facility, depending upon the disposition of its waste.

waste, or by a person who subsequently uses the reclaimed material in his own operation.

B. An Overview of the Proposed Definition.

1. Materials That Are Solid Wastes.

The revised definition of solid waste sets out the Agency's view of its jurisdiction over the recycling of hazardous waste. The definition, of course, continues to define as solid wastes those materials that are disposed of, burned, or incinerated—or stored, treated, or accumulated before or in lieu of these activities. Proposed § 261.6 then contains exemptions from regulation for those hazardous waste recycling activities that we do not think require regulation.

As discussed above, the revised definition of solid waste indicated that particular materials being recycled are solid wastes if recycled in specified ways. In other words, to know if a material being recycled is a solid waste, one must know both what it is and how it is being recycled.

The definition states that five types of recycling activities are within EPA's jurisdiction:

- Use constituting disposal; this activity involves the direct placement of wastes onto the land.
- Burning waste or waste-derived fuels for energy recovery, or using wastes to produce a fuel.
- Reclamation; this activity involves regeneration of wastes or recovery of material from wastes.
- Speculative accumulation; this activity involves accumulation of wastes that are potentially recyclable, but for which no recycling market (or on feasible recycling market) exists.
- Accumulation without sufficient amounts of stored material being recycled; this activity involves accumulation of secondary materials for

one year without 75% being recycled during that time.

These categories then are divided further according to the type of waste involved—spent materials, sludges, by-products, or commercial chemical products.

"Spent materials" (proposed § 261.2(b)(1)) are materials that have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise re-processed. Examples are spent solvents, spent activated carbon, spent catalysts, and spent acids.⁶

"Sludges" are defined in RCRA and the implementing regulations as residues from pollution-control processes. (See RCRA Section 1004(26A) and 40 CFR § 260.10.) The statute further indicates that sludges include not only these materials but "other such waste having similar characteristics and effects." The Agency interprets this language as covering pollution-control residues other than those types listed specifically in the statutory definition.

"By-products" are defined essentially the same way as in the existing definition to encompass those residual materials resulting from industrial, commercial, mining, and agricultural operations that are not primary products and not produced separately (proposed § 261.2(b)(3)). As used in the definition, the term is a catch-all, and includes most wastes that are not spent materials or sludges. Examples are process residues from manufacturing or mining processes, such as distillation column residues or mining slags.

"Commercial chemical products" are the commercial chemical products and intermediates, off-specification variants, spill residues, and container residues listed in 40 CFR 261.33. As explained more fully below in Section VI. A. and B. in this part of the preamble, although these materials ordinarily are not wastes when recycled (see 45 FR at 78540-541, November 25, 1980), we are proposing to include them as wastes when they are recycled in ways that differ from their normal use.

One difficulty in characterizing these types of waste is that certain sludges and by-products are more product-like than waste-like. Examples are hydrofluorosilicic acid from manufacture of phosphoric acid (a sludge commonly used to fluoridate drinking water), by-product turpentine from paper manufacture, and various

by-product metals from primary copper manufacture. These product-like sludges and by-products are potentially subject to regulation under the reclamation provision in the definition because they cannot be put to direct use but first must be regenerated or recovered. Similarly, certain commercial fuels that technically are by-products remain potentially subject to regulation under the definition's burning-as-fuel provision.

The Agency so far has been unable to devise a narrative standard that convincingly distinguishes between reclamation of product-like and waste-like sludges and by-products, or a standard that adequately distinguishes between legitimate by-product and waste by-product fuels.⁷ To solve this dilemma, the Agency has structured the regulation so that not all sludges and by-products are wastes when reclaimed, and not all by-products are wastes when burned as fuels or used to produce fuels. Rather, we will list those sludges and by-products that are solid wastes when reclaimed, and those by-products that are solid wastes when burned as fuels or used to produce fuels. The list, at least for the time being, will be co-extensive with the hazardous sludges and by-products listed in 40 CFR 261.31 and 261.32 of the regulations. The Agency has examined each of these materials, and is convinced that they typically are wastes when reclaimed or when burned as fuels (see the preamble to Part 261, 45 FR at 33094, May 19, 1980).

Putting all of this together, spent materials, sludges, byproducts, and commercial chemical products are considered to be solid wastes when they are recycled in any one of the following ways:

- (1) Used or reused in a manner constituting disposal via direct placement onto the land; this provision applies to all spent materials, sludges, and by-products. It also applies to

CFR 260.10 to include corporations (among other entities). Thus, an entity with a single corporate structure but multiple sites is a single person for purposes of this regulation. Conversely, an entity with a separately incorporated affiliate is not single person. (This distinction is particularly significant in the provision conditionally exempting from regulation materials reclaimed by the person generating them and materials reclaimed by a person for that person's own subsequent use.)

The definition of "person" also includes all Federal Agencies. A number of agencies, particularly the Department of Defense, have numerous and highly diverse operations located nationwide. RCRA enunciates a strong Congressional policy that hazardous waste management conducted by federal facilities comply with all federal, State, interstate, and local requirements respecting hazardous waste management (RCRA, Section 6001). Wholesale exemption of federal agencies because they are "persons" thus may be inappropriate. EPA is investigating alternative approaches, and solicits comment on this point.

⁶ Refuse and garbage likewise are spent materials (although they rarely, if ever, would be hazardous wastes). In any case, refuse and garbage ordinarily are not subject to regulation under Subtitle C of RCRA because they are household wastes (see 40 CFR 261.4(b)(1)).

⁷ The problem is to distinguish between materials of a residual character that habitually have been disposed of and secondary materials that the industrial community ordinarily uses as commodities in commerce. Any regulation using this type of standard, however, is probably too judgmental to be generally applicable. Further, as noted already, a standard based upon whether secondary materials are put to direct commercial use also is unlikely to work, because most materials must be processed or reclaimed before use. However, the Agency solicits comments as to an appropriate narrative standard. We request specifically that commenters address a possible standard which would indicate that secondary materials are wastes when (i) they contain significant levels of non-recyclable toxic constituents, and (ii) these constituents are not customarily found in raw materials or products for which the secondary materials are used as substitutes.

commercial chemical products (and related materials) applied to the land in lieu of their intended use;

(2) Burned for energy recovery (including when burned as a component of a waste-derived fuel), or used to produce a fuel; this provision applies to all spent materials, sludges, and listed by-products. It also applies to commercial chemical products (and related materials) burned as fuels in lieu of their intended use;

(3) Reclaimed; this provision applies to all spent materials, and to the sludges and by-products that are listed in 40 CFR 261.31 or 261.32.

(4) Accumulated for recycling without a specific market existing for the material (speculative accumulation); this provision applies to all spent materials, sludges, and by-products; and

(5) Accumulated for recycling without sufficient amounts being recycled; this provision also applies to all spent materials, sludges, and by-products.

2. Materials That Are Not Solid Wastes. Not all recycling activities potentially involve waste management. The definition excludes from the concept of reclamation three activities involving direct use or reuse of secondary materials. These activities ordinarily will not be considered to involve waste management. In addition, we state specifically that one type of reclamation operation is an activity outside the Agency's jurisdiction over recycling. These activities are:

(1) *Using or reusing secondary materials as ingredients or feedstocks in production processes.* Examples are using fly ash as a constituent in cement,⁹ or using distillation bottoms from carbon tetrachloride manufacture as a feedstock in producing tetrachloroethylene. The Agency is convinced that in these and similar circumstances, the recycled materials are usually functioning as raw materials, and therefore ordinarily should not be regulated under Subtitle C.

(2) *Using secondary materials as substitutes for raw materials in recovery processes that usually use raw materials as feedstocks—even though material values are recovered from the secondary materials as an end-product of the process (for example, when secondary materials are smelted at primary smelting facilities).* Because the secondary materials are merely substitutes for the primary material ordinarily used in an essentially primary material-based process, the Agency

does not regard such processes as involving waste management.

(3) *Using or reusing secondary materials as substitutes for commercial products.* Examples mentioned in the public comments are spent solvents used as roofing materials and by-product hydrochloric acid from chemical manufacture used in steel pickling. In these examples, the recycled materials are substituting for other commercial products, and material values are not being recovered from them.

(4) *Reclamation conducted at a single plant site when the reclaimed material is reused within the original process in which it was generated.* In this situation, secondary materials are not used or reused directly, but are reclaimed first.

However, where reclamation occurs at the plant site and the reclaimed materials are returned to the original process in which they were generated, the entire set of operations is really a closed-loop type of process. Regulating the reclamation step thus could amount to regulating an on-going production process.

3. Exemptions for Certain Recycling Activities. We also have chosen to conditionally exempt from regulation certain recycling activities that do constitute waste management. The most important of these exemptions are regulations governing storage and transportation¹⁰ of wastes in the following situations:

- When wastes are reclaimed by their generator;
- When wastes are reclaimed by a reclaimer who subsequently uses the reclaimed material;
- When non-listed spent materials are burned as fuels (either by their generator or by another person).¹⁰

In these situations, there appears to be a significantly reduced risk of waste mismanagement, because the generator or ultimate user has decided to retain control of the recycled waste and, thus, can assure a market for the recycled materials. Our investigation of hazardous waste recycling activities indicates that improper storage, overaccumulation, and subsequent damage have been associated with reclamation where the market for the recycled material is uncertain or where the recycling technology is unproven.

⁹ Some of these exemptions also encompass activities subject to regulation under Parts 262 and 263. Furthermore, as explained in Sections VI, B, and C. In this part of the preamble, these exemptions are also conditioned to guard against overaccumulation.

¹⁰ Actual burning of wastes also is exempt from regulation, although we intend that this exemption be temporary (see Section (IV, D. in this part of the preamble).

Overaccumulation is a particular risk where reclaimers are paid to take wastes they don't intend to use themselves, since this creates an incentive to keep accepting wastes that may prove unsalable after recycling. The most severe damage incidents, such as Chem-Dyne and Silresim, all fit this pattern. These circumstances are least likely to be present when a generator or ultimate user reclaims because of the continued exercise of control and ability to assure the wastes' end disposition. We consequently are proposing conditional exemptions for these situations. The conditions are designed primarily to guard against overaccumulation which (based on existing data), is the chief danger in these operations.

We note, however, that we are continuing to investigate the potential of these facilities to store wastes improperly. (We are doing this particularly in the course of conducting a Regulatory Impact Analysis of our storage regulations.) In devising the conditional exemptions proposed today, our premise (based on the known data) is that overaccumulation of wastes is the chief danger to guard against. The conditions attached to these proposed exemptions serve as adequate safeguards to overaccumulation, in our view. It may be that the risks of improper storage by these facilities—prior to prolonged waste accumulation—are greater than they appear. In this regard, we are examining not only storage at recycling operations but also the incidence and severity of spills and leaks from raw material and product storage, since this type of storage is analogous to storage prior to recycling. These further investigations thus may lead to a regulatory approach with some immediate controls on storage for those recycling operations that would be conditionally exempt under today's proposal.

The following charts illustrate the principles discussed in this section. The matrix in Figure 1 indicates which types of secondary materials are proposed to be solid wastes when recycled in particular ways. The flow charts in Figures 2 and 3 indicate which materials are solid wastes and which materials (if hazardous) are regulated as hazardous wastes under the proposed definition. The table in Figure 4 summarizes which recycled materials are or are not considered to be solid and hazardous wastes and which solid and hazardous wastes will be regulated when they are recycled under the proposed rules.

⁹ Fly ash at present is not subject to Subtitle C regulation as a result of the 1980 amendment to RCRA (amended section 3001 (b)(3)(A)(i)). It is included in the text only as an example.

C. The Agency's Decision to Reject a Standard Based on the Value of the Recycled Material

The Agency seriously considered a standard that would count a recycled material as a solid waste when a person other than the generator is paid to recycle it. The corollary also would

apply: when a recycler pays to obtain the material it is not a solid waste.¹¹ The logic here was that recyclers who pay for their materials must recycle them to stay in business; in addition, the materials they buy have demonstrated economic value and so are less waste like. Conversely, when a recycler must

be paid to take material, the material may not be recycled, since its mere receipt generates cash flow.

¹¹ This "value" standard was not the sole test for determining if a material is a solid waste. It would replace the provision on reclamation (proposed § 261.2(a)(2)(iii)) in the proposed definition.

FIGURE 1.—PROPOSED MATRIX OF WHICH TYPES OF SECONDARY MATERIALS WILL BE DEFINED AS SOLID WASTES WHEN USED, REUSED, AND RECLAIMED AND WHICH TYPES OF RECYCLING ACTIVITIES CONSTITUTE WASTE MANAGEMENT

	Use constituting disposal ¹ (§ 261.2(a)(2)(i))	Burning for energy recovery, or use to produce a fuel ² (§ 261.2(a)(2)(ii))	Reclamation ³ (§ 261.2(a)(2)(iii))	Speculative accumulation ⁴ (§ 261.2(a)(2)(iv))	Accumulation without sufficient amounts being recycled ⁵ (§ 261.2(a)(2)(v))
Spent Materials (both listed and nonlisted/characteristic)	Yes	Yes	Yes	Yes	Yes
Sludges (listed)	Yes	Yes	Yes	Yes	Yes
Sludges (non-listed/characteristic)	Yes	Yes	No	Yes	Yes
By-products (listed)	Yes	Yes	Yes	Yes	Yes
By-products (non-listed/characteristic)	Yes	No	No	Yes	Yes
Commercial chemical products listed in 40 CFR 261.33 that are not ordinarily applied to the land or burned as fuels.	Yes	Yes	No	No	No

¹ This waste management activity involves the direct placement of recycled materials onto the land (e.g., use of recycled materials for land reclamation, as dust suppressants, etc.)
² It should be noted that the actual burning of these wastes in boilers and industrial furnaces is proposed to be exempt from regulation (§ 261.6(b)(1)(v)). These wastes also are proposed to be exempt from regulation when they are used to produce a fuel by a facility for their own subsequent use or by facilities that ultimately burn these wastes from non-sludge wastes that are hazardous solely because they exhibit a characteristic (i.e., from non-listed spent materials).

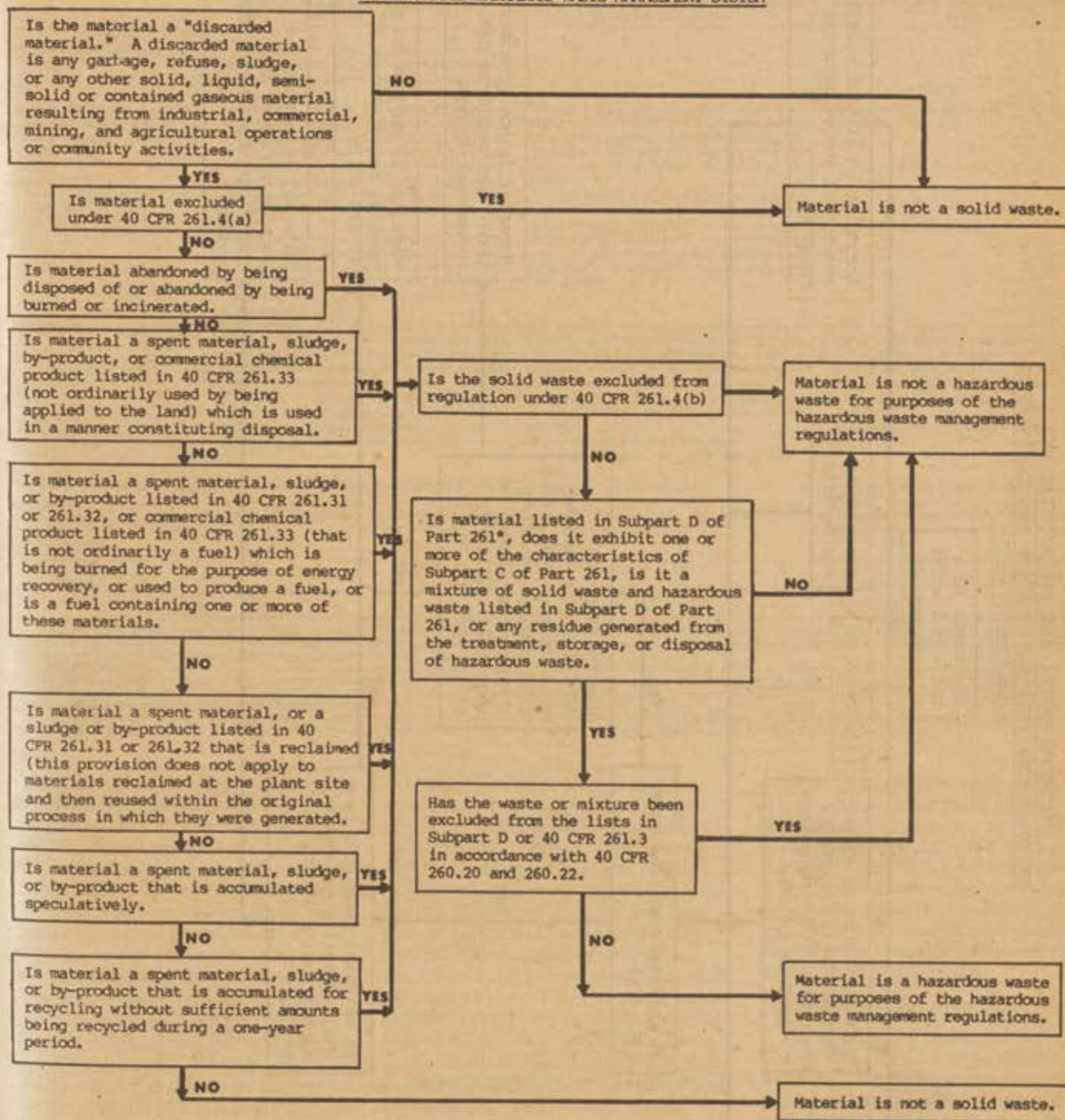
³ Reclamation is defined in proposed § 261.2(c)(1) to constitute either the processing of wastes to recover usable products or the regeneration of wastes (e.g., removal of contaminants or impurities so that the waste can be put to further use). This provision does not apply, however, to materials reclaimed at the plant site and then reused within the original process in which they were generated. In addition, reclamation conducted by a person generating the waste, or reclamation conducted by a person other than the generator for that person's subsequent use ordinarily is proposed to be exempt from regulation (§ 261.6(b)(1)(i) and (ii)). The principal exception is when wastes are stored or otherwise processed in surface impoundments. Spent batteries being reclaimed likewise remain subject to regulation.

⁴ This waste management activity is defined in proposed § 261.2(c)(2) to include wastes that are potentially usable, reusable, or reclaimable but are held without having any known market or disposition while hoping a market will develop.

⁵ This waste management activity is defined in proposed § 261.2(c)(3) to include those materials which are accumulated for over one year without 75 percent being recycled during that time. Thus, these materials' status as wastes is not determined until one year has past. A person who fails to recycle at least 75 percent of materials accumulated may petition the Regional Administrator for a determination that the materials are not solid wastes (§ 261.2(c)(3)(ii)); the materials are solid wastes, however, unless the Regional Administrator grants the petition.

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FIGURE 2
MATERIALS DEFINED AS BOTH SOLID AND HAZARDOUS WASTE UNDER
THE PROPOSED HAZARDOUS WASTE MANAGEMENT SYSTEM



* Commercial chemical products listed in 40 CFR 261.33 are regulated as hazardous wastes when they are abandoned by being disposed of or when burned or incinerated. In addition they are proposed to be regulated when used in a manner constituting disposal or when burned for energy recovery when these activities are not their ordinary use.

FIGURE 3
HAZARDOUS WASTES THAT ARE RECYCLED AND
ARE REGULATED UNDER THE PROPOSED HAZARDOUS WASTE
MANAGEMENT SYSTEM

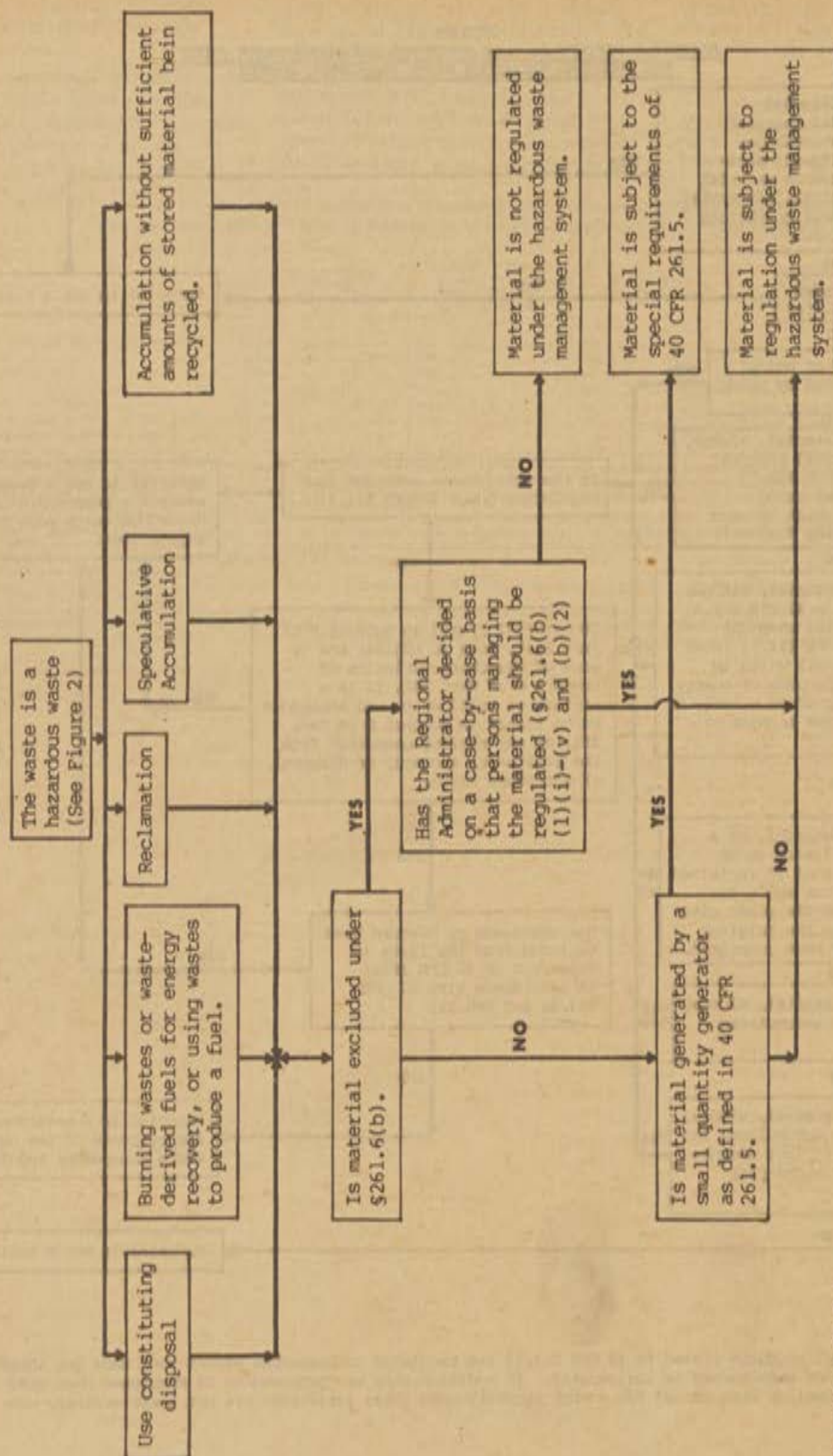


FIGURE 4.—PROPOSED MATRIX OF TYPES OF RECYCLED MATERIALS DEFINED AS SOLID AND HAZARDOUS WASTES THAT ARE REGULATED, TYPES OF RECYCLED MATERIALS DEFINED AS SOLID AND HAZARDOUS WASTES THAT WILL NOT BE REGULATED, AND TYPES OF RECYCLED MATERIALS NOT CONSIDERED TO BE SOLID WASTES

	Recycled materials regulated as solid and hazardous wastes	Recycled materials defined as solid and hazardous wastes but not regulated	Recycled materials not considered to be solid wastes
Use constituting disposal	All spent materials, sludges, by-products, and commercial chemical products listed in 40 CFR 261.33 that are not ordinarily used by being applied to the land.		
Burning wastes or waste-derived fuels for energy recovery or using wastes to produce fuels. ¹	Spent materials, sludges, by-products listed in 40 CFR 261.31 or 261.32, and commercial chemical products (listed in 40 CFR 261.33 that are not ordinarily used as a fuel) that are stored at fuel blending facilities and when generated and transported prior thereto when the facility is not also the person generating the waste or is not burning the waste-derived fuel containing these materials. Sludges and hazardous wastes listed in 40 CFR 261.31 and 261.32 when they are to be burned or used to produce fuels by facilities producing fuels from these wastes for their own subsequent use, or by facilities that ultimately burn these wastes.	Spent materials, sludges, by-products listed in 40 CFR 261.31 or 261.32, and commercial chemical products (listed in 40 CFR 261.33 that are not ordinarily used as a fuel) that are burned for energy recovery in boilers and industrial furnaces. ² Non-sludge wastes that are hazardous solely because they exhibit a characteristic (i.e., from non-listed spent materials) that are stored at facilities producing fuels for their own subsequent use and by facilities that ultimately burn these wastes or waste-derived fuels containing these wastes.	By-products not listed in 40 CFR 261.31 or 261.32.
Reclamation	Spent materials, and sludges and by-products listed in 40 CFR 261.31 or 261.32, that are: —Reclaimed by a person other than the generator and the reclaimed material will be used ultimately by a person other than the reclaimer; —Reclaimed or otherwise processed in surface impoundments or stored in surface impoundments prior to reclamation elsewhere; —Spent lead-acid batteries being reclaimed	Spent materials, and sludges and by-products listed in 40 CFR 261.31 or 261.32, that are: —Reclaimed by the person generating them, or reclaimed by a person other than the generator for that person's subsequent use (except for storage or reclamation in surface impoundments or reclamation of spent batteries (see previous column)). —Utilized for precious metal recovery. ³ —Reclaimed pursuant to batch tolling agreements. ⁴	Sludges and by-products not listed in 40 CFR 261.31 or 261.32 that are reclaimed. Spent materials, and sludges and by-products listed in 40 CFR 261.31 or 261.32 that are reclaimed at the plant site and then reused within the original process in which they were generated. Commercial chemical products listed in 40 CFR 261.33.
Speculative accumulation	All spent materials, sludges, and by-products		Commercial chemical products listed in 40 CFR 261.33.
Accumulation without sufficient amounts of stored material being recycled.	All spent materials, sludges, and by-products		Commercial chemical products listed in 40 CFR 261.33.
Use and reuse. ⁵			Spent materials, sludges, and by-products that are used reused. ⁶ Commercial chemical products listed in 40 CFR 261.33.

¹The Agency is currently conducting a number of studies to determine what controls are necessary to regulate the burning for energy recovery; in addition, we are also studying whether there should be interim controls—that is, controls prior to the time we propose a comprehensive regulatory regime for actual burning—on other aspects of hazardous waste fuel management. Therefore, we expect to change this part of today's proposal prior to final promulgation.

²These materials may still be regulated as hazardous wastes if the person does not recycle at least 75 percent over a one year period or if the Regional Administrator determines on a case-by-case basis that the material should be subject to regulation under otherwise applicable provisions of § 261.6 or Subpart O of Part 264.

³The materials may still be regulated as hazardous wastes if the Regional Administrator determines on a case-by-case basis that the material should be subject to regulation under otherwise applicable provisions of § 261.6 or Subpart O of Part 264.

⁴The use and reuse of these materials include: (1) use or reuse of secondary materials as ingredients or feedstocks in production processes, (2) use of secondary materials as substitutes for raw materials in processes which usually use raw materials as feedstocks, and (3) use or reuse of secondary materials as substitutes for commercial products.

Despite its intuitive appeal, this type of provision is open to several serious objections. First, it is not clear whether "sold for value" would cover situations where the recycler incurs certain out-of-pocket costs to obtain materials (such as transportation or marketing costs) and then is recompensed—or where materials are sold for a price that reflects the value of only some of them.

Second, this provision would fail to ensure that the purchased materials would be recycled and would lead to dissimilar regulatory coverage of the identical material at a single facility. The proof is that in many of the damage incidents involving recyclers, the recycling facility had purchased waste materials. In addition, in some cases, the facility was also given—or was paid to accept—the very same kind of material that it had also purchased (for example, a spent solvent).

Third, the value provision may in some cases discourage recycling. On occasion, recyclers accept quantities of material that are too small to be recycled economically unless they are accompanied by some payment. (This is another example of how the provision does not always reflect marketplace realities.) Recyclers may not profit greatly by these arrangements, and will discontinue them if they incur the value provision's regulatory penalty for being paid to accept these small lots.

The fourth and most telling objection to the value provision is the difficulty of enforcement. The provision would require the Agency to evaluate the bona fides of complicated, numerous, and diverse financial transactions—which may intrude significantly into companies' legitimate business affairs. The Agency is not equipped to do this. In addition, it is easy to disguise

whether payments are being made, and the unscrupulous may well be tempted to evade regulation in this way.

For all these reasons, the Agency has decided to reject an approach based on whether a material is sold for value. We do, however, solicit comments on this approach, particularly on whether this kind of scheme could be implemented and enforced successfully.

D. Materials Burned To Recover Energy

The Agency has concluded that the statute gives EPA the authority to regulate burning of hazardous waste to recover energy, and that we should exercise this authority. In most cases, such burning is environmentally identical to burning the same material in an incinerator and could pose a parallel or greater risk of environmental dispersal of hazardous waste

constituents and products of incomplete combustion.¹²

Furthermore, by allowing burning to go uncontrolled, the Agency's existing regulations create a loophole in the RCRA regulatory structure, as more and more wastes that can be burned are channelled to boilers or heat-recovery units to avoid disposal or incineration costs. It is estimated that 20 million metric tons of hazardous waste are currently burned in boilers. (See H.R. Rep. No. 97-570, 97th Cong., 2d sess. at 4 (1982).)

Furthermore, a number of facilities blend hazardous wastes into fuels and then sell these fuels to unsuspecting residential and other municipal users who burn them under conditions which may harm humans and the environment.

Two of the most notorious of these facilities—Quanta, Inc., and B & L Oil Corp. (the latter company pleaded guilty to criminal violations of New Jersey's hazardous waste regulations)—produced fuels containing PCBs, phenolic compounds, chlorinated solvents, and other chlorinated hydrocarbons. These compounds not only are very toxic and hard to destroy, but when burned at low temperatures for short residence times (as in residential boilers) can form chlorinated dioxins and dibenzofurans, phosgene, and hydrochloric acid.

EPA's existing regulations require that sludges and wastes listed in 40 CFR 261.31 and 261.32 that are to be burned as fuels or used to produce fuels be accumulated, manifested, transported, and stored under the applicable requirements of Parts 262 through 265.¹³ These regulations do not control the actual burning of these materials, however.

Today's proposal, insofar as it relates to waste-derived fuels, is intended principally to establish jurisdiction for eventual regulation; it does not seek to establish all aspects of an ultimate regulatory regime. We are, for example, proposing to continue the present exemption for actual burning of hazardous wastes in boilers for legitimate energy recovery until we complete on going analyses of the environmental consequences of burning hazardous wastes in boilers. Once we have completed these studies, we plan

to substantively regulate burning for energy recovery in those areas that appear to present a potential for substantial hazard to human health and the environment.

Presently, we are studying whether there should be interim controls—that is, controls before we propose a comprehensive regulatory regime for actual burning—on other aspects of hazardous waste-derived fuel management. Possible options under active consideration include requiring blenders, marketers, and certain users of hazardous waste-derived fuels to notify EPA of their activities, to keep records of the amounts and types of hazardous waste-derived fuels they are producing or burning, and (for blenders) to affix a label to all hazardous waste-derived fuels they produce, indicating that the fuel contains a hazardous waste. A manifest for certain transactions involving hazardous waste-derived fuels is another possibility. These actions are not part of the present proposal, but may be taken as separate regulatory actions.

We are also proposing to regulate, under certain circumstances, the storage and ancillary management of hazardous wastes before the wastes are burned. We are convinced controls are needed for hazardous wastes sent to fuel blenders who do not ultimately burn the wastes. This is the recycling situation posing the greatest risk of improper storage, overaccumulation, faulty tracking, and the like, as already explained. Consequently, we are proposing that hazardous spent materials, sludges, and listed byproducts, and nonfuel commercial chemical products, sent to these blenders be subject to Subtitle C regulation, and the blenders be subject to regulation as storage facilities.

We are less sure of whether storage standards are needed for hazardous wastes being burned by the person generating them, or being sent directly from a generator to an ultimate user. Although we are proposing to exempt conditionally other recycling practices fitting this pattern because of the reduced risk of overaccumulation or faulty tracking, fuels may present a special case due, for example, to additional concerns that ultimate users be notified of what they are burning. We also are concerned that proper records be kept for federal and state regulatory authorities, and for concerned citizens.

In light of our uncertainty, we are proposing today to leave essentially unchanged the current regulatory regime for hazardous wastes burned by their generator, or sent from a generator to a person who ultimately burns them. This

scheme calls for regulation of sludges and wastes listed in 40 CFR 261.31 and 261.32 (see 40 CFR 261.6(b)). While we may alter this part of the proposal later, we think maintaining the status quo is the least confusing way to proceed until we decide on a comprehensive regulatory strategy to control burning hazardous waste-derived fuels.

EPA is therefore proposing today to assert jurisdiction over spent materials, sludges, listed byproducts, and commercial chemical products (and related materials) listed in 40 CFR 261.33 where any of these materials are burned as fuels, used to produce fuels, or contained in fuels—the jurisdictional prerequisite to eventual regulation in this area (see Section VI. D. of this part of the preamble). We are also proposing for the time being to continue to exempt the actual burning of these materials from regulation. We also are proposing to regulate most storage of spent materials, sludges, listed by-products, and commercial chemical products that are not themselves fuels and are listed in 40 CFR 261.33, where any of these materials are used to produce fuels. The only exception will be where the person who operates the storage facility also generates the material, or burns the waste-derived fuel itself. In these cases, we are proposing provisionally to maintain the status quo by regulating only sludges and wastes listed in 40 CFR 261.31 and 261.32.

V. New Definitions Relating To Burning of Hazardous Waste

The identity of the combustion unit in which secondary materials are burned is highly relevant in EPA's developing regulatory regime for burning of hazardous secondary materials. We are proposing in 40 CFR 260.10 to amend the definition of "incinerator", and to add definitions of "boiler" and "industrial furnace", to distinguish among these devices.

A word of background as to why we are amending and adding these terms. EPA's existing rules establish a class of facilities subject to regulation under Subpart O of Parts 264 and 265—thermal treatment devices—of which incinerators are a subset. Incinerators are currently defined on the basis of their purpose—if the primary purpose of a device is thermal destruction of hazardous waste, the device is an incinerator (see 40 CFR 260.10, definition of "incinerator"). We meant for this definition to provide the distinction between regulated facilities (thermal treatment devices, principally incinerators) and heat recovery units (primarily boilers).

¹² In fact, there is a parallel here with the class of waste whose reuse constitutes disposal in the sense of direct land placement. In that case, the reuse is the functional equivalent of landfilling. Similarly, burning wastes as fuels is functionally identical to incinerating them.

¹³ See 40 CFR 261.2 (a) and (b) and 261.8(b). Sludges, and spent materials and by-products that are sometimes discarded and are listed in 40 CFR 261.31 and 261.32, are subject to regulation from their point of generation until recycling begins.

Although the existing definition of incinerator focuses on the purpose for which a device is used, the Agency did not intend to classify facilities solely on the basis of purpose. Rather, we intended that incinerators be distinguishable from boilers in order that the class of facilities subject to the standards for incineration be identifiable. The purpose for which a device is operated was used to indicate whether the device is an incinerator or a boiler. This distinction, however, has proven difficult to implement because the reference to "purpose" in the regulation introduced an unintended element of subjectivity.

We accordingly are proposing a revised definition of incinerator that avoids the use of purpose to identify incinerators—so that facilities will no longer be able to escape regulation by claiming to have a primary purpose of recovery. The regulations do this by focusing on the physical character of the unit and not on its claimed purpose.

Thus, the proposal defines an incinerator as a controlled-flame combustion device in which the combustion chamber and any heat recovery section are *not* of "integral design", *i.e.*, formed into a single manufactured unit such that there occurs significant radiant as opposed to convective heat recovery. This occurs, for example, when the combustion chamber and heat recovery section are joined by ducts that carry the flue gas to heat recovery sections. Thus, waste heat recovery units added to an incinerator cannot exempt it from regulation as a hazardous waste treatment facility. Incinerators—including those burning secondary materials and recovering energy or material—are normally subject to regulation under Subpart O of Part 264 and 265. [The major exception is for incinerators that are "industrial furnaces", a term explained below.]

Boilers, in contrast, ordinarily are not subject to regulation under Subpart O, but rather may be regulated under today's proposed regulations applying to recycling facilities. "Boilers" also are defined on the basis of design instead of purpose. Under the proposed definition, they must have: (1) provision for heat recovery, and (2) combustion chamber and heat recovery sections that are of "integral design", *i.e.*, that are formed physically into one manufactured or assembled unit. In addition, the unit must accomplish significant heat recovery in the combustion chamber section by means of radiant heat transfer.

The key distinction between boilers and incinerators is that boilers achieve

heat transfer within the combustion chamber itself, generally by exposing the heat recovery surface to the flame. In contrast, heat transfer does not ordinarily occur in the combustion chamber of an incinerator. Rather, combustion gases are transferred elsewhere in the device, where heat transfer may occur.

There may be situations where incinerator operators design or retrofit their devices to avoid regulation by achieving minimal heat transfer in the combustion chamber. The regulation consequently requires that a "significant" percentage of the thermal input to the unit be recovered in the combustion chamber by radiant heat transfer.

In determining what constitutes "significant" radiant heat transfer, the Agency considered the design of boilers that have only one surface (or side) of the combustion chamber with boiler tubes that "see the flame," *i.e.*, that experience radiant heat transfer. This is essentially the minimum design that would meet the integrated design criterion and represent a bona fide boiler. (The Agency is aware of typical "package boilers" that meet this design.)

In such a boiler, one may assume for purposes of simplification that the one boiler wall with exposed boiler tubes receives from one sixth to one fourth of the heat released. A typical heat recovery efficiency for such a boiler might be 75 percent (*i.e.*, 75 percent of the heat content of fuels fed to the boiler is actually recovered). Thus, viewed as a percentage of total heat recovered, the radiant portion represents 21 to 33 percent of the total. Since radiant heat recovery is, in fact, the more efficient portion of the total recovery, it probably represents a slightly higher portion of the total.

Thus, the benchmark the Agency intends to use in judging "significant" radiant heat transfer in the combustion chamber is 25 to 35 percent of the total heat recovered in the unit. This is consistent with industry estimates of the lower range of radiant heat transfer that occurs in typical boilers. We specifically solicit comments, however, as to the accuracy and appropriateness of this benchmark.

The proposed regulations make one further distinction among combustion devices. There are combustion devices designed as incinerators or boilers that are used as integral components of manufacturing processes to recover materials or energy, not to destroy wastes. Examples are smelting furnaces, cement kilns, and blast furnaces. These units—termed "industrial furnaces" in

the proposal—are normally considered to be engaged in recycling activities when burning secondary materials, so will not be regulated as incinerators (even if they are not of integral design).

The proposed definition of industrial furnace specifically designates certain devices as industrial furnaces, namely cement kilns, aggregate kilns, lime kilns, phosphate kilns, blast furnaces, smelting furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, methanol reforming furnaces, and pulping liquor recovery furnaces.²⁴ The proposal also allows for the Agency to add devices to the list, by rulemaking, on the basis of considering several criteria. When adding to the list of industrial furnaces, we will consider these criteria together. Therefore, a particular device need not satisfy all of the criteria to be designated an industrial furnace if it satisfies one or more of them.

These criteria have been selected because they describe those aspects of industrial furnaces that distinguish them from hazardous waste incinerators. Thus, a flame combustion device may be designated as an industrial furnace if it is designed and used primarily to accomplish recovery of material or energy, such as a secondary smelting furnace that recovers usable metal from scrap, or methanol reforming units. A device also may be designated an industrial furnace if it is used to burn spent materials, sludges, or by-products as ingredients in a production process. Similarly, where these secondary materials are used as effective substitutes for raw materials in a device that uses raw materials as principal feedstocks, the device could be an industrial furnace. These last two criteria are used to describe materials that serve essentially as raw materials and therefore are not appropriately subject to regulation under RCRA (See Section VI. E. of Part I of the preamble).

A device that burns raw materials to make a material product (such as a cement kiln or aggregate kiln) may also be designated as an industrial furnace. Finally, in determining whether a device should be listed as an industrial furnace, the Agency will consider whether the device is commonly used in a manufacturing process.

²⁴ The Agency is continuing to investigate the design of these latter three devices, as well as their precise role in the sulfuric acid, methanol, and pulping manufacturing processes in order to assure that they are properly classified as industrial furnaces.

VI. Discussion of Specific Provisions of the Revised Definition of Solid Waste

A. Proposed § 261.1(b): Purpose and Scope

It is necessary to define solid waste because of statutory draftsmanship ("hazardous waste" being a subset of "solid waste" (see RCRA Sections 1004(5) and 1004(27)). However, the proposed new § 261.1(b)(1) indicates clearly that the definition of solid waste proposed today is intended to apply only to materials that would also be hazardous wastes. It does not apply to recycled non-hazardous materials (for example, most scrap metal), although we do not commit ourselves as to when such materials are wastes, and see no reason to do so in this rulemaking.

Our intention is to emphasize that we do not mean the proposed definition to be applied in contexts other than the Subtitle C hazardous waste management regulations.

We also are clarifying (in proposed § 261.1(b)(2)) that the proposed definition of solid waste in § 261.2 does not limit the Agency's jurisdiction under Sections 3007, 3013, and 7003 of RCRA. The Agency's jurisdiction under these provisions is not limited to "hazardous wastes identified or listed under Subtitle C", whereas the proposed definition is part of the process of identifying hazardous wastes for purposes of Subtitle C and has no other applicability. Consequently, these other statutory provisions need not be limited to the materials covered by this definition. (See generally 45 FR at 33090, May 19, 1980.)

B. Proposed § 261.2(a)(1)

This provision is nearly identical to § 261.2 (b)(1) and (c) in the existing definition. It indicates that materials abandoned by being disposed of, burned, or incinerated, or otherwise accumulated, stored, or treated in lieu of or before such activities are solid wastes. This includes materials actually or intended to be discarded.

However, this proposal does differ from the existing provision in two significant respects. First, proposed § 261.2(a)(1)(ii) removes the qualification that burning materials to recover energy does not constitute discarding (existing 40 CFR 261.2(c)(2)). This clause no longer is appropriate because we are restructuring the definition to indicate explicitly that this activity is subject to our jurisdiction. (As explained in Section IV. D. above, most secondary materials burned for energy recovery are solid wastes under the Agency's existing regulations because they are sludges, or are spent materials

or by-products that are sometimes discarded.)

Second, we wish to clarify that materials being burned in incinerators or other thermal treatment devices, other than boilers and industrial furnaces, are considered to be "abandoned by being burned or incinerated" under § 261.2(a)(1)(ii), whether or not energy or material recovery also occurs. (The meanings of these terms were explained in Section V. above). (The regulatory provision also applies, of course, to devices in which materials are burned or thermally decomposed for destruction without any recycling purpose.) In our view, any such burning (other than in boilers and industrial furnaces) is waste destruction subject to regulation either under Subpart O of Part 264 or Subpart O and P of Part 265. If energy or material recovery occurs, it is ancillary to the purpose of the unit—to destroy wastes by means of thermal treatment—and so does not alter the regulatory status of the device or the activity. Thus, a hazardous waste incinerator burning chlorinated hydrocarbon wastes and recovering hydrochloric acid remains a Part 264 incinerator and the chlorinated hydrocarbon wastes are being incinerated, not recycled.

We intend shortly to propose a set of regulations clarifying the status of incinerators, boilers, and industrial furnaces for purposes of regulation as incinerators under Part 264. The Agency intends to explain these definitions in more detail at that time, and to provide further opportunity for comment. For purposes of this discussion, however, the key concept is that materials fed to incinerators that are not boilers or industrial furnaces are deemed to be solid wastes, and the unit is subject to regulation under Part 264, Subpart O, regardless of whether material or energy also is recovered from the unit.¹⁶

C. Proposed § 261.2(a)(2)(i): Wastes That Are Used in a Manner Constituting Disposal

The first category of secondary materials considered to be solid wastes when recycled and when destined for recycling are secondary materials used or reused in a manner involving direct placement on the land. Examples are the direct use of recycled materials for land reclamation, as dust suppressants, as fertilizers, and as fill material. In the Agency's view, these practices are virtually the equivalent of unsupervised land disposal, a situation RCRA is

designed to prevent.¹⁶ In fact, the Agency regards the direct use of these materials as fertilizers to be a form of land treatment subject to the standards of Subpart M of Parts 264 and 265. (See Background Document for Permitting Standards for Land Disposal Facilities, Response to Comments, July 26, 1982, p. 158.)

The many damage incidents resulting from wastes being used in a manner constituting disposal bear out the Agency's concern. This type of recycling activity has also been a particular concern of the Congress. The September 1979 report of the Subcommittee on Interstate and Foreign Commerce on hazardous waste disposal (Committee Print 98-1FC 31, 96th Cong., 1st sess., 1979) describes three damage incidents involving wastes used in a manner constituting disposal (*id.* at 4, 12-13, 17, 24, 41, and 53-54). This report indicated that these uses should be subject to regulatory control and criticized the Agency's proposed regulations for not adequately tracking this type of recycled material (*id.* at 41-42, 53-54).

These references to damage incidents reflect not only Congress' concern but its intent that EPA's Subtitle C regulations cover this type of activity.¹⁷ The recent report of the House Committee on Energy and Commerce likewise voices special concern about this type of recycling and would mandate Agency action in this area. (See H.R. Rep. No. 97-570 at 22-23.) A provision mandating Agency action was later adopted by the full House.

The proposed provision applies when a material is used essentially "as-is" (for example, a sludge used directly as fill material) or where the material is mixed with another substance without any appreciable chemical change ("simple mixing"). An example of the latter is the notorious incident where waste containing dioxin (TCDD) was mixed with waste oil and then used as a dust suppressant at a Missouri horse arena,

¹⁶ See 43 FR 58946, 58950, and 58954 (December 18, 1978) where the Agency initially proposed the concept of use constituting disposal.

¹⁷ A number of industrial commenters likewise conceded the legitimacy of Subtitle C jurisdiction over uses constituting disposal, or indicated that if the Agency indeed possesses Subtitle C jurisdiction over recycling, then jurisdiction appropriately can be exercised over uses constituting disposal. See comments of the American Paper Institute, August 18, 1980, p. 9; of Stauffer Chemical Co., August 18, 1980, pp. 12-15, 19, and 21; and of the Chemical Manufacturers Association, August 15, 1980, pp. 34-35, and 51. The Environmental Defense Fund, in its comments, likewise generally supported regulating this type of recycling activity. We think these comments contain some acknowledgment that activities virtually tantamount to unsupervised land disposal of hazardous wastes are within our proper jurisdictional purview.

¹⁸ We add that if a boiler or an industrial furnace is used to destroy wastes, that unit is being used as an incinerator and is subject to regulation as such.

killing livestock, and seriously injuring an exposed child.

On the other hand, a material blended so that it is significantly changed chemically or biologically (*i.e.*, the new material is chemically or biologically distinct from the original material being blended) does not count as a waste—and the recycling activity would not be regulated—even if the product then is placed on the land. An example is fly ash used as an ingredient in cement.¹⁸

The Agency believes this outcome is satisfactory in most cases but is concerned about not regulating fertilizers made from toxic metal-containing sludges and by-products (where these materials are significantly changed in the process). (Fertilizers using such materials as the sole or virtually sole ingredient, or using such materials in virtually unaltered chemical form would, however, be regulated under the proposal.) The Agency is gathering information on waste-derived fertilizers and may alter this part of the proposal after assessing this information.

The regulation, however, does cover residues of waste treatment processes applied to the land (even though the wastes may have undergone a chemical change as a result of treatment). Examples are waste stabilization processes where the stabilized material is then used as fill. Assuming the stabilized material is a hazardous waste, the reuse remains subject to regulation. The Agency is convinced that these waste treatment operations are not production processes and can therefore be regulated as waste management, and that the treated material remains subject to regulation as a solid waste.

Finally, the regulation applies to commercial chemical products (and related materials) listed in 40 CFR 261.33 that are not ordinarily used by being applied to the land. This provision is intended to close an unintended gap in regulatory coverage. Under the existing regulations, commercial chemical products must be "discarded" (or intended for discard) before they can be wastes, and use in a manner constituting disposal is not deemed to be a form of discard (see 40 CFR 261.2 (c)). The Agency does not normally intend to

regulate the recycling of these materials, since such recycling simply restores these materials to usable condition, and in a large sense simply continues their normal use (see 45 FR 78540-541, November 25, 1980). However, use of these materials in a manner constituting disposal is not analogous to their normal use, unless they ordinarily are meant to be used by being applied to the land. We consequently are proposing to define these materials as wastes when they are recycled in this way.

D. Proposed §§ 261.2(a)(2)(ii) and 261.6(b)(1)(v): Wastes That Are Burned to Recover Energy, Are Used to Produce Fuels, or Are Contained in Fuels

This provision indicates that spent materials, sludges, listed by-products, and any commercial chemical products (and related materials, such as off-specification variants and spill residues) listed in 40 CFR 261.33 that are not themselves fuels, are solid wastes when they are burned as fuels, used to produce fuels, or contained in fuels. EPA's reasons for asserting jurisdiction over these materials have been described in Section IV. D. above.¹⁹

To see the actual extent of proposed regulatory coverage, this provision should be read together with proposed § 261.6 (b)(1)(v). We are proposing to continue temporarily the present exemption for actual burning for energy recovery (proposed § 261.6 (b)(1)(v)) pending completion of the studies described in Section IV. D. above. We also reiterate that burning in incinerators (that are not industrial furnaces) is considered to be incineration and is regulated under Subpart O of Parts 264 or 265, whether or not energy or materials also are recovered. Such incineration is not affected by the exemption in proposed § 261.6(b)(1)(v).

The exemption does cover burning for energy recovery in units whose principal purpose is energy or material recovery, rather than waste destruction—namely boilers and industrial furnaces. (These terms were explained in Section V. above.) For certain wastes, the exemption also applies to storing and transporting these materials before burning. These wastes are those that are hazardous only by reason of exhibiting a characteristic and are not sludges, and

are used as a fuel or used to produce a fuel(a) by the person generating the wastes, (b) by a fuel blender who burns the fuel it blends, or (c) by a person ultimately burning a waste-derived fuel. Thus, anyone who—prior to their burning or blending—manages sludges or hazardous wastes listed in 40 CFR 261.31 or 261.32 would be subject to the Subtitle C regulations.

As we stated in Section IV.D. above, the scope of this exemption is designed to preserve the status quo, pending a further proposal for regulatory controls on hazardous wastes prior to their being burned as fuels. It thus is likely that this provision will change to some extent before promulgation. In light of our current uncertainty, however, we do not feel it appropriate to propose changes in the regulatory status of these wastes.

We also note that otherwise-exempt fuel-producing facilities (*i.e.*, those burning or blending non-sludge wastes that are hazardous only by reason of exhibiting a characteristic) are subject to regulation as storage facilities on a case-by-case basis (see Section III.B. of Part II of the preamble). They also remain subject to the turnover notification provision described below.

Processing or blending facilities producing fuels from other persons' spent materials, sludges, listed by-products, and § 261.33 commercial chemical products that are not themselves fuels is also subject to regulation as storage facilities when they do not use these fuels themselves. Generators sending hazardous wastes to these facilities must comply with the requirements of 40 CFR Part 262, and transporters carrying wastes to these facilities are subject to the requirements of 40 CFR Part 263. As we explained earlier, the risk of improper storage—especially overaccumulation—before fuel production or burning is significant at facilities producing fuels from other persons' materials for someone else's use, and we therefore are proposing to regulate under these circumstances.

Only listed by-products burned as fuels are considered to be solid wastes in proposed § 261.2(a)(2)(ii). This is designed to avoid regulating certain commercial fuels that may technically be by-products and which exhibit a characteristic of hazardous waste. The Agency would prefer to include all by-products, except those that are clearly commercial fuels. Therefore, the Agency solicits comments identifying by-products that are legitimate commercial fuels and questions specifically whether we could include all other by-products (such as distillation bottoms) burned as fuels as wastes once we excluded these

¹⁸ Another example where the provision similarly does not apply is when spent materials, sludges, or by-products are used as water conditioners or for water treatment. An example would be spent pickle liquor used to treat wastewater (see 40 FR 44970, September 8, 1981). In this case, although the material technically may be applied to the land, it is chemically combined as part of a conditioning process and is subsumed as an ingredient in the conditioned water.

¹⁹ In interpreting this provision, the Agency does not consider materials to be burned as fuels when both material values and energy are recovered from burning a single material, and material recovery is an important part of the recovery operation. For example, furnaces burning secondary materials to recover economically significant amounts of contained chemicals, and that also recover energy from the same materials, are not considered to be burning the materials as fuels.

named commercial fuels. Spent materials and sludges, on the other hand, appear to be waste-like whenever used to produce fuels, and are so classified.

The inclusion of commercial chemical products and other materials listed in 40 CFR 261.33 that are not themselves fuels closes an unintended gap in EPA's current regulations, and parallels the similar inclusion in this proposal of commercial chemical products used in a manner constituting disposal. Burning of these materials as fuels and using them to produce fuels is not at all analogous to these materials' normal use. We consequently are proposing to define these materials recycled in these ways as solid wastes. We intend to regulate their storage at a facility using them to produce fuels (as well as their prior generation and transport) when that facility is not also the generator or is not burning the waste-derived fuel containing these materials. These materials were present at many of the damage sites involving improper storage by producers of waste-derived fuel, pointing up the need to exercise regulatory authority.

To give an example, Generator A generates several unlisted ignitable spent organic chemicals that it blends and burns in its boilers as a fuel. These chemicals are hazardous wastes but are not subject to regulation before blending because they are being blended by the original generator, and are not listed in 40 CFR 261.31 or 261.32. The actual burning also is exempt, since it occurs in a boiler.

E. Proposed §§ 261.2(a)(2)(iii), 261.2(c)(1), and 261.6(b)(1) (i) and (ii): Wastes That Are Reclaimed

1. *The Proposed Provisions.* These provisions are among the most important in the proposed regulations. Read together, they say that spent materials, listed sludges, and listed by-products that are reclaimed are solid wastes, except where these materials are reclaimed at the plant site and returned to the original process in which they were generated. (See proposed § 261.2(a)(2)(iii).) However, these materials are subject to regulation during storage and transportation only:

- Where reclaimed by a person other than the generator and when the reclaimed material will be used ultimately by a person other than the reclaimer;²⁰ or

- Where reclaimed or otherwise processed in surface impoundments, or stored in surface impoundments before reclamation elsewhere;²¹ or
- Where accumulated for over a year without sufficient amounts being reclaimed (see proposed § 261.2(a)(2)(v) explained in Section VI.G. of this part of this preamble);²² and or
- Where regulated on a case-by-case basis (see proposed § 261.6(b)(2), explained in Section III. B. of Part II of this preamble).

These provisions are directed at the type of operation that has caused most of the recycling damage incidents—the unrelated reclaimer (*i.e.*, a reclaimer who is not the generator of the material) reclaiming material for another person's use. This type of operation cannot guarantee an end market for its reclaimed materials, and so runs the most risk of overaccumulating waste inventory. This risk has been borne out again and again in the damage cases, the most well-known being the Chem-Dyne and Silresim facilities, which accepted solvents and other spent organic chemicals for reclamation (and fuel production) with disastrous consequences. Indeed, all of the 20 Superfund interim priority sites involving recyclers were unrelated reclaimers reclaiming materials or blending them as fuels for a different person's use.

These provisions apply to all spent materials, but only to listed sludges and listed by-products—to avoid including sludges and byproducts routinely processed to recover usable products as part of normal commercial practice. Although some of those materials may be wastes, the Agency wishes to consider them individually before asserting jurisdiction, since many of them also have product-like aspects.

The basis for exempting (conditionally) hazardous wastes reclaimed by their generator or reclaimed for the reclaimer's subsequent use is that by exerting continuing control over these materials, the

There is one exception to this principle, namely when spent lead-acid batteries are reclaimed. We are proposing to regulate these wastes whether or not the reclaimed material is used ultimately by the reclaimer. Our basis for this distinction, and the regulatory scheme we are proposing for spent lead-acid batteries, is explained in Section III.D.3. of Part II of the preamble.

²⁰ The exemption in §§ 261.6(b)(1) (i) and (ii) does not apply to hazardous wastes that are reclaimed in surface impoundments, or that are stored in surface impoundments prior to being reclaimed elsewhere. Our basis for this approach is explained below in this section.

²¹ The exemptions in §§ 261.6(b)(1) (i) and (ii) likewise do not apply to hazardous wastes that accumulate for over a year without sufficient amounts being reclaimed.

generator or reclaimer/user is treating them in a way that ensures their end disposition. In fact, our investigation of recycling activities confirms that such operations have not caused the harms associated with the risk of overaccumulation.²³

These reasons do not apply, however, when hazardous wastes are reclaimed or processed in surface impoundments or are stored in surface impoundments before being reclaimed. Surface impoundments containing hazardous waste pose a particular threat of contaminating ground water and have always been one of the chief concerns of the hazardous waste management program. (See generally, the Background Document to Subpart K Interim Status Standards, April 28, 1980.) Not only is containment without a liner system usually impossible, but wastes are present as liquids or are constantly in the presence of liquids. This creates the situation most conducive to forming leachate. In addition, the collected liquids in an impoundment will form a pressure head, causing downward dispersion of the leached contaminants. Since most impoundments are unlined, and because many are underlain by permeable soils, the potential for downward seepage of contaminated fluids into ground water is high.²⁴ In fact, incidents of ground water contamination from impoundments have been reported in nearly all states.²⁵ Thirty-eight of the first 180 Superfund interim priority list sites involve leaching from unsecured surface impoundments.

Surface impoundments also can contaminate surrounding soil and surface water by directly releasing the contaminated liquid via washout, overtopping, or dike breakage.²⁶ Volatilization of organic contaminants also can pollute air in areas surrounding the impoundment.²⁷

²³ The State of California's statutory definition of solid waste, which is quite similar in approach to that proposed today, in fact excludes materials reclaimed by the original generator. See California Hazardous Waste Control Act, Article 2 § 25122.5 (California Health and Safety Code Division 20, Chapter 6.5) (definition of "recyclable material").

²⁴ See U.S. EPA, Report to Congress, *Surface Impoundments and Their Effects* on Ground Water Quality in the United States—A Preliminary Survey, EPA 7019-78-004 (1978); see also U.S. EPA, *The Prevalence of Subsurface Migration of Hazardous Chemical Substances at Selected Industrial Waste Disposal Sites*, EPA/5301 SE 6341 (October 1977).

²⁵ See the Background Document cited earlier at pp. 9-29, collecting dozens of incidents of ground water contamination caused by leaking surface impoundments.

²⁶ See *id.* at pp. 9-17 again detailing numerous damage incidents.

²⁷ *Id.* at 25-29.

²⁰ Proposed §§ 261.6(b)(1) (i) and (ii) consequently exempt from regulation hazardous wastes reclaimed by the person who generates them, or reclaimed by a person who ultimately uses the reclaimed material itself.

These potential dangers are all present when wastes are reclaimed in surface impoundments or stored in impoundments before reclamation. In fact, reclamation in surface impoundments is very similar to a use or reuse constituting disposal: both involve direct, uncontrolled placement of waste in the land. We thus are not exempting this activity from regulation. (However, since the concern here is waste management in surface impoundments, the hazardous wastes are not automatically subject to regulation when they are removed from the impoundment to be used, reused, or reclaimed.)

By using the language "reclaimed or otherwise processed" in proposed § 261.2(c)(1) (i) and (ii), the Agency means to cover virtually all management activities occurring in surface impoundments involving material recovery for subsequent use, reuse, or additional reclamation, or involving processing designed to make the impounded material amenable for recovery.

The following examples show how the provisions operate with respect to surface impoundments:

- Generator A has a listed wet emission control sludge that is dewatered in a surface impoundment. The settled sludge is then dredged and used as an ingredient in manufacturing cement.

The sludge is a solid waste and is subject to regulation when it is dewatered in the impoundment. The recovery and processing of the sludge in the impoundment meets the "reclaimed or otherwise processed" standard of the proposed regulation. This result conform well with the language of RCRA, since dewatering is conducted to recover the entrained solids for future use—i.e., to make the sludge "amenable for recovery", in the language of the statutory definition of treatment.

The sludge is not a solid waste once it is removed from the impoundment because it is being used as an ingredient, not reclaimed. (This concept is explained in the following subsection.) This sludge could be a waste, however, if it accumulates, after being removed from the impoundment, for over a year without a sufficient amount being used (see proposed § 261.2(a)(2)(v), described in Section G, below).

- Generator B generates a listed wastewater treatment sludge by precipitating metals from wastewater collected in a surface impoundment. The sludge is then dredged and shipped to a secondary smelter for metal recovery.

The smelter is not smelting for its own subsequent use.

The sludge is a solid waste and is subject to regulation when in the impoundment for the same reason as the previous example. In addition, the sludge remains a solid waste when sent to the secondary smelter because it is being reclaimed by a person other than the generator for use by a person other than the reclaimer.

2. *The Meaning of "Reclamation".* The Agency has defined "reclamation" in proposed § 261.2(c)(1) to constitute either regenerating waste materials or processing waste materials to recover usable products. Regeneration processes involve removing of contaminants or impurities so that the material can be put to further use. Examples are spent solvent and other spent organic chemical reclamation (ordinarily a regeneration process), spent catalyst regeneration, and most secondary metal reclamation, including secondary smelting (recovery of usable metal from otherwise unusable material).²⁸

In thus defining reclamation operations to involve solid wastes, the Agency is following closely the various statutory definitions that indicate unequivocally that recovering usable material from otherwise unusable material constitutes solid waste management, and that the materials from which resources are recovered are solid wastes. Thus, one aspect of solid waste management is "resource recovery," which involves "the recovery of material or energy from solid waste" (Sections 1004(30) and 1004(22), emphasis added). Similarly, a "recovered material" (Section 1004(19)) includes material or by-products that "have been recovered or diverted from solid waste * * *." To the same effect, see Sections 1004(7), (18), (23), (24), and (29).

This provision is perhaps not as encompassing as it may appear. First, as described in the next subsections, activities involving use or reuse of the materials are not deemed to constitute reclamation. Second, reclamation

conducted at the plant site where the reclaimed material is returned to the original process also is outside the scope of the definition. Operations where a generator reclaims his own materials, or when a reclaimer reclaims for his own use, also are ordinarily exempt from regulation. In addition, most reclamation activities do not involve hazardous wastes and so are unaffected by this provision.²⁹

The limitation of the regulation to listed sludges and listed by-products also reduces the scope of the reclamation provision. By examining whether a particular type of sludge or by-product is a waste when reclaimed, the Agency will have an opportunity to determine if reclamation of the individual sludge or by-product should be viewed as a waste management process. At the same time, the Agency believes it important to have the means to regulate particular sludges and by-products that are to be reclaimed.

3. *The Distinction Between "Use" and "Reclamation".* Proposed § 261.2(c)(1) contains an important clarifying clause indicating that three types of activity involving the use or reuse of spent materials, sludges, or by-products do not constitute reclamation:

- First, using materials as ingredients to make new products, without distinct components of the materials being recovered as end-products. Examples are zinc-containing sludges used as ingredients in fertilizer manufacture, and chemical intermediates (for instance, distillation residues from one process used as feedstocks for a second process).³⁰ This exception does not apply when the spent material, sludge, or by-product is itself recovered or when its contained material values are recovered as an end-product. For example, if a metal containing sludge is

²⁸ Metal-containing scrap comprises the great majority of reclaimed materials. See National Association of Recycling Industries, *Recycling Resources: Priorities for the 1980's*, indicating that over 80 percent of the materials recycled by its members are scrap metal. Scrap is not usually considered hazardous. Generators can determine this on the basis of their knowledge of the material (see § 262.11(c)(2)). Thus, most secondary metal reclamation is not affected by this provision.

³⁰ Another example, which occurs often in the chemical industry, is using spent sulfuric acid as an ingredient in producing sulfuric acid. In this operation, spent sulfuric acid is introduced as a feedstock where it is burned to derive sulfur as SO₂. As part of the same process, this SO₂ is then purified, catalytically converted, and absorbed into existing sulfuric acid. This process does not constitute reclamation because the spent sulfuric acid is neither regenerated (impurities are not removed from the spent sulfuric acid to make it reusable) nor recovered (acid values are not recovered [acid values are not recovered from the spent acid]). It is being used as an ingredient.

²⁹ The Agency believes that blending or combining materials to form fuels also is similar to reclamation, and within the Agency's jurisdictional purview, since otherwise unusable materials are being restored to usable condition so that energy can be recovered. (See Section 1004(22) of RCRA defining "resource recovery" as "the recovery of material or energy from solid waste" (emphasis added); see also Section 6002(c)(2), which refers to "systems that have the technical capability of using energy or fuels derived from solid waste. . . ." The House Report to RCRA likewise indicates that both raw materials and energy can be recovered from solid waste (see H. Rep. No. 94-1491 at 11 and 13).) We are exerting regulatory control over this activity by means of separate regulatory language in the interest of definitional clarity.

processed to recover its contained metal values, the process constitutes reclamation, and the sludge, if listed, is a hazardous waste.

• Second, using the materials as substitutes for raw materials in processes that normally use raw materials as principal feedstocks; this exception does include those situations where material values are recovered from these substitute materials. Examples are sludges or spent materials used as substitutes for ore concentrate in primary smelting. The Agency does not believe these processes constitute reclamation, in spite of the recovery or regeneration step, because the materials literally are being used as alternative feedstocks.³¹ This is not the case when the same materials are recovered in secondary processes (such as secondary smelting). These processes are waste-based, so that the materials being recovered are not substituting for raw materials. Indeed, this distinction is reflected in the clear delineation of primary and secondary processes. Secondary processes involving recovery or regeneration thus are defined as reclamation.

• Third, using the materials as substitutes for commercial products in particular functions or applications. An example is spent pickle liquor used as a phosphorus precipitant and sludge conditioner in wastewater treatment. This does not regenerate or recover the pickle liquors. Rather, the material is being used (actually reused, since pickle liquor is a spent material) to substitute for other commercial products.

In these three cases, the materials are being used essentially as raw materials and so ordinarily are not appropriate candidates for regulatory control. Moreover, when these materials are used to manufacture new products, the processes generally are normal manufacturing operations (although not when these materials are combined into fuels). The Agency is reluctant to read the statute as regulating actual manufacturing processes.

However, we are somewhat concerned that in the first of these cases the proposal leaves unregulated certain processes that could constitute waste management. Processes where secondary materials are the predominant (or even the sole) ingredient are conceivable examples, particularly where the process operator is paid to take the materials. In addition, processes using spent materials may be

more logical candidates for regulation because spent materials (having already fulfilled their original use) are more inherently waste-like than by-products and sludges. We have not been able to reduce these ideas to a quantifiable regulatory standard, however, and solicit further comment on this point.

Examples

• Generator A generates an ignitable spent solvent that it sends to reclaimer R who reclaims the solvent for resale to the general public.

The spent solvents are solid wastes in A's hands and in R's and are subject to regulation. Solvent reclamation meets the definition of reclamation since it is a regeneration process, and is subject to regulation since A is not reclaiming its own materials, nor is R reclaiming for its own use.

• Generator B generates a spent solvent that it reclaims itself; the reclaimed solvent is not sent back to the original process from which it was generated.

The spent solvent is a solid waste but is not subject to regulation because B is reclaiming his own materials. The spent solvent could be regulated, however, if it accumulates for over a year without a sufficient amount being reclaimed (see proposed § 261.2(a)(2)(v), described in Section G., below), and also could be regulated on a case-by-case basis (see proposed § 261.6(b)(2), described in Section III. B. of Part II of this preamble).

• Generator C generates an emission control dust (a sludge) that it sends to a secondary smelter for metal recovery. The smelter then sends the recovered metal to an unrelated refiner for processing.

The emission control dust is a solid and hazardous waste if it is listed in § 261.31 or 261.32 and would be subject to regulation. The smelting process recovers metals from the dust as an end-product, and the smelter is not engaging in reclamation for its own use.

• Generator D generates the same emission control dust that is sent to a cement manufacturer for use.

The dust is not a waste because it is being used as an ingredient to make cement and is not being recovered or regenerated.

4. *Exception for Materials Reclaimed at the Plant Site and Returned to the Original Manufacturing Process.* There is one further exception to the reclamation provision. Reclamation can sometimes be part of a closed-loop recycling step, where reclaimed materials are recycled back into the initial production process. This type of recycling is really an adjunct to the original process, and as such it

represents a situation where the recycling activity may not fall within the Agency's jurisdiction. An example is wastewater recycled to the original process after being purified in an impoundment.

To allow for these cases, we do not count spent materials, listed sludges, and listed by-products as solid wastes—even if reclaimed or processed in impoundments—where they are reclaimed at the plant site and then returned to the manufacturing process from which they were generated for further use. Similarly, the same materials are not wastes if they are stored (even if stored in impoundments) and reclaimed at the plant site, and the reclaimed material is then returned to the original manufacturing process. (The exclusion would not apply, however, if the reclaimed material is later used in a different process—even if under the generator's control—since this goes beyond the Agency's conception of closed-loop recycling.) The material need not be returned to the exact production step in which it was generated, so long as it is returned to the original process.³²

The term "plant site" means essentially the same thing as "on-site", namely, the same geographically contiguous property, as well as non-contiguous parcels owned by a single person and connected by a private right-of-way. In addition, the plant site includes contiguous property divided by rights-of-way, whether or not the entrance and exit between parcels is a cross-roads (compare the definition of "on-site" in 40 CFR 260.10). The limitation regarding means of egress in the definition of on-site is not relevant in determining whether a recycling operation is a closed-loop.

The Agency's proposed definition of a closed-loop process hinges essentially on the proximity of location of the reclamation operation, plus return of the material to the original process. There may be better ways to distinguish when reclamation is integrally tied to a production process, such as the length of time materials accumulate before being reclaimed. The Agency solicits

³¹ Spent sulfuric acid fits within this exception, as well as the "use as ingredient" exception. The spent acid is usually returned to the original sulfuric acid production process, where it substitutes for raw material customarily used as feedstock.

³² It should be noted, with respect to surface impoundments, that an impoundment would not be regulated under this provision only if all of the material in it that could be a hazardous waste is recycled back to the original production process. Seepage impoundments and impoundments from which wastewaters are both discharged and recycled consequently would remain subject to regulation. In addition, an impoundment still could be regulated if sufficient amounts of material accumulated within it are not recycled within a year of accumulation (see Section G. below).

comments on the question of alternative approaches in this area.

The following example illustrates how this exclusion applies.

- A pulp and paper manufacturer generates black liquor, a potentially corrosive spent residue from the pulping process. Black liquor is sometimes stored in impoundments before being routed to boilers where it is burned to recover chemicals and energy. The chemicals are then reused in the original pulping process.

The black liquor would not be a waste for this purpose, since it is reclaimed at the plant site and the reclaimed product is reused within the original manufacturing process.

The following example shows how the various provisions dealing with reclamation operate in combination.

- Generator A generates a listed emission control dust that is placed in an on-site excavated ditch for holding until it can be re-smelted. To prevent wind dispersion, the dust is wetted down while in the ditch. The dust then is dried and placed back in the smelting process to recover metal values.

While the dusts are in the surface impoundment they are not being reclaimed and therefore are not necessarily solid wastes. The purpose of the wetting process is to hold the dusts in place, not to recover material values in the dusts or to facilitate later recovery of the metals (since the dusts could be smelted without being wetted first). In contrast, when wet sludges are dewatered in impoundments, recovery is occurring, since the sludges could not be recycled further without the dewatering step.

The dusts may or may not be deemed to be stored in an impoundment (assuming the ditch is an impoundment) before reclamation, depending on their disposition upon being removed from the impoundment. If the dusts are smelted at a primary smelter, they are not being reclaimed since they are substituting for raw material feedstocks. Thus, even though the materials would be stored in an impoundment, they would not be stored before reclamation and so would not be wastes.

On the other hand, if the metal values in the dust are recovered at a secondary smelting facility, the materials would be reclaimed and so would be wastes when stored in the impoundment. However, if the dust is returned to the original smelting process (primary or secondary), it would not be regulated while in the impoundment because the process is essentially a closed-loop.

5. *The Status of Reclaimed Products.* The Agency also has added language to § 261.3(c)(2) (the "derived from" rule) to

indicate that commercial products reclaimed from spent materials, listed sludges, and listed by-products—e.g., a reclaimed solvent—are not wastes and are not subject of regulation under RCRA. This proposed addition merely clarifies the existing regulations and does not represent a change in regulatory approach. However, this principle does not apply to reclaimed materials that are not ordinarily considered to be commercial products, such as wastewaters. These materials rarely are dealt with as products moving in commerce, and are often discharged, and so reasonably can be considered to remain wastes. In addition, we wish to make clear that waste-derived fuels are not products reclaimed from a hazardous waste and thus remain wastes. Our claim of jurisdiction over these materials is made explicit in proposed § 261.2(a)(2)(ii).

We also caution that waste materials do not become products if they are merely processed minimally—i.e., operations that leave materials unfit for use without further processing. For instance, a hazardous sludge remains a waste when it is dewatered and sent to a metal reclaimer or used in a manner constituting disposal. Similarly, a spent solvent that is processed by removing rocks and other debris, and then sent to be distilled, remains a waste.

F. Proposed §§ 261.2(a)(2)(iv) and 261.2(c): Wastes That Are Accumulated Speculatively

The next category of solid wastes is materials that are accumulated speculatively. Proposed § 261.2(c)(2) defines these as materials with recycling potential, that are accumulating with a legitimate expectation of eventual recycling but have never been recycled or cannot feasibly be recycled. An actual example is a generator that has accumulated emission control dust from steel production (Hazardous Waste KO61) for over eight years without being able to find a feasible means of recycling it, despite legitimate efforts. Over 40,000 tons are now piled in the open in an abandoned quarry near a drinking water source.

The Agency believes strongly that these types of materials are wastes, at least until a means of recycling is found. To hold otherwise simply invites unregulated accumulation of materials under the guise of being held for recycling. For this reason, the provision applies to all spent materials, sludges, and by-products.³³

³³ The jurisdictional basis for this provision, as well as the following provision (materials being overaccumulated), rests on a footing different from

The Agency does not mean to include in this category materials actually recycled by other generators, such as fly ash. Because of their known recycling potential, these materials generally are not deemed immediately to be solid wastes, even if a generator is accumulating them without a known market. Instead, these materials will be considered solid wastes if insufficient amounts are recycled (see the following section). A rather narrow qualification to this is that generators must have some feasible way of recycling the material. An example would be an emission control dust used as an ingredient in an industrial process. If a generator is accumulating the dust with no feasible means of sending it to a user and no other immediately feasible means of recycling it, the generator would be deemed to be accumulating the material speculatively.

The regulatory status of § 261.33 commercial chemical products, off-specification variants, spill residues, and container residues under this provision, as well as under the next provision—accumulation without sufficient amounts being used, reused, or reclaimed—requires a bit more explanation. As described earlier, commercial chemical products are presently regulated as hazardous wastes when discarded or intended for discard, and not when recycled or intended for recycling (see 45 FR 78540). Commercial chemical products that are being stored with recycling potential and with a legitimate expectation of recycling, therefore, are not intended for discard and thus are not subject to this provision. (As already explained, however, we are proposing to define certain commercial chemical products destined for recycling by burning to recover energy or by direct land placement as solid wastes under other provisions of the revised definition.)

If, however, a recycling market does not develop and one is not expected within a reasonable time period, or if insufficient amounts of these materials are being recycled, we would consider these commercial chemical products as being stored for discard, and thus subject to regulatory control. We are not setting any time period for determining when these commercial chemical

the earlier provisions. Those provisions apply to materials actually being recycled. In contrast, proposed §§ 261.2(a)(2)(iv) and (v) apply to materials not being recycled, but for which recycling is eventually a possibility. Since the materials are not actually being recycled, and there is only a possibility of eventual recycling, there is no question that these materials are RCRA solid wastes.

products would become wastes. However, we do expect persons storing these materials to have appropriate documentation or information to support their claim that these materials have recycling potential and that the materials are accumulating for eventual recycling (see Section I. of this part of the preamble on record-keeping provisions).

As indicated above, we are not proposing a time period for determining when these commercial chemical products would become wastes. We instead would retain the existing standard indicating that these materials are wastes when intended for discard. Although a subjective standard of this type does not provide absolute certainty, alternatives appear to have greater problems. For example, if we set a time period that would define when commercial chemical products would become wastes, we believe persons might have to keep records of all commercial chemical products they use or keep in inventory in order to comply with the regulations. The Agency does solicit comment on this point; in particular, we ask commenters to address the following questions: (1) whether a time period should be set for commercial chemical products being stored for recycling before they are defined as wastes; (2) what are the maximum and average lengths of time that commercial chemical products are stored before recycling; (3) how and where (*i.e.*, with normal inventory) are these commercial chemical products stored; and (4) how many hours (on the average) would be required to keep appropriate documentation to ensure that the commercial chemical products are recycled if a time period were set.

G. Proposed §§ 261.2(a)(2)(v) and 261.2(c)(3): Materials That Accumulate Without Sufficient Amounts Being Used, Reused, or Reclaimed

A major recurring circumstance in the damage incidents involving recyclers is the accumulation of materials for extended periods before recycling, leading to eventual overaccumulation and improper storage. Accordingly, proposed § 261.2(a)(2)(v) defines as a solid waste any spent material, sludge, or by-product accumulated over time without sufficient amounts being used, reused, or reclaimed. (See the previous section's discussion of the regulatory status of § 261.33 commercial chemical products that accumulate without sufficient amounts being recycled.) This provision is not limited to listed sludges or listed by-products, since the material's status as a waste turns on the amount recycled over time, not on the

material's inherent character. The provision also applies both to a generator's own materials that it plans to recycle itself and to materials accumulated by reclaimers for their own eventual use.

Proposed § 261.2(c)(3) defines materials with known recycling potential to be overaccumulated—and thus solid wastes—when they accumulate at a site for over a year without at least 75 percent (by volume) being recycled. Under this provision, the amount of material turned over in a year is critical, not the total amount accumulated at the end of the year. Thus, if A starts with 100 units, and during the year generates 300 more units, but recycles 75, none of the material is a solid waste even though 325 units remain at the end of the year. Of course, in the following year A would have to recycle (or transfer to a different site for recycling) 75 percent of the 325 units present at the beginning of that year. The time period can be computed according to a calendar, fiscal, or inventory year, whichever is appropriate for the person accumulating. We note that this approach could allow essentially a free year to accumulate where a generator starts a year with little or no waste, since the generator would have to recycle little or no material during the year to meet the test. (We solicit comments as to whether some controls are needed as to when the one-year period begins.)

The Agency has not decided whether the specified percentage of turnover should apply on a material-by-material basis, or on another basis, such as to:

- All materials of the same class (*i.e.*, all solvents, or all still bottoms); or
- All materials to be recycled in the same way (*i.e.*, all materials held for burning to recover energy); or
- All materials of the same class to be recycled in the same way (*i.e.*, all solvents held for burning to recover energy).

Our initial preference is for this last option, but we solicit comments on all of these alternatives, and ask that commenters suggest how these alternatives can be expressed in regulatory language.

The Agency nevertheless recognizes that some persons may be unable to recycle sufficient amounts of material in a given year but could do so if given additional time. Accordingly, the Agency offers a procedure (in § 261.2(c)(3)(ii)) that the person accumulating the material can use to notify the Regional Administrator of the circumstances. Although it need not follow any specified format, the

notification would have to describe what kind of material is involved, how much is being stored, how it is being stored, how and when it is expected to be recycled, and why this expectation is reasonable. The Regional Administrator could then decide—on the basis of the submitted information—that the material is not a solid waste, or could request further information from the notifier. Once the material has accumulated for over a year without sufficient turnover, it becomes a waste unless the Regional Administrator decides otherwise.

The ultimate standard for the Regional Administrator's finding is whether a large portion of the accumulated material is reasonably likely to be recycled in the next year. Factors to be considered are the notifier's past history of recycling the material (including any contractual arrangements for recycling), relevant market factors, the character and quantity of material being accumulated, and how it is being stored.

For example, assume generator A has an emission control dust that he ordinarily sells as an ingredient in fertilizer. In a given year, however, he is unable to turn over 75 percent because the fertilizer manufacturer has gone out of business. Generator A believes he can find an alternative user in the next three months. Under these circumstances, the Regional Administrator could find legitimately that the material may be recycled and need not be managed as a waste.

There also may be extreme situations where a material can accumulate for a second year without 75 percent turnover and still possibly not be considered a waste. We thus have allowed (in § 261.2(c)(3)(ii)(B)) the person accumulating to present a second petition to the Regional Administrator containing the same information described above. The Regional Administrator could use this information to determine again whether the material is reasonably likely to be recycled. To submit the petition, however, the person accumulating must have recycled at least 50 percent of the total accumulated material. For example, assume that on day one A has 100 units of potentially recyclable material, recycles 50 percent in the first year, and successfully petitions the Regional Administrator. During the first year, A generates 200 more units of material. Thus, if A fails to recycle 75 percent of the 250 accumulated units, he would have to recycle at least 125 units to petition a second time.

The Agency believes that a two-year grace period is sufficient. Materials accumulating up to three years without 75 percent turnover are therefore solid wastes, with no further opportunity for petition (proposed § 261.2(c)(3)(ii)(C)).

Once materials are considered to be solid wastes under this provision, all of the accumulated materials are wastes. The materials remain wastes in the hands of the accumulator until 75 percent are turned over in a given year. Of course once any part of that accumulation is physically segregated from the rest and sent to recycling, that part is no longer automatically considered to be hazardous waste under this provision. For example, if a recyclable listed distillation residue "overaccumulates" under this provision—so that the total accumulated is a waste—and 10 percent is then sold to an asphalt manufacturer as an ingredient in asphalt production, that 10 percent is not a waste once it is sent to the asphalt manufacturer. (The material would remain a waste, however, if it were eventually sent to a reclaimer, and would be subject to regulation if that reclaimer was reclaiming for another person's use.)

The Agency considered exempting from this provision situations where a generator accumulates its own non-listed by-products in tanks or containers for its own subsequent use or reuse (but not subsequent reclamation).²⁴ It could be argued that materials a generator retains for its own use differ from materials sent to an unrelated person, since the generator is controlling the material until its end disposition. In addition, the risk of protracted, uncontained accumulation is reduced with materials accumulated in tanks or containers.

We have decided against including this exemption at the present time. These materials pose the potential to cause substantial harm if overaccumulated, and the provision safeguards against this risk. In addition, we do not believe that accounting for the volume of unlisted by-products being used constitutes a substantial administrative burden, since in assessing compliance, we contemplate that tracking can be tied to normal inventory practice.

We request comment, however, as to whether the Agency should include this exemption in its final regulation. Commenters should address which materials are being accumulated by generators for their own use, their

intended use, the type of vessels the materials are stored in, duration of storage, and volume of materials being stored.

The Agency acknowledges that the turnover-notification provision is complicated in description. However, it safeguards against overaccumulation of materials without recycling, while creating a strong incentive to turn over accumulated materials. It also ensures that the Regional Office will be alerted to possible problem operations. Persons accumulating materials may incur some expense when accounting for their materials, but the turnover period is tied to normal inventory practice and involves keeping track only of relative in-flow and out-flow, not of each specific unit of material.

The Agency still has a number of questions about this type of provision. The first is whether further controls are necessary to provide regulatory control over facilities accumulating material for their own recycling. Another is whether the one-year time period is too long to allow substantial amounts of material—e.g., a 20,000 ton-pile of a hazardous emission control dust—to accumulate unchecked. The Agency would appreciate comment on these questions, as well as on questions of this provision's enforceability and feasibility.

H. Proposed § 261.2(a)(3): Spent Materials, Sludges, and By-Products To Be Listed as Solid Wastes

As explained above, certain recycling activities are deemed to constitute waste management only if the sludge or by-product being reclaimed, or (in the case of by-products) being burned as a fuel or used to produce a fuel, is also listed. These listed sludges and by-products are the same sludges and by-products listed as hazardous wastes in 40 CFR 261.31 and 261.32.²⁵

Proposed § 261.2(a)(3) states that the Administrator also may list particular materials as solid wastes without regard to the mode of recycling. Thus, if a material is listed under this provision, it is a solid waste and a hazardous waste no matter how it is recycled, and would be subject to regulation under the

provisions of proposed § 261.6. The reasons for this provision is to provide a safeguard to cover situations where a secondary material being recycled is inherently waste-like and the recycling activity potentially poses substantial environmental risk, but the material is not otherwise defined as a solid waste.

The most likely examples would be particular secondary materials being used or reused as ingredients or as commercial product substitutes. As we stated above, secondary materials ordinarily function more like raw materials or products than wastes when used or reused in these ways (see Section VLE.3.), and so are not ordinarily defined as wastes. There are exceptions, however. The listing provision in the revised definition would cover these exceptions by listing the particular material as a solid waste, the listing functioning in essence as a caveat to the general principles regarding use and reuse.

Spent materials, sludges, and by-products could be listed as solid wastes under § 261.2(a)(3) if they meet two conditions. First, the material would have to be waste-like. To be waste-like, the material, on a nationwide basis, would ordinarily have to be disposed of or incinerated, rather than recycled. The justification is that materials that are ordinarily thrown away are inherently waste-like. (See 45 FR at 33093, May 19, 1980, citing legislative history.) Alternatively, the material would be waste-like if (1) it contained toxic constituents listed in Appendix VII of Part 261 not ordinarily found in significant concentrations in the raw materials or products for which it was substituting, and (2) these toxic constituents were not used, reused, or reclaimed during the recycling process.

Second, to be listed, the material would have to pose a potentially substantial threat to human health and the environment when recycled in ways not already defined as waste management. This condition is relevant in determining whether a waste-like material is a solid waste since it sheds light on whether the purpose of recycling is ancillary to a central purpose of disposal. Potential dangers posed by the practice are also relevant in determining whether there is any need to assert control over the practice.

The Agency is proposing today to list as solid wastes certain dioxin and dibenzofuran-containing wastes that we are also proposing to list as hazardous wastes in another proposed regulation appearing in the Proposed Rule section of today's FR. As we explain there in more detail, these wastes typically are

²⁴ For this purpose, materials stored before blending, processing, or burning as fuels would be deemed to be stored before use.

²⁵ For the purpose of paragraph (a)(2)(iii), the listed sludges currently are EPA Hazardous Waste Nos. F008, F012, F019, K001, K002, K003, K004, K005, K006, K007, K032, K036, K037, K040, K041, K044, K046, K048, K051, K061, K069, K084, K106. For the purpose of paragraphs (a)(2)(ii) and (a)(2)(iii) the listed by-products currently are EPA Hazardous Waste Nos. F008, F019, K008, K009, K010, K011, K013, K014, K015, K018, K017, K018, K019, K020, K022, K023, K024, K025, K026, K027, K028, K030, K031, K034, K036, K039, K042, K043, K049, K050, K052, K060, K071, K073, K083, K085, K087, K093, K094, K095, K096, K101, K102, K105.

disposed of, and are extremely toxic, so that unregulated recycling (including use and reuse) is potentially hazardous. They contain hazardous constituents that are not ordinarily present in raw materials or products, and are not recyclable. Accordingly, we are proposing to list them as solid as well as hazardous wastes in order to control all means of recycling. (We are including the relevant regulatory language in this rule, rather than in the proposed dioxin waste listing, so that all the proposed regulations on recycling are in one place.)

We note that we do not expect to invoke this provision very often, since ordinarily the recycling situation is of concern (for example, reclamation by a person who did not generate the material), not the type of material involved. We also solicit comment on whether § 261.2(a)(3) should apply when materials are used as chemical intermediates by the generator of the materials at the site where the materials are generated. It can be argued that this type of use is close to use of raw materials in the same production process.

1. Proposed § 261.2(d): Record-keeping Provisions

No formal record-keeping requirements are imposed as part of the definition of solid waste. However, in many cases some type of records will be needed to substantiate that a particular material is not a solid waste under the definition or is a waste not subject to regulation. For example, a generator may need to demonstrate that a material is sent to a different person to be reused rather than reclaimed, or that accumulated materials are being turned over sufficiently during a year.

The Agency accordingly has proposed § 261.2(d), requiring persons to keep whatever records (or alternative means of substantiation) are appropriate to document their claims that they are not managing a solid waste or that their wastes are exempt from regulation because they are being recycled in a particular way. The burden of proof rests with the person handling the material, so that failure to provide proof means that the person will be considered to be managing a solid waste or be subject to regulation. An analogous situation is a tax audit, where taxpayers must provide appropriate records or substantiation to support their claimed deductions. (Indeed, the Agency interprets present § 261.6 as putting the burden of proof on the entity claiming to be exempt from regulation because of its recycling activities, in accord with the general principle that

the party asserting an affirmative defense has the burden of proof.)

The Agency is seriously considering a requirement that persons who recycle 75 percent or more of their accumulated materials send a short annual letter to the Regional Administrator identifying themselves, their accumulated materials, and the percentage and volume recycled during the past year. The Agency is concerned that without such a requirement it will never be able to identify potential problem facilities for follow-up inspection. The Agency solicits comments on whether it should adopt such a requirement.

Part II: Standards for Managing Hazardous Wastes That are Recycled

I. The Agency's Existing Standards for Managing Hazardous Wastes That are Recycled and the Agency's Rationale for the Proposed Revisions

In the Agency's existing regulations, the requirements for recycled hazardous wastes are the same as those that apply to generators, transporters, or storers of any hazardous waste (see 40 CFR 261.6). The rationale is that these wastes present essentially similar hazards when they are transported or stored before their end disposition, whether recycling or disposal. Accordingly, certain hazardous wastes to be recycled are regulated up to, but not including, their recycling.³⁶

In rethinking the definition of solid waste, the Agency considered the possibility of less stringent substantive management standards for persons who recycle hazardous wastes. Such materials could be expected to be handled somewhat more responsibly than ordinary wastes, given their value as reusable commodities. In addition, since our policy is to encourage recycling, we would be willing to ease the standards, provided no substantial threat is posed to human health and the environment.

However, the Agency concluded that such relaxation is not now advisable. In the first place, certain types of facilities recycling hazardous wastes repeatedly have mismanaged these wastes, causing extensive damage—thus refuting the argument that these wastes necessarily are handled more responsibly. Second, and more important, the Agency does not now have the technical information necessary to determine which management standards should remain

unchanged and which should be streamlined or eliminated. Given these materials' demonstrated potential for harm, as well as legal requirements of an adequate record for rulemaking, we believe that the current substantive standards should remain in place, at least for the present.

Accordingly, the existing substantive standards will continue to apply to persons who generate, transport, and store hazardous wastes before recycling (subject to several exceptions discussed below). Recycling facilities (as opposed to generators and transporters) also will continue to be subject to the notification requirements of Section 3010. In addition, recycling facilities that are ineligible for interim status will have to obtain a storage permit to legally store the wastes they take in. (See Section VI. of this Part of the preamble for a detailed discussion of the eligibility of recycling facilities for interim status.)

However, the Agency is also in the process of gathering additional information to develop modified regulatory standards for hazardous waste storage facilities. Thus, under Executive Order 12291, the Agency is analyzing the RCRA storage standards to determine which management standards are most appropriate for which types of wastes. We expect to complete this analysis soon, and we will begin to repropose these standards as appropriate.

To provide regulatory relief, we are also considering the development of substantive permitting standards for certain classes of facilities that would be essentially self-implementing or would reduce the amount of required interaction with a permit writer. Coupled with these standards would be simpler procedures for obtaining permits for these classes—procedures that would allow all members of an appropriate class that handle similar types of wastes or manage wastes in a particular manner to submit a short permit application to an EPA Regional Office. The application would indicate that a facility is a member of the class and that it will be in compliance with the applicable permitting standards when the permit is issued. The Regional Office would then provide public notice of the permit application, and a hearing would be available, if requested. This procedure would streamline the existing application process for both applicants and the Agency and would still provide for the public participation required by RCRA.

³⁶ Section 261.6(b) thus provides that these wastes are subject to: (1) notification requirements under Section 3010 of RCRA, (2) 40 CFR Part 262, (3) 40 CFR Part 263, (4) 40 CFR Part 264 Subparts A through L, (5) 40 CFR Part 265 Subparts A through L, and (6) 40 CFR Parts 122 and 124.

II. An Overview of the Proposed Regulations

Section 261.6 of the existing regulations contains the special requirements for hazardous wastes that are beneficially used, reused, recycled, or reclaimed. Section 261.6(a) of the existing regulations excludes from hazardous waste regulation those recycled wastes (except sludges) that are hazardous only because they exhibit a hazardous waste characteristic. Section 261.6(b) of the existing regulations indicates that persons engaged in recycling operations are subject to regulation if they handle a hazardous sludge or a waste listed as hazardous²⁷ in 40 CFR 261.31 or 261.32. This paragraph further specifies the management standards those persons are subject to when the wastes are beneficially used, reused, recycled, or reclaimed.

The proposed amendment to § 261.6 eliminates the current distinction between listed wastes and wastes exhibiting a characteristic. Amending the potentially overbroad features of the solid waste definition renders this distinction unnecessary. The substantive standards for generators and transporters of recycled hazardous wastes, which are identical to those in the existing regulation, have been moved to proposed § 261.6(c). The standards for facilities that store wastes that are to be recycled (again, substantially identical to those in the existing regulation) are now found in proposed § 261.6(d).

There also are a number of conceptually new provisions. To avoid possibly stigmatizing the hazardous wastes that are recycled; we are proposing a new § 261.6(a) which redesignates these wastes as "regulated recyclable materials." We also are proposing a new § 261.6(b), which conditionally exempts certain types of regulated recyclable materials from regulation.

As discussed in Section III.D. in this part of the preamble, we are proposing to regulate materials that are used in a manner constituting disposal, including the actual recycling phase. Therefore, the standards for those materials that are used in a manner constituting disposal are found in proposed § 261.6(e).

In addition, certain regulated recyclable materials, and certain types of facilities managing these materials, are subject to regulatory standards

different from those contained in Parts 262 through 265 and Parts 122 and 124 of the existing regulations. The regulatory standards for these materials and facilities are contained in various proposed Subparts of Part 266. Proposed § 261.6(f) serves as a cross-reference, listing the various materials and facilities subject to special standards. At present, we are proposing Part 266 standards for materials reclaimed under non-batch tolling agreements and for spent lead-acid batteries being reclaimed.

Finally, § 261.6(g) provides substantive and procedural standards for case-by-case regulation of otherwise exempt regulated recyclable materials.

The following table compares the various provisions of the current and proposed regulations:

Subject	Existing provision	Corresponding provision in proposed rule
Exemption for recycled hazardous wastes exhibiting a characteristic.	§ 261.6(a)	Eliminated.
Regulatory standards for recycled hazardous wastes.	§ 261.6(b)	§ 261.6 (c), (d), and (e).
Redesignation of recycled hazardous wastes.		§ 261.6(a).
Exemption for certain regulated recyclable materials.		§ 261.6(b).
Reference to tailored management standards for regulated recyclable materials.		§ 261.6(f).
Substantive and procedural requirements for case-by-case regulation of otherwise exempt regulated recyclable materials.		§ 261.6(g). ²⁸

²⁸ We also are proposing conforming amendments to § 261.5(c), § 264.1(d)(2), and § 265.1(c). The amendment to § 261.5(c) carries over the principles contained in the existing regulation that recycled wastes that are exempt from regulation are not included in the small quantity generator calculation. The amendments to §§ 264.1 and 265.1 indicate that the requirements of Parts 264 and 265 do not apply to certain types of recycling activities—namely, those conditionally exempt under § 261.6(b) and those subject to regulation under Part 266 (unless the Part 266 standards make reference to the Part 264 or 265 standards).

III. Discussion of Specific Provisions of the Proposed Regulation

A. Proposed § 261.6(a): Regulated Recyclable Materials

We added this paragraph to respond to public comments that merely to designate a recycling activity as "hazardous waste management" is immediately to stigmatize it. The Agency is somewhat skeptical that a redesignation will significantly affect the volume of recycling or that public response to hazardous waste recycling necessarily is negative. However, to avoid conceivable stigmatization, we are willing to re-name recycled hazardous wastes "regulated recyclable materials."

However, public announcements—via newspaper and radio—of intent to issue a permit to a recycling facility will continue to mention hazardous waste (for example, a "hazardous waste permit to store regulated recyclable materials"). Eliminating reference to "hazardous waste" in the public notice would substantially undermine the meaningful opportunity for public participation in the RCRA permit-issuing process (under amended Section 7004(b)(2)).

B. Proposed § 261.6(b): Exemptions

This section exempts from regulation certain categories of regulated recyclable materials and persons handling them.

1. *Proposed §§ 261.6(b)(1) (i) and (ii), 261.6(b)(2), and 261.6(g): Exemption of Hazardous Wastes Reclaimed by the Person Who Generates Them, or Reclaimed by a Person Other Than the Generator For That Person's Subsequent Use.* These exemptions already have been discussed in Part I of the preamble. They exempt from regulation regulated recyclable materials (*i.e.*, hazardous wastes) being reclaimed by the person generating them, or reclaimed by a person other than the generator for that person's subsequent use. The exemptions apply from the time the waste is generated until it is reclaimed. Thus, if A generates a hazardous spent solvent and sends it to B who reclaims it and then uses the reclaimed solvent, the waste is not subject to regulation in A's hands or in B's.²⁹

As discussed in Section VI.E. of Part I, there are four qualifications to these exemptions. First, these exemptions do not apply when the materials are being reclaimed or otherwise processed in surface impoundments or stored in surface impoundments prior to reclamation. Second, they do not apply when spent batteries are being reclaimed. Third, sufficient amounts of the materials must be reclaimed during a one-year period, as provided in § 261.2(c)(3). This qualification guards against the risk of overaccumulation.

Fourth, and finally, the Regional Administrator may regulate these materials on a case-by-case basis upon discovering that the materials are being stored or accumulated in a manner injurious or potentially injurious to

²⁹ Incidentally, if a material being reclaimed consists of a mixture of listed sludges or by-products, and non-listed materials, or a mixture of spent material and unlisted sludge or by-product, the material is subject to regulation if the portion being reclaimed would be subject to regulation if reclaimed separately. For example, a mixture of a spent solvent and an unlisted product would be considered a spent material being reclaimed if it is being utilized for solvent reclamation.

²⁷ On November 25, 1980, the Agency clarified that wastes listed in § 261.33 are not at present subject to regulation when recycled (see 45 FR at 76340).

public health and safety. (See § 261.6(b)(2).) To meet this standard, the Regional Administrator must find that the materials (or their toxic constituents) are not being contained, or that incompatible materials are being accumulated or stored together. (See § 261.6(g)(1).) Relevant factors in making this determination are the type and quantity of material accumulating, the mode and length of accumulation, and the type of hazard posed by the site. For example, if during an inspection of an otherwise exempt reclamation operation, the Agency's compliance assistance officers find that materials are being stored in large quantities in leaking drums or that a site poses a danger of fire or explosion, these observations could become the basis for a finding that the facility should no longer be exempt from regulation.

The case-by-case regulatory provisions function as a safety valve, allowing the Agency to regulate individual unsafe reclamation operations, while maintaining an otherwise appropriate exemption. Indeed, the Agency routinely conditions general exemptions by providing for regulation of individual operations causing environmental harm.⁴⁰

Proposed § 261.2(g)(3) sets out applicable procedures.⁴¹ Upon deciding that material at a particular location is to be regulated, the Regional Administrator will issue a notice to the person storing the material stating why the material is considered to be improperly contained (for instance, because contaminated runoff from a pile of the material is seeping into surface water or ground water). If the person is accumulating the material as a generator (i.e., the material is reclaimed or blended within 90 days and is being held in tanks or containers), the notice will require compliance with the provisions of § 262.34. The notice becomes final within 30 days, unless the person accumulating requests a hearing, in which case a public (non-evidentiary legislative) hearing will be held. A final

order, appealable to the Administrator, will be issued after the hearing.

If the person is storing the material, the notice will require him to apply for a storage permit within 60 days of being notified.⁴² Permit applicants normally have six months to submit a Part B permit application. (See 40 CFR 122.22(b)(2).) We are specifying a shorter time period because facilities subject to § 261.6(g) ordinarily will be causing actual harm or have the potential to cause harm. The person can challenge the determination that he is storing a hazardous waste, either in comments filed with his permit application or in the public hearing on either a draft permit or the decision to deny the application.⁴³

The Agency believes this provision safeguards against unsafe operation and possible abuses by otherwise exempt facilities. The Agency solicits public comment on these points, as well as on the proposed procedures.

2. Proposed § 261.6(b)(4)(iii):
Exemption of Regulated Recyclable Materials Used for Precious Metal Recovery. The Agency also is proposing to exclude from regulation those regulated recyclable materials from which precious metals are reclaimed. These materials also are excluded from regulation when stored and transported before reclamation.

By "precious metal reclamation," we mean to include any reclamation operation recovering gold, silver, iridium, palladium, platinum, rhodium, ruthenium (or any combination of these).⁴⁴ Examples are certain electroplating wastewater treatment sludges, solutions and sludges from electroplating and heat-treating operations, and certain silver-bearing scrap and silver-containing photographic films and solutions. Generally, the value of the metal in these materials is so great that they will not be mishandled. Indeed, many of these materials are never disposed of because of their value.⁴⁵

⁴⁰ If the facility in question were eligible for interim status, the effect of the notice would be to require submission of a Part B permit application.

⁴¹ No compliance order can be issued against an excluded reclaimer or fuel blender until it has been finally determined that the exemption should not apply since no regulatory standards apply before the time.

⁴² These are the metals considered precious in sub-categorizing the electroplating industry for purposes of effluent limitation guidelines (see 40 CFR 413.20). The Agency proposes to use the same definition here.

⁴³ See 45 FR 74884 and 74887 (November 12, 1980), indicating that solutions and sludges from precious metal electroplating are never discarded and so are not solid wastes under the May 19, 1980, definition.

However, the Agency is conditioning this exclusion to allow a case-by-case determination that particular problem facilities storing or accumulating wastes containing precious metals can be regulated before reclamation. The basis for this, and the applicable procedures, are the same as those in proposed § 261.6(g)(1) and (3).⁴⁶ To guard against the risk of overaccumulation, we are also subjecting these facilities to the turnover notification requirements of § 261.3(c)(3).

In addition, we are proposing to make a conforming amendment to the listing description of certain wastes listed in 40 CFR 261.31 (Hazardous Wastes F007-F012) to remove the existing exclusion for precious metal solutions and sludges. This exclusion will be redundant in light of the proposed exclusion in § 261.6(b) (and also would not allow case-by-case regulation as discussed above).

Finally, the wastes from precious metal reclamation are considered to be hazardous whenever the material being reclaimed is a hazardous waste (i.e., a regulated recyclable material). (See 40 CFR 261.3(c)(2), the so-called residue rule.) The usual example is precious metal reclamation from spent cyanide solutions or sludges listed as wastes F007-F012. Precious metals also can be reclaimed from electroplating wastewater treatment sludges (Hazardous Waste F006).

This result is soundly based in fact, since all the hazardous constituents (usually cyanides and possibly toxic metals) in the material being reclaimed remain in the waste solutions and sludges after the precious metals are recovered. Thus, waste residues from precious metal reclamation of regulated recyclable materials are presumptively hazardous. If the material being reclaimed is a listed hazardous waste, the waste residues from reclamation remain hazardous unless the Agency has taken action to exclude them under 40 CFR 260.20 and 260.22 (and they do not exhibit a characteristic of hazardous waste). If the material being reclaimed is a waste that exhibits a hazardous characteristic, the waste residues remain hazardous unless they no longer exhibit that characteristic.

3. Proposed § 261.6(b)(1)(iv):
Exemption of Regulated Recyclable Materials Being Reclaimed Under Batch Tolling Agreements. A batch tolling

⁴⁴ The Chemical Metals Industries facility, a Superfund interim priority site, engaged primarily in precious metal reclamation (under non batch tolling agreements) but still mishandled the materials it received. By conditioning the exclusion, the Agency has a means of bringing such a facility into compliance with regulatory standards.

⁴⁰ See e.g., 40 CFR 122.54(c): case-by-case permitting of concentrated animal feeding operations that otherwise have a general permit; 122.55(c): case-by-case permitting of concentrated aquatic animal production facilities that otherwise have a general permit; 122.57(c): case-by-case permitting of separate storm sewers that otherwise have a general permit; and 122.59(c)(2): case-by-case permitting of certain facilities otherwise covered by general permits. See also proposed § 122.26(d)(2) (45 FR 76082, November 17, 1980) where an individual permit is required for individual elementary neutralization units or wastewater treatment units otherwise subject to a permit-by-rule.

⁴¹ These procedures are modelled, to some extent, on those in 40 CFR 124.52, a provision similarly dealing with case-by-case permitting of facilities otherwise subject only to general permit standards.

agreement is a contractual arrangement between a generator and a reclaimer. While retaining ownership of the material, the generator sends it to another person for reclamation; the reclaimed portion is then returned to the generator/owner.

For such materials to be exempt, the proposed regulation specifies that: (1) they must be sent to the reclaimer within 180 days of generation, (2) the reclaimer must reclaim them and return the reclaimed material within 90 days of receiving them, and (3) the reclaimer may not commingle the materials being reclaimed under a batch tolling agreement with materials generated by any other person. The reclaimer also must be paid according to the amount of reclaimed material returned to the generator/owner and must be paid more as the amount of material returned increases.

Batch tolling agreements satisfy the Agency's concern that materials will be tracked properly and moved safely from the generator to the reclaimer, and that they will be stored safely before reclamation. In addition, discrepancies will be discovered, since failing to deliver a shipment to the reclaimer or delivering a nonconforming shipment is a breach of the agreement. For these reasons, a manifest requirement is unnecessary.

The batch tolling agreement also guarantees that the reclaimed material will have an end market, so that each batch of material sent to a reclaimer will be reclaimed and not allowed to overaccumulate. In this respect, such reclamation is very similar to a generator reclaiming its own material. The regulatory requirements that material be sent to a reclaimer within 180 days of generation and that the reclaimed material be returned to the generator within 90 days after the reclaimer receives the materials likewise safeguard against overaccumulation.

The conditions for payment provide a strong incentive for the reclaimer to store materials properly, since any material lost in storage costs the reclaimer money. The requirements that the generator retain ownership of the material and that the material not be commingled by the reclaimer further ensure safe storage, since the generator will be evincing a strong interest (indeed, creating a legal obligation) in receiving back the reclaimed portion of the material he sends to the reclaimer. (We also expect that a generator who retains ownership will scrutinize the handling practices of reclaimers because his ownership guarantees his continuing legal responsibility for the materials.)

For all of these reasons, therefore, we believe that regulated recyclable materials reclaimed under batch tolling agreements should be exempt from regulation. We also have provided that generators or facilities that mishandle materials being accumulated or stored under batch tolling agreements can be regulated on a case-by-case basis, according to the standards and procedures contained in proposed § 261.6(g) (1) and (3).

Batch tolling agreements, as defined in the proposed regulation, exist now. (Examples are in the public docket.) Thus, the proposed regulation will not disrupt on-going commercial practice. In addition, we do not expect this proposed exclusion to significantly alter the scope of regulatory coverage. Few, if any, reclamation facilities conduct all of their business under such arrangements.⁴⁷ Thus, we do not believe that many reclamation facilities will be exempt completely from regulation as a result of this proposed exclusion. We do expect, however, that it will promote these agreements, a desirable result in light of the environmental safeguards they incorporate.

Finally, the Agency is aware of certain arrangements where the reclaimer retains title to the waste being reclaimed, leases the reclaimed material to a user, and then receives back the spent material which it reclaims and releases. This is a batch tolling agreement where the reclaimer rather than the user retains title. The Agency interprets the exemption for batch tolling to cover these arrangements as well, since they provide the same assurances for tracking and handling as the more usual batch arrangement, due to the continued retention of title. (This type of batch tolling arrangement was complimented during the House of Representatives' rebate on H.R. 6307 for providing environmental safeguards. See 128 Cong. Rec. H. 6740 (daily ed. Sept. 8, 1982), remarks of Rep. Florio.)

**4. Proposed § 261.6(b)(1)(v):
Temporary Exemption of Regulated
Recyclable Materials Being Burned as
Fuels, Being Used to Produce Fuels, or
That Are Contained in Fuels.**

This provision has already been described in detail in Sections IV. D. and VI. D. of Part I of the preamble. In essence, it states the following:

(1) Recovering energy by burning spent materials, sludges, and listed by-products (and § 261.33 materials that are not themselves fuels) is exempt from

regulation when these materials are burned in unregulated boilers or industrial furnaces. This exemption is temporary and will be amended following completion and assessment of the technical studies described earlier.

(2) Spent materials, sludges, and listed by-products (and § 261.33 materials that are not themselves fuels) are subject to regulation when used to produce fuels by persons who did not generate them and who are not themselves burning the fuels containing these materials. In these situations, the materials are subject to regulations under Parts 262-265. Non-exempt fuel-producing facilities thus are subject to regulations as storage facilities.

(3) Sludges and hazardous wastes listed in 40 CFR 261.31 or 261.32 would be subject to regulations when they are to be burned or used to produce fuels, as they are under the existing regulations. These wastes would be subject to regulation whether or not they are managed by facilities producing fuels from them for their own subsequent use, or by facilities that ultimately burn these wastes. We may re-propose and alter this part of the proposal.

(4) Storage and ancillary activities by facilities would be provisionally exempt if: (i) facilities produce fuels for their own subsequent use from non-sludge wastes that are hazardous solely because they exhibit a characteristic (*i.e.*, from non-listed spent materials), or (ii) facilities ultimately burn these wastes or waste-derived fuels containing these wastes. These facilities remain subject to the turnover-notification requirements of § 261.2(c)(3), however. In addition, they can be regulated on a case-by-case basis as storage facilities or as generators under the provisions and procedures of § 261.6(g).

The actual burning of these materials also is subject immediately to case-by-case regulation. The proposed regulation (§ 261.6(g)(2)) thus provides that persons burning these materials as fuels in unregulated boilers or industrial furnaces can be regulated on a case-by-case basis under the Part 264 Subpart O regulations applicable to incinerators. The grounds for regulating are that the materials are being burned in a manner insufficient to protect human health and the environment, based upon the toxicity and quantity of stack emissions. Relevant factors in making this determination include the content and mass of the waste feed, operating conditions of the unit, and potential of stack emissions to pose a health hazard. For example, if the Regional Administrator discovers that a boiler is

⁴⁷ A survey conducted by the National Association of Solvent Recyclers indicates that none of their members operate exclusively under batch tolling agreements.

burning large quantities of solvents at low temperatures and with short residence times, and that stack emissions indicate presence of toxicants (all of which circumstances have occurred in the damage incidents involving improper burning in boilers), the unit could be regulated under the Subpart O regulations.

5. *Proposed § 261.6(b)(1)(vi): Temporary Exemption of Recycled Used Oil.* The Used Oil Recycling Act of 1980 requires EPA to determine whether used oil is a hazardous waste and to report to Congress the basis for that determination.⁴⁸ This Act also requires EPA to promulgate regulations that protect human health and the environment from the hazards associated with recycled oil and to tailor the regulatory scheme so that recovering or recycling used oil is not discouraged.

The Agency intends to regulate certain recycled used oils as hazardous wastes. We also are developing the tailored management requirements contemplated by the statute. Until the specific regulations are completed, however, the Agency is deferring any regulation of recycled used oils that exhibit a characteristic of hazardous waste. (Used oil that is a hazardous waste and is disposed of, or treated or stored before disposal, remains subject to regulation as any other hazardous waste.) To regulate now would make little sense when the Agency is working on a specially tailored regulatory scheme and would well conflict with congressional intent by discouraging used oil recycling.

This exemption does not apply when a hazardous waste is mixed with used oil and the resultant mixture is recycled. The most usual case is placing the mixture on the land—e.g., when a listed waste from aniline production is mixed with used oil, and the mixture is used as a dust suppressant. In this case, the Agency is regulating the hazardous waste that is mixed with the used oil, not the used oil component of the mixture. The recycling activity would be regulated as a use constituting disposal.⁴⁹

⁴⁸ See Pub. L. 96-462 (now codified substantially as Section 3012 of RCRA). Under EPA's current regulations, used oil is a hazardous waste only if it meets one or more of the hazardous waste characteristics. It is not subject to regulation when recycled because it is neither a listed waste nor a sludge.

⁴⁹ See Section VI.C. of Part I of this preamble, as well as proposed § 261.2(a)(2)(i), indicating that materials can be used in a manner constituting disposal, and thus be subject to regulation, when they are mixed together without appreciable change and then placed on the land.

6. *Proposed § 261.6(b)(1)(vii): Exemption of Used Batteries Returned to a Battery Manufacturer for Regeneration.* Used batteries sometimes are returned intact to battery manufacturers to be regenerated by replacing the drained electrolyte or replacing one or more bad cells.⁵⁰ This could be subject to Subtitle C regulation under the proposed solid waste definition, since it constitutes reclamation of a spent material by a person other than the generator (used batteries may be hazardous wastes because of acid and metal content). However, the Agency believes the practice presents minimal environmental risks and is very similar to recycling commercial chemical products, an activity not ordinarily regulated (see 45 FR at 78540, November 25, 1980). This practice is not subject to the turnover-notification provision for the same reason. Accordingly, we are proposing today to exempt from Subtitle C regulation used batteries returned to a battery manufacturer for regeneration.

C. *Proposed §§ 261.6(c) and (d): Specific Management Standards for Generators, Transporters, and Stors of Hazardous Wastes That Are Recycled.*

These proposed provisions are the analogues to the present § 261.6(b) and provide the specific management requirements for recycled hazardous wastes. As an organizational change, the Agency has placed the generator and transporter requirements (proposed § 261.6(c)) and the storage requirements (proposed § 261.6(d)) into different paragraphs of this section.

As discussed above, the Agency, for the most part, is retaining its current management standards for regulated recyclable materials. Thus, these materials (unless subject to a Part 266 standard) will continue to be regulated through the conclusion of their storage. Persons managing them will be subject (in some instances) to Section 3010 of RCRA and in all cases to the provisions of Parts 262–265, as well as Parts 122 and 124 for storage facilities requiring a permit.

Specifically, generators and transporters are subject to requirements of Parts 262 and 263. We are not requiring RCRA notification from these persons (see amended Section 3010(a)), since we believe the Part 262 and Part 263 requirements (such as obtaining an identification number) satisfy the

⁵⁰ Batteries also are recycled to recover contained lead values. This practice prevents environmental risks different from regenerating used batteries and is subject to a set of special management standards (see Section III. D. 3. of this part of the preamble).

objectives of the notification provision.⁵¹ Generators accumulating regulated recyclable materials in tanks and containers for less than 90 days are subject to the provisions of § 262.34, provided they comply with the substantive conditions of that provision. (Persons accumulating regulated recyclable materials in piles or impoundments for any length of time are storage facilities. See proposed § 261.6(d).)

Facilities storing regulated recyclable materials are subject to the standards contained in Subparts A–E of Parts 264 and 265, and to the technical standards of Subparts F through L of the same parts (depending upon the manner of storage—in tanks, containers, piles, or impoundments). The permit requirements and procedures of Parts 122 and 124 also apply (see proposed § 261.6(d)).

D. *Proposed § 261.6(e): Management Standards for Hazardous Wastes Used in a Manner That Constitutes Disposal.* The standards for regulated cyclable materials used in a manner that constitutes disposal appear in § 261.6(e). We believe that these materials should be regulated at all stages of management. This includes the recycling phase, since recycling that constitutes disposal is virtually tantamount to unsupervised land disposal.

We are proposing, for the time being, to regulate these activities under the land treatment or landfill regulations of Parts 264 and 265. (These are the two Subparts that are most analogous to uses constituting disposal.) The risk of irrevocable environmental contamination from unregulated placement of hazardous wastes on the land is obvious. In addition, we indicated in our land disposal regulations that waste constituents cannot be contained indefinitely, and so are likely to migrate to ground water at some time. Predictions as to when and what the rate will be are very difficult. (See 47 FR at 32293, July 26, 1982.) We indicated that in protecting ground water, any statistically significant increase at the compliance point in ground water background levels of the

⁵¹ Amended Section 3010(a) allows the Agency to make notification optional when it amends a Part 261 regulation "identifying additional characteristics of hazardous waste or listing any additional substances as hazardous waste. . . ." In spite of this language, the Agency believes the clear intent of the provision is to give the Agency authority to make notification optional whenever it amends Part 261 to bring additional persons into the hazardous waste management system, not just when additional characteristics or listings are promulgated; we are so interpreting the statutory language.

Part 261 Appendix VIII constituents is sufficient to trigger compliance monitoring (40 CFR 264.91(a)(1)) and possibly corrective action. In light of the uncertainties of predicting waste migration, and the need for action if there is even a small increase in the concentration of hazardous constituents in ground water, there ordinarily will be some need for immediate regulation of this recycling activity.

At the same time, we recognize that uses constituting disposal involve unique situations different in practice (though possibly equivalent in risk) from waste management at ordinary land disposal facilities. Thus, uses constituting disposal can be regarded as a type of activity that does not fit precisely the description of any of the specific units that are covered by specific Subparts of Part 264 or 265. In our land disposal regulations, we indicated that we were considering promulgating separate regulations to address these types of waste management units. These regulations would consist of general environmental performance standards similar to those contained in 40 CFR § 267.10. (See 47 FR 32281.) We believe that ultimately developing such general standards probably is suitable for regulating uses constituting disposal, because of the situation-specific nature of the activity. We accordingly solicit comments as to whether we should proceed along these lines.

In any case, the immediate impact of these provisions is likely to be minimal. Public comments and the Agency's own investigations indicate that most materials recycled in this manner are at present excluded from regulation by the 1980 statutory amendments. The principal examples are utility wastes and wastes from phosphate mining and processing.⁵² We are studying these wastes and their management. It may be that special standards (other than those proposed today) will prove appropriate for these wastes, should any be subject to regulation as hazardous wastes.

The proposed rules also cover the regulated recyclable materials before they ultimately are recycled to the land. Thus, the materials must be carried to the use location by a Part 263 transporter. In addition, the manifest system must track these materials to the use location. (See proposed § 261.6(c).) The owner or operator of the facility using the materials must then comply with the provisions for using the

manifest (40 CFR 264.71 or 265.71) and for dealing with manifest discrepancies (40 CFR 264.72 or 265.72).

Without these requirements, there would be nothing in the arrangement for use constituting disposal to ensure proper tracking of materials from the point of their generation to the point of their use. In fact, a user or generator might well not know if a shipment has been misdirected, particularly if the material involved is being shipped in large volumes via repeated movement (as in a land reclamation situation).

If a generator stores materials that will be used by a different person in a manner constituting disposal, the generator must still comply with applicable storage standards. The generator is not relieved of storage responsibilities because the end use is approved; nor are owners or operators of intermediate storage facilities exempt from regulatory control (*i.e.*, storage facilities whose owners or operators do not ultimately use the waste).⁵³ (See proposed § 261.6(d).)

E. Proposed §§ 261.6(f) and Subparts C and D of Part 266. Proposed § 261.6(f) serves as a cross-reference to the special management standards in Part 266. The Agency intends to use Part 266 for all regulatory standards that differ from those in Parts 264 or 265—in other words, for tailored management standards. Eventually, we hope to develop Part 266 standards for many types of recycling activities. At present, we are proposing two: for materials reclaimed under nonbatch tolling agreements and for spent lead-acid batteries that are reclaimed.

1. Proposed §§ 261.6(f)(1) and 266.20: Regulated Recyclable Materials Reclaimed Under Nonbatch Tolling Agreements. We have developed special management standards for regulated recyclable materials reclaimed under nonbatch tolling agreements. A nonbatch tolling agreement is a contract between a generator and a reclaimer. Under this contract, the generator physically transfers waste material to a reclaimer, who then returns reclaimed material to the generator by a specified deadline. It differs from the batch tolling agreement (discussed in Section III. B. 4. of this part of the preamble) in that (1) the generator does not retain ownership of the material sent to the reclaimer and (2) the reclaimer is not paid in proportion to the amount of reclaimed material returned. Instead, the generator

is simply guaranteed the return of a reclaimed material. (Contracts also may call for the waste and the reclaimed material to meet particular specifications.)

Nonbatch tolling agreements appear to satisfy all of the Agency's objectives in requiring a manifest system for generators, transporters, and facilities. As explained earlier, the agreement itself ensures proper tracking of materials from the generator to the reclaimer. We accordingly are eliminating any manifest requirements for generators, transporters, and facilities reclaiming wastes under these agreements. However, persons handling wastes under these agreements must be able to show that they actually are doing so by keeping copies of the apposite agreement. (See the discussion of proposed § 261.2(d) in the first part of today's preamble.)

We are also proposing to eliminate the general waste analysis requirements of 40 CFR sections 264.13 and 265.3 for facilities managing materials under these agreements. Under those provisions, an owner or operator who treats, stores, or disposes of any hazardous waste must obtain a chemical or physical analysis of a representative sample of the waste and must develop and follow a written analysis plan that describes the procedures to obtain the analysis. This requirement is to ensure that the facility has all the information necessary to properly treat, store, or dispose of the waste.

However, the nonbatch tolling agreement already serves the same purpose because the material sent to the reclaimer ordinarily must meet physical specifications to enable the reclaimer to return suitable reclaimed material to the generator. Thus, the materials will be analyzed by the reclamation facility or other appropriate party, whether or not regulations apply.

We do not believe, however, that existence of the nonbatch tolling agreement satisfies any of the technical standards for storing or properly handling the material. Indeed, materials stored under such agreements have been mishandled at a number of the recycling facilities involved in damage incidents. (See Appendix B.) Unlike batch tolling, nonbatch tolling agreements neither guarantee an end market for the materials, nor provide incentives for safe storage.

We thus are proposing to retain all of the technical requirements. However, the Agency solicits comments on whether further requirements could be reduced or eliminated. For each suggested elimination or reduction, we

⁵² Used oil, which often is used directly on the land, will be regulated under a separate set of regulations. See Section III.B. of this part of the preamble.

⁵³ The Agency is aware of at least one damage incident caused by improper storage of wastes prior to a use constituting disposal. See *Damages and Treats Caused By Hazardous Materials Sites*, *supra*, p. 44.

request the commenter to explain how the nonbatch tolling agreement ensures that the policy underlying that affected requirement would be satisfied.

2. *Proposed §§ 261.6(f)(2) and 268.30: Management Standards for Spent Lead-Acid Batteries Being Reclaimed.* The final category of materials for which the Agency is proposing a tailored management standard is spent lead-acid batteries that are hazardous wastes⁵⁴ and are being reclaimed. Reclaiming these batteries involves recovering the lead they contain by first cracking or breaking the casings and then smelting the lead plates that were inside.

We are proposing to regulate these spent batteries only when they are stored by persons who reclaim them. Spent batteries thus would be subject to regulation when stored by battery crackers and secondary smelters (including smelters who subsequently refine the recovered lead). However, they would not be regulated when accumulated by generators, or when stored by persons who do not also reclaim them, or transport them. The basis for these distinctions is set out below.

a. *Regulation of Spent Batteries Stored by Reclaimers.* Spent batteries have been mishandled while being stored by all types of reclamation facilities—by integrated smelter-refiner operations as well as by independent battery crackers and smelters (see Appendix B). Thus, we have no justification for distinguishing among these facilities for regulatory purposes. In this respect, the provisions proposed for these facilities differs from those proposed today for other types of reclamation facilities. In the case of those other facilities, the Agency—based in part on the lower level of risk—is proposing not to regulate generators

reclaiming their own wastes or facilities reclaiming for their own subsequent use.

However, many battery reclaimers do not store batteries before reclaiming them, as the Agency interprets its current regulations. These reclaimers transfer the batteries directly from the delivery truck to the battery-breaking equipment.

The batteries sometimes remain on the truck for several hours, sometimes for up to several weeks. We ordinarily do not consider this temporary holding to constitute storage. This holding time usually is short because it is expensive for transporters to keep their delivery trucks off the road. We expect to propose soon a clarifying regulation indicating that temporarily holding hazardous wastes on bona fide transport vehicles does not constitute storage. The proposed time limit for such holding probably will be 14 days. Under the present proposal, therefore, battery reclaimers (and similarly situated persons) need not obtain a storage permit, unless they take the batteries off of the truck and store them at a separate area before reclamation.

We acknowledge that some questions remain as to the efficacy of regulating storage of spent batteries before reclamation. Most of the environmental damage from battery reclamation has been caused by disposing of wastes from the reclamation process rather than by storing batteries before reclamation. Existing regulations already apply to disposing of process wastes.⁵⁵ We also recognize that risks from improper storage are reduced with the increased use of automated battery shredding equipment.

Nevertheless, the damage from improper storage by battery reclaimers indicates some need for regulation. We also can envision potential problems arising from storing spent batteries. For example, a facility could pile batteries in leaking containers in the open, spilling metal-contaminated acid. Reclamation facilities also can receive damaged batteries with the possibility of harm if storage is unsafe.

We consequently are proposing to regulate spent battery reclaimers who store these batteries. At the same time, we solicit comments on alternative regulatory approaches, such as a class permit for battery reclaimers directed narrowly to containing releases of

hazardous waste occurring both during storage and during treatment (battery breaking). A second alternative is to limit the quantity of batteries that a reclamation facility can store at one time without having to obtain a storage permit.

We also would like commenters to address the following questions: (1) What are the maximum and average lengths of time that reclaimers store spent lead-acid batteries before reclamation? (2) How are these spent batteries stored? and (3) What risks of environmental damage are associated with the reclamation process itself?

b. *Exclusion of Spent Batteries from Regulation When Accumulated by Persons Other than Reclaimers or When Transported.* We are proposing to exclude spent batteries from regulation when they are accumulated by persons other than reclaimers or when they are transported. This exclusion is needed because an excessive (and unnecessary) regulatory burden is likely to result if Subtitle C standards are extended back to cover activities before storage by reclaimers.

Generator and transporter requirements do not appear necessary, since there are other incentives outside RCRA and other regulatory constraints that ensure that these materials both arrive at their intended destination and are not improperly managed during this phase of the management cycle. First, these spent batteries are a valuable commodity, and customarily are reclaimed;⁵⁶ therefore, the Agency can be assured that these materials ordinarily will arrive at their intended destination. Second, acid spillage during transport is unlikely because the Department of Transportation currently regulates these batteries during their transportation under 49 CFR Part 122. Under these regulations, batteries must be properly packaged, labelled, etc., to prevent hazards during transport. (Such spillage also would constitute illegal hazardous waste disposal.) Finally, as indicated by both the independent battery crackers and the integrated smelter-refiners, reclamation operators pay for each battery on a weight basis. Therefore, to increase their profit, generators and transporters are encouraged to deliver batteries full of acid.

We also think it unnecessary to regulate storage of these batteries by

⁵⁴ We believe that most spent lead-acid batteries will exhibit the characteristics of corrosivity and EP toxicity and so will be hazardous wastes. With regard to corrosivity, these batteries contain concentrated sulfuric acid, which is corrosive [40 CFR 261.22]. (Although the characteristic of corrosivity applies only to aqueous and liquid solutions, the Agency does not consider batteries to be solids for purposes of evaluating their corrosivity. In determining the hazardousness of the waste, a representative sample of the material must be taken. In the case of spent batteries, this means all parts of the battery, including the liquid acid, must be part of the sample. When this is done, most lead-acid batteries meet the definition of a corrosive liquid.)

These batteries also may exhibit the characteristic of EP toxicity. Spent batteries contain lead plates and leaded compounds that are engulfed in highly acidic solutions. Since lead is quite soluble under these conditions, we expect that the contained solution would be lead-contaminated and probably would exhibit the EP toxicity characteristic.

⁵⁵ These wastes are spent acid solutions and spent battery casings. Ordinarily, both are hazardous wastes when disposed or when treated before disposal (the spent acid solutions usually are hazardous because of their corrosivity and toxicity, and the spent casings may exhibit the EP toxicity characteristic). The regulation of these wastes is not affected by the regulations proposed today.

⁵⁶ In fact, these spent batteries are the primary source of lead for secondary lead smelters. Of the approximately 50 million batteries produced each year, over 90 percent are recycled and used again to make lead-acid batteries or other lead-based products.

retailers, wholesalers, or local service stations that receive spent batteries from consumers. These types of establishments rely heavily on maintaining good public relations with the consumer, and thus have an added incentive to manage their wastes properly. We also are reluctant to impose Subtitle C regulations on establishments of this type (particularly when a recycling activity is involved), unless there is a compelling environmental need. No such need is apparent in the case of stored spent lead-acid batteries.

We also are proposing not to regulate the storage of spent lead-acid batteries at immediate collection centers. Many of these centers are small establishments—e.g., scrap yards or salvage dealers—that receive many different types of scrap metal (including spent batteries), segregate it, classify it into the various grades, and send it off to be smelted and refined. We estimate that there may be thousands of these establishments. We believe that these facilities are unlikely to present a significant hazard to human health and the environment because they ordinarily do not store large quantities of these batteries for long periods. Therefore, we are proposing not to regulate spent batteries when accumulated at these intermediate collection centers. However, we believe that we need to investigate these facilities further. If after this analysis we conclude that regulatory control of these facilities is necessary, we will propose appropriate regulations.

In summary, the Agency is today proposing to regulate spent lead-acid batteries only when stored before reclamation at battery cracking, battery cracking-smelting operations, or battery cracking-smelting-refining operations.⁵⁷ Spent batteries stored by these persons thus would be subject to the requirements contained in Parts 264 and 265. These include: (1) the administrative requirements of Subparts A through E, minus those regulations pertaining to the manifest requirements and waste analysis (since the batteries' composition is known) and (2) the technical standards of Subparts F through L (depending on the manner of storage). The permit requirements of Parts 122 and 124 also apply.

⁵⁷ For our purpose, the reclamation process includes both cracking and smelting, both being necessary to recover lead. (Lead plates obtained by cracking batteries are unlikely to exhibit a characteristic of hazardous waste, and so could be sent from a battery cracker to a secondary lead smelter without being subject to RCRA regulation.)

IV. Standards Applicable to the Various Activities Constituting Waste Management Under the Proposed Definition of Solid Waste

This section of the preamble reviews which regulatory standards apply to the activities defined in § 261.2 as waste management.

Persons engaging in uses constituting disposal⁵⁸ are regulated under proposed §§ 261.6(c) (generators and transporters), 261.6(d) (storage facilities), and 261.6(e) (uses constituting disposal). Persons handling wastes being reclaimed by someone other than the generator or by someone who subsequently uses the reclaimed material are regulated under proposed §§ 261.6(c) and 261.6(d).⁵⁹ In the case of hazardous wastes that are listed in 40 CFR 261.31 and 261.32 or are hazardous sludges, persons managing these wastes prior to burning or blending are also regulated under proposed §§ 261.6(c) and 261.6(d). Any wastes listed under proposed § 261.2(a)(3) also would be regulated under these provisions.

Persons accumulating materials speculatively likewise are subject to the standards in proposed §§ 261.6(c) and (d). These materials are deemed immediately to be solid wastes. Generators who accumulate these materials for less than 90 days in tanks and containers are subject to the provisions of 40 CFR 262.34. Storage for longer periods (or for any length of time in piles or impoundments) must satisfy the applicable storage standards.⁶⁰

The standards applicable to materials that are accumulated without sufficient amounts being recycled require further explanation. Under the proposed definition, it is not determined whether these materials are regulated recyclable materials until a year has passed. The person accumulating these wastes also may petition the Regional Administrator for a determination that the materials he is accumulating are not solid wastes.

In the Agency's view, persons accumulating these materials are storage facilities when a year elapses without sufficient turnover of the material. Thus, they are subject to the standards contained in proposed § 261.6(d). These persons should not be

⁵⁸ The descriptions of the recycling activities that constitute waste management are shortened characterizations. The actual regulatory standards in the proposed definition of solid waste are described in detail in Part I of this preamble.

⁵⁹ Regulated recyclable materials reclaimed under a nonbatch tolling agreement are subject to regulation under Part 266.

⁶⁰ It should be remembered, however, that these materials do not necessarily remain solid wastes once they are removed from accumulation to be recycled. See proposed § 261.2(c)(2).

considered generators, or have the benefit of the generator accumulation provision (§ 262.34), because they already have held the material for well over 90 days.

We do, however, interpret these provisions as allowing a six-month period for a facility either (1) to come into compliance with the applicable requirements (i.e., the storage standards in proposed § 261.6(d), and the requirement to submit permit applications—both Part A and B applications for facilities ineligible for interim status), or (2) to ship all the materials to another Subtitle C facility. This is analogous to Section 3010(b) of RCRA, which provides that Subtitle C regulations become effective six months after promulgation—to allow regulated entities lead time to come into compliance.

The Agency believes a similar principle applies when a material becomes a solid waste after held for a year without sufficient turnover. In this situation, the applicability of regulatory requirements is not certain until the year has passed, just as the applicability of regulatory requirements is uncertain until a regulation is promulgated. Because of this uncertainty, the person accumulating the material may not have had, and cannot reasonably be expected to have had, sufficient opportunity to come into compliance with the regulatory requirement.⁶¹

V. Possible Inclusion of a Variance Provision

The Agency considered including a variance provision in these regulations to cover processes that do not appear to be waste-based but that nevertheless fall under the revised definition of waste management. However, we decided that such situations, if they exist, can be dealt with by using the rulemaking provisions and procedures of § 260.20 of the regulations. In fact, informal rulemaking, which would accord relief on a classwide basis is the most appropriate mechanism. If a petitioner can show that its process should not be considered waste management, all similar processes should be accorded the same regulatory status at that time.

⁶¹ These facilities also would have to file a notification within 90 days after the accumulated material becomes a regulated recyclable material. As an incidental matter, the six-month period described above is a good time to apply to the Regional Administrator, under proposed § 261.2(c)(3)(ii), for a determination that the accumulated material is not a solid waste. The time it takes for the Regional Administrator to make this determination is another reason to allow a six-month lead time to come into compliance.

We do not think that a variance provision to exempt individual facilities (or generators or transporters) from particular regulatory requirements is appropriate. We believe that petitioners for this type of variance would argue that their facility performs a certain activity properly and so should not be regulated. This type of claim is properly made in the permitting process, where the existing Part 264 (or Part 266) standards provide flexibility to accommodate individual situations. If the form of relief requested is justifiable on a classwide basis, a rulemaking petition can be filed.

Consequently, we are not including a variance provision in the proposed regulation. We solicit comments on this approach, however.

VI. Eligibility of Owners or Operators of Recycling Facilities for Interim Status

It obviously is of great practical significance whether owners or operators of recycling facilities newly brought into the hazardous waste management system are eligible for interim status. The requirements for interim status are no different for recycling facilities than for any other hazardous waste management facility. They require: (1) that the owner or operator of a facility notify he is engaging in a hazardous waste management activity (if the Agency requires notification), (2) that he submit a Part A permit application in a timely manner, and (3) that the facility had been in existence on November 19, 1980. See § 122.23(a) and 45 FR 76630 (November 19, 1980), interpreting these requirements.

In general, the owner or operator of any facility⁶² that presently has interim status will continue to have such status if his recycling operations are now brought into the hazardous waste management system for the first time. If the owner or operator of a facility does not have interim status, he may qualify if he notifies the Agency, if he submits a Part A permit application, and if on November 19, 1980, his facility was treating, storing, or disposing of a material later identified or listed as a hazardous waste.

The following examples illustrate how these principles apply:

1. The ABC Company generates and stores a listed waste and did so before November 19, 1980. It also complies with the other statutory prerequisites and so

has interim status. After November 19, 1980, the company begins to reclaim a different person's EP toxic spent material, an activity considered to be hazardous waste management under the amended definition of solid waste. Does the company still have interim status and can the recycling activity be conducted permissibly?

The company continues to have interim status, and the recycling activity constitutes a change during interim status—specifically adding waste, increasing design capacity, and possibly adding a new process (if storage incident to reclamation uses a different type of vessel or mode of storage than that used for the listed wastes). The regulations on changes during interim status (§ 122.23(c)) determine whether this change is permissible and, if so, what regulatory obligations apply (such as filing an amended Part A application).

2. The EFG Company does not have interim status. After November 19, 1980, it begins to reclaim a different person's spent corrosive materials. It was not handling this waste before November 19, 1980. The facility owner or operator notifies the Agency and submits a timely Part A permit application. Does the company have interim status?

The company does not have interim status. Although it has complied with the notification and application requirements, it was not "in existence on November 19, 1980," because on that date it was not treating, storing, or disposing of waste it now is recycling. (See 45 FR at 76633-634, which interprets the requirement that a facility be in existence on November 19, 1980.) Consequently, until the company obtains a storage permit, it must stop storing the waste before recycling.

3. The DEF Company does not have interim status. On November 19, 1980, the company was reclaiming an EP toxic spent material generated by a different person and storing that material before reclamation. It is now deemed to be engaged in hazardous waste management as a result of the amended definition of solid waste. The owner or operator of DEF notifies the Agency and promptly submits a Part A permit application. Does the company have interim status?

This company's facility meets all of the prerequisites for interim status. A facility is "in existence on November 19, 1980" if it was treating, storing, or disposing of a material on that date, and action by the Agency subsequently brings that material (or management activity) into the hazardous waste management system. This is the case in

the example above. The company also has satisfied the other interim status requirements.

4. The XYZ Company does not have interim status. It was generating a hazardous distillation bottom on November 19, 1980, and then it obtained an EP toxic sludge for recycling. The sludge has accumulated for over one year without sufficient amounts being recycled, and so is a solid and hazardous waste under amended § 261.2(a)(2)(v). The company promptly notifies and files a Part A application in a timely fashion. Does it have interim status?

The company does not have interim status. Although the company has notified and filed a permit application, it was not in existence on November 19, 1980, because it was not then treating, storing, or disposing of a hazardous waste—but only generating a hazardous waste. (This result is the same if XYZ generated a hazardous waste on November 19, 1980 and subsequently began to store and recycle that same waste.) XYZ still was not treating, storing, or disposing of a hazardous waste on the critical date, and so its facility was not in existence on November 19, 1980.

Part III: Miscellaneous

I. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and thus requires a Regulatory Impact Analysis. This proposed rule is not a major rule because it will not (1) have an effect on the economy of \$100 million or more, (2) significantly increase costs or prices for industry, or (3) diminish the ability of U.S.-based enterprises in domestic or export markets.

This assessment is based on two EPA studies of the economic effects on the regulated community of the proposed changes to the definition of solid waste and accompanying management standards. The first of these studies is entitled "Impact on the Regulated Community of Possible Changes in the Definition of Solid Waste: Use, Reuse, Recycling, Reclamation." This study analyzed the net reductions and increases in regulation of establishments that recycle hazardous wastes if the current regulations defining solid waste and establishing management standards for recycled hazardous wastes were replaced by those proposed today.

This study identified 39 industrial categories which are involved in the 15 recycling activities that will be affected significantly. We based our numerical

⁶² See 45 FR at 76633-634; only owners or operators of "facilities" can obtain interim status, and so only entities engaged in treatment, storage, or disposal may qualify. See also § 260.10(a) defining "facility" as an entity that treats, stores, or disposes of hazardous waste.

estimates on 27 of these industrial categories. (The number of establishments within the other 12 industrial categories could not be quantified within the scope of the study. Available information indicates strongly, however, that—under the proposed standards—there will be a net reduction in the regulation of the establishments within these categories.

According to the study, under the proposed regulations:

- Approximately 4,500 to 5,300 establishments would have their requirements under the hazardous waste management regulations reduced;
- At least 76 establishments that use or reuse materials otherwise considered hazardous wastes would be excluded from regulation;
- Approximately 230 to 350 establishments would have their requirements under the hazardous waste management regulations increased;
- Approximately 60 establishments that recycle hazardous materials would be newly subject to regulation.

These findings show a significant reduction in regulatory impact as a result of the proposed regulations. The most significant change would be the reduced regulatory impact on persons reclaiming materials that they generate (particularly spent solvents). These persons would not be subject to regulation under the proposed definition if they reclaim 75 percent of the material on hand at the beginning of a 1 year period. At present, they are subject to regulation immediately if they are reclaiming listed hazardous wastes or hazardous sludges. The regulatory impact on persons using or reusing listed hazardous wastes and hazardous sludges also would be significantly reduced. These regulated activities would not be regulated at all under the proposed regulation.

The proposed regulation increases the regulatory impact of facilities that reclaim hazardous wastes generated by others, or that process such wastes to make fuels. However, because this class or recycling operations has caused most of the damage incidents involving recycled hazardous wastes, we view this effect as appropriate.

The second study is entitled "Cost Impact Analysis for Proposed Changes in the Definition of Solid Waste and Management Standards for Wastes Which are Used, Reused, Recycled, and Reclaimed." It analyzed what the proposed change will actually cost the regulated community. The study applies the appropriate unit cost estimates to the estimates developed in the first study to arrive at a net cost. (These

costs were adjusted to reflect only the volume-dependent variable costs and not the incremental fixed costs already incurred by the affected establishments.)

The results of the study demonstrate that the proposed regulation will reduce compliance costs by an estimated \$24.4 million (costs shown are the annualized after-tax cost savings). This figure represents the sum of increases and decreases in annualized costs for all affected establishments, including:

- An estimated decrease in costs of \$24.7 million for establishments with reduced regulatory requirements, or for establishments that are released from the hazardous waste management regulations entirely; and
- An estimated increase in costs of \$0.34 million for newly-regulated establishments or for those facing increased regulatory requirements.

Our analysis further suggests that for industries facing increased regulatory requirements under the proposed regulations, there would be no significant cost increases or other adverse effects on competition, employment, or investment.⁴³

Finally, it should be noted that many of the assumptions made in both reports were conservative. Thus, we believe that our estimates *understate* the reduced regulatory impact from the proposed changes. Moreover, a number of provisions presented unquantifiable effects for which we made no estimates at all, even though we know that costs will be reduced. Therefore, because this proposed amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

II. Regulatory Flexibility act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the rule's impact on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This

⁴³ We could not compare the estimated increases in cost for independent battery crackers with profits, value added, or other measures of financial strength because the available economic information is not sufficiently disaggregated. However, for a number of reasons, we do not expect that the proposed changes in the definition will cause significant adverse impacts (see cost impact analysis for details).

analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA and its contractor performed an analysis to determine whether the proposed changes in the definition of solid waste and the accompanying management standards will impose significant costs on small entities. The resulting report ("Cost Impact on Small Entities of Proposed Changes in the Definition of Solid Waste and Management Standards for Wastes Which Are Used, Reused, Recycled, and Reclaimed") indicates that in none of the industry categories would this rule have a "significant economic impact on small entities" (as this is defined under the criteria for a Regulatory Flexibility Analysis). Accordingly, I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis.

III. Paperwork Reduction Act

The reporting or record-keeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under Section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq. Any final rule will explain how its reporting or record-keeping provisions respond to any OMB comments.

IV. List of Subjects in

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

40 CFR 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 266

Hazardous materials.

Dated: March 21, 1983.
John W. Hernandez, Jr.,
Acting Administrator.

Appendix A

This Appendix sets forth the Agency's legal basis for asserting jurisdiction under Subtitle C and the implementing regulations over materials being recycled. Although the statutory definition of solid waste (Section 1004(27)) does not expressly address the question of whether a material being recycled or destined for recycling can be a solid waste, we believe that Congress did indeed intend that recycled materials can be solid wastes, and, if they are hazardous, that they can be regulated under the hazardous waste management regulations.

I. Recycled Materials Can Be "Solid Wastes" Under RCRA

Many commenters to the Agency's May 19, 1980 regulations argued that recycled materials cannot be wastes under RCRA, basing their claim largely on the phrase "other discarded material" in the statutory definition (a term nowhere defined in RCRA). They claim that this language means that a material must first be discarded, in the sense of thrown away or abandoned, before it can be a RCRA solid waste.

The Agency disagrees with this reading. It is quite clear from the text of other statutory provisions that recycled materials can be wastes.⁶⁴ Perhaps the most pertinent provision is the definition of "hazardous waste management." This term (which is the title of Subtitle C) is defined as "the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste." (Section 1004(7).) The recycling activities of recovery, source separation (the selection of recyclable from non-recyclable items), and collection thus can involve hazardous waste.

Equally clear, a whole series of statutory definitions dealing with resource recovery indicate that this activity involves reclaiming material or energy from solid waste, demonstrating again that a material being recycled can be a waste. "Resource recovery" itself means "the recovery of material or energy from solid waste." (Section 1004(22) (emphasis added).) A "resource recovery facility" is "any facility at which solid waste is processed for the

purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse." (Section 1004(24) (emphasis added).) A "resource recovery system" is a "solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of non-recoverable waste residues." (Section 1004(23) (emphasis added).) A "recovered resource" is "material or energy recovered from solid waste." (Section 1004(2) (emphasis added).) Section 6002(c)(2) speaks of "systems that have the technical capability of using energy or fuels derived from solid waste * * *." See also Sections 1004(18), (28), and (29) all of which likewise presuppose a solid waste from which resources can be recovered.⁶⁵ There also are repeated references to resource recovery throughout the statute; these references would be meaningless if solid wastes were never reclaimed or otherwise recycled. See, e.g., Section 1002(c)(2) and (3), 1003(1) and (5)-(8), 2003, 4002(c)(10), 4003(5) and (6), 4008(a)(2)(A) and (d), 5001, 5002, and 6002(c)-(g).⁶⁶

⁶⁴ A number of commenters have argued that the statutory definition of "recovered material" (Section 1004(19)) suggests by negative implication that materials "generated from, and commonly reused within, an original manufacturing process" are not solid wastes. The Agency disagrees. The plain language of the provision does not support the negative implication read into it by these commenters. Equally important, the legislative history indicates unequivocally that this provision was intended to apply to Federal procurement guidelines issued pursuant to Section 6002. See S. Rep. No. 96-172, 96th Congress, 1st Session at 2. It is clear, therefore, that the provision does not have the broader meaning attributed to it by these commenters.

⁶⁵ A number of commenters also found support in the House Report to RCRA for their argument that only discarded materials can be wastes. They pointed to the following language in the Report:

"Much industrial and agricultural waste is reclaimed or put to new use and is therefore not a part of the discarded materials disposal problem the committee addresses." H.R. Rep. No. 94-1491, 94th Cong., 2d Sess. at 2.

This language is taken out of context. In fact, it applies only to non-hazardous solid waste. Throughout the report, it is clear when the committee refers to non-hazardous waste and hazardous waste. Indeed, these two types of waste often are referred to separately. See, e.g., H.R. Rep. at 1, 4, 5, 8, 12: "discarded materials and hazardous wastes." Congress intended a regulatory solution for hazardous wastes. *Id.* at 3, 4, 6-7. Statements made about non-hazardous wastes thus have little or no bearing on Congress' intent regarding hazardous waste.

Furthermore, the House Report indicates that "discarded materials" can indeed be utilized for recycling (and hence can be solid wastes). See H.R. Rep. at 7, 10: "the state plan must provide that no state or local government shall prohibit such local community from entering into long-term contracts to supply discarded materials of the community to resource recovery facilities"; "(r)esource recovery facilities cannot be built unless they are guaranteed

The commenters' argument that a material must first be discarded or thrown away before it can be a RCRA waste also has been rejected by the United States Court of Appeals for the D.C. Circuit in *United States Brewers' Association, Inc. v. EPA*, 600 F.2d 974 (D.C. Cir. 1979), a lawsuit challenging a beverage container recycling guideline issued by EPA under Section 1008(a)(1) of RCRA. The petitioners in that proceeding contended that beverage containers were not "solid wastes" until "discarded" and therefore that EPA had no authority under Section 1008(a)(1) to require that beverages be sold in returnable containers, or that a minimum deposit be charged on containers (to encourage their return for recycling). The Court of Appeals rejected this contention, saying that it flies squarely in the face of the explicit definition in the statute. Section 1008(a) directs EPA to publish suggested guidelines for solid waste management, which as defined in Section 1004(30) expressly included "planning or management respecting resource recovery and resource conservation, * * * and 'utilization of recovered resources'." (600 F.2d at 982-83.)

In addition, 17 courts to date have exercised jurisdiction in imminent hazard actions under Section 7003 brought against recycling facilities (reclaimers reclaiming wastes generated by a different person).⁶⁷ Since the

a supply of discarded material"; see also H.R. Rep. at 13: "locating new markets for resources recovered from waste", and 43 "(t)he Committee has received much information on the importance of expanded and stable markets for the materials recovered from waste."

⁶⁷ These cases are *U.S. v. Midwest Solvent Recovery, Inc.*, 484 F. Supp. 139 (N.D. Ind., 1980); *U.S. v. Solvent Recovery Services of New England, Inc.*, 496 F. Supp. 1127 (D. Conn., 1980); *U.S. v. West Cir. No. C-801342 M* (D. Wash., 1981) (the complaint in this action was later amended to include only counts for violation of the Subtitle C regulations; a preliminary injunction was entered against the facility ordering compliance with certain of these regulations); *U.S. v. Acme Refining Co.*, No. 80C-3213 (N.D. Ill., filed 6/20/80); *U.S. v. Chem-Dyne Corp.*, No. C-1-79-703 (S.D. Ohio, filed 12/19/78); *U.S. v. Chemical Recovery Systems, Inc.*, No. C-80-1858 (N.D. Ohio, filed 10/7/80); *U.S. v. Bridgeport Rental and Oil Service, Inc.*, et al., No. 80-3267 (D.N.J., filed 10/2/80); *U.S. v. Ken Industries, Inc.*, et al., No. H80-420 (N.D. Ind., filed 8/1/80); *U.S. v. Fisher-Cole Chemicals and Solvent Corp.*, et al., No. S80-204 (N.D. Ind., filed 7/3/80); *U.S. v. A&F Materials Co., Inc.*, et al., No. 80-4395 (S.D. Ill., filed 9/3/80); *U.S. v. South Carolina Recycling and Disposal, Inc.*, No. 80-1274-6 (D.S. Car., filed 7/7/80); *U.S. v. Automated Industrial Disposal and Salvage Co., Inc.*, No. 2-80-139 (E.D. Tenn., filed 8/1/80); *U.S. v. Gulf Coast Lead Co.*, No. 80-1127 (M.D. Fla., filed 10/9/80); *U.S. v. Chemicals and Minerals Reclamation, Inc.*, No. C-79-1356 (N.D. Ohio, filed 1/10/79); *U.S. v. Spectron, Inc.*, No. HM80-15-52 (D. Md., filed 8/17/80); *U.S. v. Laskin Greenhouse and Waste Oil Co.*, No. C-79-75-9v (N.D. Ohio, filed 4/24/79); *U.S. v. Seymour Recycling Corp.*, et al., No. IP-80-457-C (S.D. Ind., filed 5/9/80).

⁶⁴ The Agency's interpretation that "wastes" are recycled also accords with common understanding and usage. In fact, a number of industry advertisements on waste management refer repeatedly to recycling of their "wastes". These advertisements are in the EPA docket which is listed in the address section of the preamble.

government's authority to bring an imminent hazard action depends upon the presence of "solid waste" or "hazardous waste" (see Section 7003(a)), these cases all stand for the proposition that materials destined for recycling can indeed be solid and hazardous wastes. See *U.S. v. Midwest Solvent Recovery, Inc.*, 484 F. Supp. 138 (N.D. Ind., 1980) (spent solvents held by a reclamation facility are "chemical wastes" which are "solid wastes" or "hazardous wastes" as those terms are defined in Section 1004 of (RCRA), [and] that the chemical wastes so present are the objects of 'storage' and 'disposal' activity * * *"). 484 F. Supp. at 142; *U.S. v. Solvent Recovery Services of New England*, 496 F. Supp. 1127 (D. Conn. 1980) (solvent reclaimer "accepted waste products (including chlorinated organic solvents) from industries in New England, processed those materials in order to recover usable chemicals, and returned the recovered chemicals to industry for reuse." 496 F. Supp. at 1130).

Finally, the House Committee on Energy and Commerce likewise reaffirmed, in recent action, that RCRA presently provides authority over hazardous wastes being used, reused, recycled, or reclaimed, and directed the Agency to exercise this authority more fully. (H.R. Rep. No. 97-570, 97th Cong. 2d Sess., at 16.) Although not part of the contemporaneous legislative weight, this report still carries "considerable weight as a kind of 'expert opinion' concerning the meaning and proper interpretation of the statute." *U.S. v. Solvents Recovery Services of New England*, 496 F. Supp. 1127, 1240 n. 18 (D. Conn. 1980). The full House of Representatives later adopted, by a wide margin, the provision reported by the Committee.

In sum, in view of the statutory language, the holding in the *Brewers'* case, and the results of the various Section 7003 actions, the Agency believes that solid wastes can be reclaimed, reused, or otherwise recycled, and that such recycling activities as material processing, source separation, and reclamation (termed "recovery" in the statutory definitions) involve solid wastes.⁶⁸

⁶⁸ One commenter argued that even though the various statutory definitions dealing with resource recovery are phrased in terms of recovery from solid waste, and that hazardous wastes are a subset of solid waste, these definitions apply only when a non-hazardous solid waste is involved. Although non-hazardous materials can be wastes when recovered, the argument goes, hazardous materials cannot; they must be discarded first.

The Agency disagrees. The argument is at odds with the plain meaning of the statute, hazardous waste being a type of solid waste. Furthermore, we believe it highly unlikely that Congress intended the term "waste" to have a different meaning in

II. EPA Has Regulatory Authority Under Subtitle C To Regulate Hazardous Wastes That Are Recycled and to Regulate Hazardous Recycling Operations

1. A number of commenters made the further argument that even if recycled materials could be solid and hazardous wastes under RCRA, Congress did not intend that the Agency's Subtitle C regulatory authority apply to hazardous wastes that are recycled or to hazardous waste recycling activities. The argument is that the Agency's regulatory authority is limited to treatment, storage, and disposal of hazardous waste (and any incidental generation and transport incident thereto), and that waste recycling (of any kind) does not constitute treatment, storage, or disposal.

The Agency does not accept this argument, for a number of reasons. As shown above, Congress defined the term solid waste (and therefore hazardous waste) to include recycled materials. It is at odds with the whole thrust of Subtitle C to argue, as these commenters do, that Congress did not then intend for these wastes to be regulated. Congress' "overriding concern" (H.R. Rep. No. 94-1491, 94th Cong., 2d Sess. at 3) ("H.R. Rep.") in enacting RCRA was to establish the statutory framework for a comprehensive system that would ensure the proper management of hazardous waste. Implementing this framework, Subtitle C establishes a cradle to grave management system, with regulatory control attaching to hazardous waste from the point of generation to the point of final disposition. A broad grant of regulatory authority over all enumerated aspects of waste management is necessary, and we believe intended, to effectuate this scheme.

different statutory provisions. Not only is the identical term used throughout the statute, but Congress' intent in promulgating Subtitle C was to implement a comprehensive scheme for controlling hazardous waste management and so to "eliminat(e) the last remaining loophole in environmental law". H.R. Rep. No. 94-1491 at 4. In light of this intention, it seems highly unlikely that Congress would intend to adopt a different and narrower meaning of "waste" in Subtitle C than in other statutory provisions.

In any case, the statutory definitions themselves indicate that hazardous wastes as well as non-hazardous wastes can be recycled. "Hazardous waste management" includes recycling activities such as collection, source separation, and recovery. "Solid waste management" (which term includes "management respecting resource recovery" [Section 1004(30)] occurs at "solid waste management facilities"; these facilities include those which manage hazardous wastes. See Section 1004(29)(C). Thus, solid waste management facilities engaging in management respecting resource recovery can indeed be managing hazardous wastes.

Failure to regulate hazardous waste recycling would moreover leave open the very loophole Congress sought to close—unregulated disposition of hazardous waste—vitiating substantially the whole cradle to grave system. For example, hazardous wastes could be recycled by being placed directly on the land for land reclamation without regulatory control, contaminating soil and groundwater. Hazardous wastes could be stored insecurely for years before being reclaimed, with resulting environmental contamination. Wastes destined for recycling could be mishandled during transportation, or never arrive at their intended destination because of the lack of a manifest to track the waste. Indeed, all of these situations have occurred repeatedly, causing extensive damage. The Agency believes these are the very situations Congress meant to control in establishing the hazardous waste management system, and that the grant of regulatory authority in Subtitle C reaches these situations.

Congress' intent to regulate hazardous wastes which are recycled is borne out further by several of the damage incidents cited by Congress as justification for establishing a national hazardous waste management system. A number of incidents resulted from waste recycling activities, including an incident where wastes were stockpiled in the open prior to reclamation and leached toxic metals into public water supply wells (H.R. Rep. at 18); a similar incident where wastes destined for reclamation were improperly stored in lagoons and toxic metals seeped into an adjacent creek (*id.* at 17); and a final incident when a child was poisoned by contact with a pesticide drum being reused as a trash container (*id.* at 22). The Agency does not believe Congress would have referred to these incidents without intending that the described activity be regulated.

Congress also has continued to express a desire that recycled hazardous wastes be regulated. The Subcommittee on Interstate and Foreign Commerce issued a report of its oversight hearings on the Agency's proposed hazardous waste regulations (Committee Print 96-1FC 31, 96th Cong., 1st Sess. (September 1979)) (the "Eckhardt Report"). The report describes three damage incidents involving recycled hazardous wastes, and expressed the Subcommittee's view that these activities should be controlled and that the Agency possessed jurisdiction to exercise control. (Eckhardt Report at 4, 12-13, 17, 24, 41-

42, 53-54; see also discussion in Section VI. C. of Part I of the preamble.)⁶⁹

The recent report of the House Committee on Energy and Commerce, as well as the substantive legislation it accompanies, likewise would mandate EPA's regulations of hazardous waste recycling. In doing so, it stated unequivocally that the legislative change "clarifies" that "materials being used, reused, recycled, or reclaimed can indeed be solid and hazardous wastes and that these various recycling activities may constitute hazardous waste treatment, storage, or disposal." H.R. Rep. No. 97-570, *supra* at 22.

The Agency thus believes that Congress meant for it to regulate hazardous wastes which are recycled. The lack of an absolutely explicit directive in the statute (for instance "all persons reclaiming hazardous waste must obtain a permit") appears to result from a factual misconception that hazardous wastes are rarely, if ever, recycled or amenable for recycling. H.R. Rep. at 4. In light of this assumption, a statutory directive to control hazardous waste recycling would be unnecessary.

2. Even if one disregards Congressional intent, and assumes that Congress meant that EPA regulate only the treatment, storage, disposal, and transportation of hazardous wastes, the wording of these provisions indicates that the Agency possesses authority to regulate most hazardous waste recycling (and all recycling operations that the Agency seeks to regulate or contemplates regulating), and transport and storage incident thereto. There is indeed no question that transportation and storage of hazardous wastes prior to recycling is covered by the definitions of "transportation" and "storage", so that these activities can be regulated under Subtitle C.⁷⁰

The definitions of treatment and disposal provide regulatory authority over the major types of recycling activity the Agency actually seeks to regulate or contemplates regulating: resource recovery (termed 'reclamation' in the proposed definition), and recycling involving direct placement of

residual materials or materials derived therefrom on land or water or into the air.

a. *Reclamation Operations Constitute Waste Treatment.* Reclamation operations—that is, operations involving recovery of energy or material—meet the statutory definition of "treatment." This term is defined in RCRA to include "any method, technique, or process . . . designed to change the physical, chemical, or biological character or composition of any hazardous waste . . . so as to render such waste . . . amenable for recovery, amenable for storage, or reduced in volume." (Section 1004(34).)

One key part of this definition is the phrase "amenable for recovery." The Agency interprets this language to mean that processes that make a waste or its contained values available for further use constitute treatment. This includes processes that recover material or energy resources from wastes.⁷¹ Subtitle C jurisdiction exists potentially until the material is available for reuse, or until energy has been recovered. For example, a spent chemical would be 'treated' until material values were finally recovered. This interpretation not only is consistent with the literal sense of the words, but also with the definition of treatment as a form of activity in addition to, and more encompassing than, processing. (See Sections 1004 (7), (28), and 29(C)—all dealing with waste management—where the terms 'processing' and 'treatment' are both included, indicating (to avoid redundancy) that treatment includes additional activities.)

"Treatment" also includes operations designed to reduce the volume of material. Where such a process is conducted incident to or as part of reclamation operations, there is thus another basis for regulating the process as waste treatment. The best example of such an activity is dewatering of sludges before their reclamation or use elsewhere. Dewatering is conducted to reduce the volume of sludge; in the words of the statute, it is a process "designed to change the (waste's) composition . . . so as to . . . render such waste . . . reduced in volume."

Even if (contrary to the Agency's view) one interprets the "amenable for

recovery" language to mean that treatment occurs only up until the point reclamation commences, the Agency still would retain Subtitle C jurisdiction over all aspects of reclamation (and ancillary activities) that it seeks to regulate. Under this reading, storage, transportation, and processing preceding reclamation could be regulated.

These are the very activities which the Agency presently regulates (see existing § 261.6(b)), and which the Agency would regulate under today's proposed regulation. Furthermore, where tanks, piles, or surface impoundments are used both to store and reclaim hazardous wastes, they are subject to regulation as storage facilities even through the reclamation phase of the operation would not be regulated. See generally, 46 FR at 2808 (second column) (January 12, 1983). All of these facilities thus are subject to regulation under Subtitle C whether or not the actual process of reclamation is subject to control.

b. *Recycling Involving Direct Placement of Residual Materials on Land or Water, or Into the Air Can Be Regulated As Waste Disposal or Treatment.* The other major types of recycling activity the Agency would regulate involve the direct placement of residual materials on the land or water (such as use of wastes for land reclamation or structural fill), or into the air (burning of these materials as fuel). We think reuse involving direct land or water application is fully encompassed by the statutory definition of disposal. "Disposal" means

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such . . . waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. (Section 1004(3).)

Recycling involving direct placement on land or water meets the terms of this definition. The waste is placed on the land in a fashion, "so that such . . . waste or any constituent thereof may enter the environment" Environmental contamination by the waste or escaping waste constituents has resulted repeatedly from this type of recycling activity. The Agency, in fact, believes that in many cases this activity is the functional equivalent of unsupervised land disposal, an activity obviously within its jurisdictional purview. We therefore believe that this type of recycling activity can be regulated as waste disposal under the Subtitle C regulation.

⁶⁹ Regarding the value of this report in interpreting Congressional intent, see *U.S. v. Solvents Recovery Services of New England*, 490 F. Supp. 1127, 1140 n. 18: Such a subsequent report is not part of the legislative history of RCRA and therefore lacks the probative value as to legislative intent that contemporaneous statements of Congress' purpose would have. Nonetheless, it is entitled to considerable weight as a kind of 'expert opinion' concerning the meaning and proper interpretation of the statute (citations omitted).

⁷⁰ The only argument against regulation is that the materials involved in recycling cannot be wastes, and this argument already has been answered above.

⁷¹ This interpretation is reflected in the regulatory definition of treatment contained in § 260.10(a). The Agency realizes that it once took a contrary view in one of the background documents to its 1978 proposal, but has now reconsidered. Of course, "[n]othing in the Administrative Procedures Act prohibits an agency from changing its mind, if that change aids it in its appointed task." *American Petroleum Institute v. EPA*, 661 F.2d, 340 (5th Cir. 1981).

The burning of residual materials as fuels, and production of fuels from these materials, likewise is potentially subject to regulation under Subtitle C. The Agency believes that this activity is a type of waste treatment, being designed to "change the physical, chemical, or biological character or composition" so as to render it less hazardous, amenable to energy recovery, or reduced in volume. (See also H.R. Rep. No. 97-570, *supra* at 12: "(p)roduction and burning of hazardous waste-derived fuels recovers energy from hazardous waste, and so

constitutes hazardous waste treatment under the statute.") In addition, this activity is the environmental equivalent of incineration, a waste management technique regulated as hazardous waste treatment (see 40 CFR Parts 264 and 265, Subpart O). Consequently, this type of recycling also can be regulated under Subtitle C regulations.

Conclusion

In summary, the Agency believes that recycled materials can be hazardous wastes under RCRA, and that recycled

hazardous wastes can be regulated under Subtitle C regulations. This conclusion is fully in accord with the statutory language and the legislative history. It is also in accord with the paramount policy objective of the statute to control management of hazardous waste from point of generation to point of final disposition. The Agency's reading also has substantial support in judicial precedent. We thus conclude that we possess jurisdiction to regulate recycling of hazardous waste under Subtitle C and the implementing regulations.

APPENDIX B.—SUMMARY OF DAMAGE INCIDENTS RESULTING FROM RECYCLING OF HAZARDOUS WASTES ⁷²

Type of recycling operation, wastes present, damages caused, or hazards posed	Source of information
1. Resolve, Inc. (located in N. Dartmouth, Mass.) stored spent solvents and solvent distillation bottoms in unlined lagoons prior to reclamation. Substantial groundwater contamination has resulted.	Superfund Interim Priority Site.
2. The Gold Coast Oil Facility (located in Miami) is a solvent and paint thinner reclamation operation. It also obtained drums of other miscellaneous wastes containing phenols, metals, and other organic compounds. Nearly 3,000 of these drums have accumulated without their contents being recycled. In addition, still bottoms from the solvent reclamation operation were disposed of improperly. Substantial contamination of a drinking water aquifer has resulted.	Do.
3. Sapp Battery Salvage (in Jackson County, Florida) recovered lead from spent batteries. Damage to surface and ground water was caused by spillage of acid from the spent batteries, leaching from severed battery casings, and (to a lesser degree) from runoff from batteries stored prior to being recovered.	Do.
4. Seymour Recycling Corp. (located in Indiana) is an inactive waste recycling and incineration facility which overaccumulated inventory and eventually ceased operation, leaving over 60,000 drums and one-half million gallons of bulk waste. Wastes are toxic, ignitable, and corrosive. Ground and surface water contamination resulted, and there also is danger of fire or explosion.	Seymour Recycling Corp. (N.D. Ind.) (RCRA § 7003 action); Superfund Interim Priority Site.
5. A waste processing company (located in New Jersey) operated an oil recycling plant which purchased waste oil for reclamation. Waste oil, some of it PCB contaminated, was stored in unlined settling lagoons. Filter clay from the settling operation was also used to build a road to the site. The site was abandoned, leaving all waste material in place in the unlined lagoons. Contamination of an aquifer used as a public water supply is suspected. (Some damage at the site also resulted from disposal of waste from the reclamation process.)	Superfund Interim Priority Site (known as Burnt Fly Bog).
6. The Chem-Dyne facility (located in Ohio) engaged in reclamation of spent solvents and other organic chemicals. It also blended these wastes and sold the mixture as a fuel. The facility overaccumulated huge amounts of these materials, and also mishandled materials that were processed. Materials present include phenol, naphthalene, polyvinyl chloride distillation waste, paint sludges, ink sludges, vanadium pentoxide, cyanide, methylmercaptan, silicate resins, freon, acetaldehyde, benzyl chloride, cumenes, asbestos, epichlorohydrin, arsenic, toluene diisocyanate, pentachloronitrobenzene, phthalate esters, and plastic and rubber industry resins. Clean-up costs are estimated at \$3.5 million. The company presently is in receivership. Hazards posed by this site include human health, contamination of air and surface water, fish kills, noticeable odors, actual fire, explosions, spills and runoff, storm sewer problems, erosion problems, inadequate security, and presence of incompatible wastes.	U.S. v. Chem-Dyne, Inc. (§ 7003 and Superfund action); Superfund Interim Priority Site; Hazardous Waste Report, December 14, 1981, p. 15.
7. The Bridgeport Rental and Oil Services site (located in Bridgeport, New Jersey) stored waste oil in an unlined lagoon prior to recycling it. The waste oil is known to be contaminated with benzene, vinyl chloride, methylene chloride, trichloroethylene and toluene. Overflow and leaching from the lagoon has been documented; groundwater used as a human drinking water source from nearby wells is contaminated.	Superfund Interim Priority Site; U.S. v. Bridgeport Rental and Oil Services (§ 7003 action).
8. Chemical Metals Industries (located in Maryland) engaged in the reclamation of precious metals primarily from various electroplating wastes, as well as other spent chemical reprocessing. Most materials were taken pursuant to tolling agreements. Waste materials were accumulated sloppily, resulting in spills of acid and metal-bearing wastes. The facility later was abandoned, leaving over 1500 drums of unreclaimed waste, many corroded or leaking. Over \$350,000 in federal, state, and municipal funds has been expended to date on clean-up.	Superfund Interim Priority Site; Hazardous Waste Report, January 25, 1982, p. 4.
9. The Chemicals and Minerals Reclamation Company (located in Cleveland) acted as a waste broker, receiving flammable organics, solvents, and resins prior to recycling or disposal. A massive fire resulted from unsafe accumulation of these materials. The facility closed after the fire, leaving waste inventory (over 1,500 drums) for clean-up.	U.S. v. Chemicals and Minerals Reclamation (§ 7003 action); Superfund Interim Priority Site.
10. The Midwest Solvent Recovery Company, a solvent reclaimer located in Gary, Indiana, stored spent solvents improperly in drums, tanks, and open pits. These materials were often flammable, in many cases incompatible (acids and cyanides, for example), and were badly overaccumulated. A fire of "tremendous size" (484 F. Suppl at 140) broke out at the reclamation site, and burned for a week before it could be extinguished. The company continued to operate for a number of years after the fire without any change in practice. Soil and ground water contamination have occurred. A preliminary injunction ordering clean-up was eventually entered in the government's imminent hazard action.	U.S. v. Midwest Solvent Recovery Inc. (§ 7003 action).
11. Solvent Recovery Service (located in Connecticut) obtained a variety of chlorinated solvents for reclamation. These solvents were stored improperly in leaking drums. Wastes were also disposed in a lagoon on the site. Aquifer contamination has resulted and the local drinking water supply has been affected.	U.S. v. Solvent Recovery Service of New England (§ 7003 action).
12. Andover Sites (located in Andover, Minn.) are a group of five sites which operated as waste brokers. They accepted metal-bearing wastes, solvents, waste oils, paints, inks, and glues. A recycling market was found for some of this material but a great deal overaccumulated. Some of this material was ultimately dumped or burned improperly. Many drums still remain. Ground and surface water have been contaminated by metals and organic contaminants.	Superfund Interim Priority Site.
13. Frit Industries (in Walnut Ridge, Arkansas) obtained sulfate and other wastes from generators and used them as an ingredient in fertilizer production. These materials, along with other process ingredients, are stored in large, exposed piles. An enormous fire occurred when the piles of waste ignited; run-off from water used to fight the fire contaminated soil and surface waters.	Do.
14. The South Carolina Recycling and Disposal Company was a waste broker accepting volatile organic wastes and waste oils. These materials were accumulated improperly prior to reclamation or disposal. Among the compounds present are solvents, waste oils, acetaldehyde, methyl acetate, cyanuric acid, ethylene dichloride, acetone, cyanohydrin, trichloroethylene, mixed acids, sulfuric acid, mercuric oxide yellow, and other caustics and acids. Massive overaccumulation, fire hazard and actual fires, and ground water contamination near drinking water wells resulted.	U.S. v. South Carolina Recycling and Disposal Company (Bluff Roads); (§ 7003 action); Superfund Interim Priority Site.
15. (" * ") accepts steel mill flue dust, pickle liquors, solvents, and acids for regeneration and material recovery. Some of these materials also are used as ingredients in fertilizers. The facility used surface impoundments and piles for storage. These storage facilities were unsecured and leaked heavy metals and chlorinated solvents. The facility also burns waste oil, spent solvents, and solvent distillation bottoms as fuels, creating air pollution problems. A local Air Pollution Control Agency has initiated action against the company to require monitoring of incoming wastes and of boiler flue gas emissions.	Damages and Threats Caused by Hazardous Material Sites, EPA/430/9-80/004, p. 251; followup phone conversations with representatives of Ecology and Environment (EPA Superfund contractors); Superfund Interim Priority Site.
16. PCB contaminated waste oil was stored prior to recycling or road application. No market developed and the facility operator was unable to dispose of the contaminated oil. Over 24,000 gallons are accumulated, and the State probably will have to pay disposal costs.	Damages and Threats from Hazardous Material Sites, p. 103.

APPENDIX B.—SUMMARY OF DAMAGE INCIDENTS RESULTING FROM RECYCLING OF HAZARDOUS WASTES²²—Continued

Type of recycling operation, wastes present, damages caused, or hazards posed	Source of information
17. The Laskin Greenhouse and Waste Oil Co. (located in Jefferson, Ohio) accepted waste oil and spent solvents for storage prior to use as fuels or for road oiling. Millions of gallons accumulated without being recycled, resulting in a substantial hazard. The boilers in which the waste oil was burnt were incapable of destroying the contained contaminants (including PCB's), resulting in air pollution. Approximately \$1.7 million has already been expended; additional funds are to be allocated.	U.S. v. Laskin Greenhouse and Waste Oil Co. (§ 7003 action); Hazardous Waste Report, January 25, 1982, pp. 5-6; Superfund Interim Priority Site.
18. This facility (located in Illinois) engaged in petroleum reclamation from waste oil, and also reclaimed metal hydroxide sludges, spent acids and caustics, and miscellaneous sludges. These materials overaccumulated in pits, lagoons, and tanks. PCB's, phenol, and PAH's are found in the waste oil. Chromium, cadmium, and lead are also present, as are benzene, toluene, and trichloroethylene. Leaching and drainage to surface waters has caused extensive damage. Over \$300,000 has been spent on clean-up to date.	U.S. v. A&F Materials Co. (§ 7003 action); Superfund Interim Priority Site.
19. This scrap metal reclaimer stored materials destined for reclamation in leaking drums. Some ongoing disposal occurred as well. Paint sludge, 465 Resin Flux, and miscellaneous oily materials were on hand, contaminating soil and possibly ground and surface water.	U.S. v. Acme Refining Co. (§ 7003 action).
20. The site (located in Tennessee) engaged in waste salvage and disposal operations involving improperly drummed and buried materials; most constituents that leaked or spilled appear to be chlorinated solvents. 1,2-Dichloropropane has also been found. Nearby soil, ground, and surface water have been contaminated.	U.S. v. Automated Industrial Disposal and Salvage Co. (§ 7003 action).
21. The Dewey-Loeffel, landfill (located in Nassau County, New York) was used in an oil reclamation and storage operation. PCB-contaminated oil was stored at the site. Ground and surface water in the vicinity have been found to be contaminated with PCB's.	Damages and Threats from Hazardous Material Sites, p. 193.
22. (" * ") is a solvent and chemical recovery and waste recycling operation. It also separates out and resells acids, caustics, and poisons. Some on-going disposal occurs as well. Chemicals which have been present at the site include acetone, ether, benzene, ketones, acetaldehyde, aniline, methanol, chlorinated solvents, cyanides, HCL, H ₂ SO ₄ , formic acid, PCB's, beryllium, pentachlorophenol, and caustics. The government's complaint alleges that damages and hazards include overaccumulation, improper storage (including unsafe storage in underground bulk storage tanks), mislabeling, fire hazard, soil contamination, and possible water contamination. A preliminary injunction has been entered ordering the facility to comply with certain of the interim status standards for storage.	U.S. v. Wiest (§ 7003 action).
23. Improper storage of spent solvents by this Ohio solvent recovery operation led to contamination of ground and surface water and air. PCB's, tetrachloroethylene, toluene, MEK, and xylene are among the toxicants involved.	U.S. v. Chemical Recovery Systems (§ 7003 action).
24. This Indiana scrap metal recovery operation accepted steel drums containing flammable toxic materials. These drums were stored and handled improperly. Substance present include cyanide, asbestos, and paint residues.	U.S. v. Ken Industries (§ 7003 action).
25. This Indiana facility engages in solvent reclamation. Disposal of incoming materials and still bottoms also occurred. A large fire was caused by overaccumulation and improper storage. Compounds present include arsenic, chromium, cadmium, lead, mercury, nickel, selenium, antimony, cyanides, dimethylphenols, phthalate esters, naphthalene, and solvents.	U.S. v. Fisher-Cato Chemicals and Solvent Corp. (§ 7003 action).
26. Dioxin-contaminated waste oil was sprayed in horse show arenas, in Missouri, leading to poisoning of exposed individuals and livestock.	EPA Damage Incident Files.
27. Radioactive mining wastes are used as foundation fill for residential dwellings throughout Denver.	Superfund Interim Priority Site (known as Denver radium site); also cited in Eckhardt Report.
28. Radioactive mining wastes are used as foundation fill for residential dwellings in Montana.	Eckhardt Report.
29. Radioactive phosphate mining wastes are used as foundation fill for residential dwellings in Florida.	Background Document 6 to EPA's 1978 proposed regulations.
30. Air pollution from solvent reclamation operations.	Subtle C Environmental Impact Statement, Vol. II, p. J-1.
31. The American Ecological Recycle Research Corporation (located in Jefferson, Colorado) stores and reclaims solvents, waste oil, and other chemical wastes. Many of these materials are incompatible, including oxidizers and solvents, and cyanides and acids. These materials were stored together haphazardly, often in leaking drums. A large fire gutted portions of the facility, releasing toxic fumes and causing cyanide poisoning of firefighters. A continuing fire hazard and soil and water contamination threat remains.	U.S. v. American Ecological Recycle Research Corp. (§ 7003 action).
32. Air, ground water, and surface water contamination resulted from solvent recovery operations in Maryland (including volatilization of solvents from distillation units).	U.S. v. Spectron, Inc. (§ 7003 action).
33. Drinking water was contaminated because of improper storage of organic solvents at a reclamation facility.	Minnesota State Damage File D2306.
34. The Schuykill Metals Company (located in Hillsboro County, Florida) reclaims lead from spent batteries. Acid spillage from the battery cracking operations, acid and metal leaching from stored casings, and runoff from piled spent batteries have contaminated ground water in the area.	Interviews with officials of Hillsboro County Environmental Protection Commission.
35. The Chloride Metals Company (located in Tampa) is a secondary lead smelter reclaiming lead from spent batteries. Ground water is contaminated with acid and metals from the battery cracking operation (which recovers lead for smelting), and from runoff from piled casings and spent batteries.	Do.
36. Reclamation of tetraethyl lead sludges stored in ponds prior to reclamation. Damage is from air pollution and from fumes in transit.	§ 3004 damage incidents; also cited in H.R. Rep. 94-1491, pp. 20-21.
37. Metal reclamation of "waste stockpiled raw materials." Leachate from these piles contaminated public drinking water supplies with metals, closing a number of wells.	H.R. Rep. 94-1491, p. 16.
38. A company reclaims copper from "industrial wastes"; these materials are stored in cement-lined lagoons. The lagoons cracked, contaminating the ground and surface waters.	H.R. Rep. 94-1491, p. 17.
39. The McKin Company (located in Gray, Maine) was used as a transfer station and processing point for contaminated waste oils prior to final shipment to re-refiners. Both waste oil from oil spills and fuel still bottoms are reprocessed. Evidence exists that wastes were spilled at the processing facility and leached into the underlying aquifer. Organic toxicants were eventually identified in ground water, residential drinking wells, and the public water system. The damage appears to be attributable to waste disposal as well as oil processing. Specific contaminants found include trichloroethylene, trichloroethylene, acetone, xylene, dimethyl sulfide, trimethylsilanol, and alcohols. The state eventually ordered the facility closed.	Damages and Threats Caused by Hazardous Material Sites, p. 14.
40. Mercury-containing sludges generated by a number of different companies were sent to a Mexican reclaimer for metal recovery. The wastes were abandoned before they reached Mexico. In most cases, the drummed wastes were unlabelled and unmanifested, so that it is difficult to pinpoint responsibility or determine the precise nature of the drummed materials.	U.S. v. Monocem, Inc. (enforcement action).
41. Damage resulted from burning waste oil and solvents as fuel in boilers and landspreading of PCB-contaminated waste oil, coupled with improper tank and pond storage.	Tel. comm. with state site insp. on May 4, 1981; Task Force Source Data Report.
42. Tons of fly ash to be used as road building material were piled beside roadways near Decatur, Alabama. Metals leaching from the fly ash appear to have contaminated ground water and residential drinking wells in the vicinity.	Damages and Threats Caused by Hazardous Material Sites, p. 44.
43. The Southern Metal Processing Company (located in Alabama) is a reclamation facility for acid and metal-containing wastes, allowed over 10,000 drums to accumulate; leakage from these drummed wastes polluted surface waters. A fire at the site injured two firemen.	Damages and Threats Caused by Hazardous Material Sites, p. 43.
44. Waste oil contaminated with organics (including carbon tetrachloride) was used as a dust suppressant. Well contamination resulted.	EPA New Hampshire State Damage File, Code D2315.
45. Use of cadmium-contaminated POTW sludge as a fertilizer for farm land.	EPA New York State Damage File, Code D2317.
46. Waste oil storage results in ground water contamination from organics. Site also was used for disposal.	Do.
47. (" * ") engages in solvent reclamation and waste brokerage operations. Paint residues (to a lesser degree) are also redistilled at this plant. Hazards posed by the site include contamination of ground water and soil, noxious odors, risk of fire/explosion, spills/runoff, sewer/storm problems, and presence of incompatible wastes.	Telephone conversation with state site inspector on May 5, 1981; Task Force Source Data Report.
48. (" * ") was paid by waste generators to store waste oil on-site. Prior to reclamation operations, waste oils were carelessly stored in surface impoundments or bulk tanks resulting in waste oil leakage.	Telephone conversation with state inspector on May 4, 1981; Task Force Source Data Report.
49. (" * ") reclaims both solvent and waste oil. Huge drum inventory resulted with some drums being stacked up as long as two years. Surface water was contaminated when hazardous wastes leached from containers with unbroken seals. Paint solids were stored so long that reclamation became virtually impossible (due to thinner evaporation and rain dilution). Hazards posed by the site include contamination of water supply, contamination of surface water, and soil contamination from spills and runoff.	Telephone conversation with state site inspector on May 4, 1981; Task Force Source Data Report.
50. (" * ") is a reclaimed solvent distributing plant that packages solvents in drums and sells them. If a company switches from one solvent to another, a pipeline must be washed out with the new product. The solvent mixture wash would be drummed, sold to (" * ") where the solvents would be separated and redistributed. Hazards posed by the site include worker injury, contamination of soil, and spills/runoff.	Do.

APPENDIX B.—SUMMARY OF DAMAGE INCIDENTS RESULTING FROM RECYCLING OF HAZARDOUS WASTES⁷²—Continued

Type of recycling operation, wastes present, damages caused, or hazards posed	Source of information
51. (" * ") is predominantly a solvent reclamation operation. Solvents are stored in drums and tanks prior to reclamation. (" * ") paid to return refined materials to the manufacturer. The site was investigated primarily because of a spillage problem from loading and unloading drums outside. Potential hazards on the site include contamination of air, water supply, and ground water, risk of fire and explosion, spills, leaks, runoff, and inadequate security.	Do.
52. (" * ") is a solvent reclamation operation. The waste generator buys back the reclaimed waste. Pre-RCRA, (" * ") piled wastes for long periods of time in the open on permeable soil. No labels were on the drums and toxic chemicals leached.	Telephone conversation with state site inspector on May 5, 1981.
53. An oil reclamation firm in Region V recycles oil for large manufacturing plants. The firm takes used oil, restores it to desired levels of purity, blends it with virgin oil, and finally sells it back to the dealer to be sold.	Do.
Hazard description/incident includes human health hazard, contamination of surface water, soil, and air, noticeable odors, fire/explosion, spills/runoff, and erosion problems.	Task Force Source Data Report.
54. The Silosim Chemical Corp. (located in Massachusetts) engaged primarily in solvent reclamation, but also accumulated many other types of wastes. These materials overaccumulated and incompatible wastes were stored indiscriminately. An office fire triggered an explosion and a spectacular fire. The site is now bankrupt and over 30,000 drums, most containing unknown toxicants, remain. \$2.9 million has been spent on cleanup to date.	EPA Damage Incident Files; Superfund Interim Priority Site.
55. (" * ") is a New Jersey facility recycling organo-tin compounds, presently stores approximately 5000 drums in poor condition. A potential fire hazard also exists and site security is inadequate.	EPA, Region II officials.
56. (" * ") is a New Jersey facility, operated an oil/solvent reclamation facility. The site was abandoned, leaving hazardous wastes for clean-up.	Do.
57. (" * ") is a New Jersey drum reconditioner, went out of business leaving approximately 3000 drums on the site. There is extensive soil contamination and runoff into an adjacent drainage ditch.	Do.
58. Quanta Inc. (located in New Jersey) received tainted waste oils and spent solvents which it blended into fuels. The fuel was sold to apartment buildings for burning. PCBs, metals, bromoform, and halogenated solvents are present at the site and in the fuels. The site now has been abandoned.	EPA, Region II officials. (This site was also the subject of ABC's "20/20" broadcast on waste oil)
59. The Ferguson site (located in Rock Hill, South Carolina) stored spent solvents prior to reclamation. The solvents were stored in corroded and leaking drums, and leakage from the drums contaminated soil and seeped into surface water. Toxic chemicals in the waste and surrounding soil including toluene, bis(2-ethylhexyl) phthalate, xylene, ethyl chloride, diethyl carbamatoxy phosphate, alcohols, and toxic metals. The site eventually was abandoned leaving about 2,500-5,000 drums. \$145,000 was spent so far for site clean-up, and clean-up is not yet complete.	U.S. EPA, Remedial Actions at Hazardous Waste Sites: Survey and Case Studies, EPA 430/9-81-05.
60. Chromium-bearing wastes were used as a landfill cap at the Monument St. Landfill in Baltimore, Md. The wastes began to leach toxic metals, and the runoff contaminated soil and surface water.	Report of the House Committee on Energy and Commerce (May 1982).
61. Commercial-grade pentachlorophenol is burnt as a fuel in diesel trucks. Chlorinated phenols, burnt at low temperatures and short residence times, are likely to form chlorinated dioxins and dibenzofurans.	EPA, Region VII officials.
62. B + L Oil (located in Newark, New Jersey) sold contaminated waste oil as fuel. The blended fuel contained phenolic compounds, volatile chlorinated hydrocarbons, and aromatic hydrocarbons. The company and its president both have been convicted criminally in the New Jersey state courts.	New Jersey Hazardous Waste News, April, 1982; Conversations with New Jersey state officials.
63. Madison Industries (located in Old Bridge, New Jersey) manufactures zinc chloride and zinc sulfate from waste zinc and spent acids, which it obtains from other sources. These materials were accumulated improperly in large quantities, causing damage.	Transcript of state enforcement proceedings.
64. Air pollution resulted from solvent and waste oil recovery operations conducted by Frinck's Industrial Waste facility (located in Pecatonica County, IL).	Documents from Illinois Environmental Protection Agency.
65. The Old Inger Oil Refinery (located in Darrow, La.) operated an oil reclamation plant. Storage tanks overflowed into holding ponds, which were later abandoned without clean-up.	Superfund Interim Priority Site.
66. York Oil Co. (located in Moline, New York) is an abandoned waste oil recycling facility. Lagoons used in the recovery of waste oil discharged into adjacent wetlands. The lagoons and wetlands remain contaminated with PCB-containing oil.	Do.
67. Enviro-Chem, a hazardous waste recycling facility in Indiana, was investigated by State officials after an employee died in a tank of hazardous waste. The officials found 21,000 barrels of hazardous waste at the site. The facility has been ordered to close down due to failure to remove sludge and contaminated soil from a pit, failure to provide adequate concrete pads for 14,000 barrels of hazardous waste being stored on the ground at the site, and failure to store hazardous materials in compliance with State fire marshal rules and regulations.	EPA, Region V officials.
68. American Recovery, a chemical waste reprocessing facility (located in the Baltimore area) has suffered a number of fires caused by explosions of accumulated wastes. The facility also was fined for violation of various state regulatory requirements.	EPA, Region III officials.

⁷²Note: Summaries of § 7003 actions are based on allegations in the Government's verified complaint. The courts hearing these cases must decide ultimately whether these allegations have been proven, and no findings of fact or conclusions of law have yet been made in these cases. In citing these allegations, we are not seeking to prejudice the outcomes of these actions. At the same time, these statements reflect the results of the Government's investigation of these sites, and the Agency believes the statements to be accurate. In any case, we are citing these allegations to demonstrate that there is a need for regulation in this area, not to ascertain the potential liability of particular facilities.

In addition, certain sites are not named specifically in this Appendix, because the companies involved are the subject of ongoing enforcement investigation. These companies are indicated by (" * ") in the summary.

⁷³The Agency's task force source data report is a confidential compilation of inspections of damage sites by Federal and State officials. It also contains reports of some § 3006 inspections, whether or not the sites were causing damage.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 is as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, and 3010 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 USC 6905, 6912(a), 6921 through 6927, and 6930).

2. Section 260.10 is amended by adding new definitions for "Boiler" and "Industrial Furnace" to appear alphabetically and by revising the definition of "Incinerator":

§ 260.10 Definitions.

"Boiler" means an enclosed device using controlled flame combustion and having the following design characteristics:

- (1) The unit has provision for heat recovery; and
- (2) The combustion chamber and heat recovery section are of integral design. The combustion chamber and heat recovery sections are of integral design if formed physically into one manufactured or assembled unit. (A unit in which the furnace or combustion chamber and heat recovery section are joined by ducts or connections carrying flue gas in not integrally designed); and
- (3) Significant heat recovery takes place in the combustion chamber section by radiant transfer of heat to the

transfer medium.

"Incinerator" means an enclosed device using controlled flame combustion, and having a combustion chamber and heat recovery section, if any, that are not of integral design. "Industrial Furnace" means any of the following devices that are integral components of manufacturing processes and use flame combustion or elevated temperature to accomplish recovery of materials or energy: cement kilns, lime kilns, aggregate kilns, phosphate kilns, blast furnaces, smelting furnaces, methane reforming furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and pulping liquor recovery furnaces. The Administrator may decide to add devices to this list on the basis of one or more of the following factors:

(1) The device is designed and used primarily to accomplish recovery of material products;

(2) The device burns secondary materials as ingredients in an industrial process to make a material product;

(3) The device burns secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

(4) The device burns raw materials to make a material product;

(5) The device is in common industrial use to produce a material product; and

(6) Other factors, as appropriate.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

3. The authority citation for Part 261 reads as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

4. In § 261.1, paragraph (b) is revised to read as follows:

§ 261.1 Purpose and scope.

(b)(1) The definition of solid waste contained in this Part applies only with respect to the regulations implementing Subtitle C of RCRA.

(2) This Part identifies only some of the materials which are solid wastes and hazardous wastes under Sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this Part, or is not a hazardous waste identified or listed in this Part, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of Sections 3007 and 3013, EPA has reason to believe that the material may be a solid waste within the meaning of Section 1004(27) of RCRA and a hazardous waste within the meaning of Section 1004(5) of RCRA; or

(ii) In the case of Section 7003, the statutory elements are established.

5. § 261.2 is revised to read as follows.

§ 261.2 Definition of solid waste.

(a) A solid waste is any discarded material that is not excluded by § 261.4(a). A "discarded material" is any material that fits one of the descriptions in paragraphs (a)(1) and (a)(2) of this section.

(1) Any garbage, refuse, sludge, or any other solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities that is:

(i) Abandoned by being disposed of; or

(ii) Abandoned by being burned or incinerated; or

(iii) Accumulated, stored, or treated prior to—or in lieu of—paragraphs (a)(1) (i) or (ii) of this section.

(2) Any of the following materials, when used, reused, or reclaimed in the following ways or accumulated, stored, or treated prior thereto:

(i) Any spent material, sludge, or by-product, or any material listed in § 261.33 that is not ordinarily used by being applied to the land, that is used or reused without essential change to its identity, or after simple mixing, in a manner that constitutes disposal;

(ii) Any spent material or sludge, or any by-product listed in §§ 261.31 or 261.32, or any material listed in § 261.33 that is not itself a fuel, that is being burned for the purpose of energy recovery, or that is being used to produce a fuel, and any fuel that contains one or more of these materials;

(iii) Any spent material, any sludge listed in §§ 261.31 or 261.32, or any by-product listed in §§ 261.31 or 261.32, that is reclaimed (as this activity is explained in paragraph (c)(1) of this section). This provision does not apply, however, to materials reclaimed at the plant site and then reused within the original process in which they were generated;

(iv) Any spent material, sludge, or by-product that is accumulated speculatively (as this activity is explained in paragraph (c)(2) of this section);

(v) Any spent material, sludge, or by-product that is accumulated for use, reuse, or reclamation without sufficient amounts being used, reused, or reclaimed during a one-year period (as this activity is explained in paragraph (c)(3) of this section);

(3) Materials that meet the criteria stated in paragraph (a)(3)(i) of this section, and that are listed in paragraph (a)(3)(ii) of this section are solid wastes when used or reused:

(i)(A)(1) The materials are ordinarily disposed of, burned or incinerated, or

(2) The materials contain toxic constituents listed in Appendix VIII of Part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute and are not used or reused during the recycling process; and

(B) The materials may pose a substantial hazard to human health and the environment when used or reused.

(ii) Hazardous Waste Nos. F020, F021, F022, and F023.

(b) For the purpose of this section:

(1) A "spent material" is any material that has been used and has served its original purpose;

(2) "Sludge" has the same meaning used in § 260.10 of this chapter;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process.

(c) For the purposes of this section and § 261.6:

(1) A material is "reclaimed" if it is processed to recover usable products, or if it is regenerated. (Examples are recovery of lead values from spent batteries and regeneration of spent solvents.) However, a material that is used or reused in the following ways is not considered to be reclaimed:

(i) Used or reused as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, sludges used as ingredients in cement production, or distillation bottoms from one process used as a feedstock in another process), provided that distinct components of the material are not recovered as separate end products (as in recovery of metals from metal-containing secondary materials); or

(ii) Used or reused as effective substitutes for raw materials in processes using raw materials as principal feedstocks (for example, sludges used as substitutes for ore concentrate in primary smelting); or

(iii) Used or reused in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as a phosphorous precipitant and sludge conditioner in wastewater treatment).

(2) A material is "accumulated speculatively" if it is potentially usable, reusable, or reclaimable but is held without having any known market or disposition, or is held without having any feasible means of use, reuse, or reclamation. However, when a material that has been accumulated speculatively is removed from accumulation for use, reuse, or reclamation, it is no longer considered to be a solid waste for purposes of this paragraph.

(3) A material is "accumulated without sufficient amounts being used, reused, or reclaimed" if—during the calendar, fiscal, or inventory year period—the amount of material that is used, reused, reclaimed, or transferred to a different site for use, reuse, or reclamation does not equal at least 75 percent by volume of the amount of that material accumulated at the beginning of the period. However, paragraphs (c)(3) (i) and (ii) of this section provide certain exceptions to this principle. (In addition, materials excluded from regulation under § 261.6(b)(1) (vi)–(vii)

are not to be included in making this calculation.)

(i) Spent materials, sludges, or by-products are not considered to be solid wastes under this paragraph if after being accumulated initially without sufficient amounts being used, reused, or reclaimed, they are removed from accumulation for use, reuse, or reclamation.

(ii) (A) If a material accumulates for one year without use, reuse, reclamation, or transfer of at least 75 percent of the accumulated volume, the Regional Administrator may determine that the accumulated material will not be a solid waste during the following year. To obtain this determination, the person accumulating the material must notify the Regional Administrator in writing, submitting the following information:

(1) The name and address of the person required to notify and the address of the location of the accumulated material, if different.

(2) A description of: (i) the material being accumulated, (ii) why the material would be a hazardous waste if deemed to be discarded (i.e., whether it is listed or exhibits a characteristic), (iii) the quantity accumulated at the date of notification, and (iv) the way the material is stored prior to use, reuse, reclamation, or transfer; and

(3) A statement of: (i) what the notifier expects the disposition (use, reuse, reclamation, or transfer) of the material to be, (ii) why this expectation is reasonable (for example, because of past practice, market factors, or contractual arrangements), (iii) why the material has accumulated for over one year, and (iv) when the notifier expects the use, reuse, reclamation, or transfer to occur.

The Regional Administrator may then use this information to determine whether the material will not be a solid waste during the following year, or alternatively, may require further pertinent information from the notifier.

Such a determination will be based upon the reasonableness of the notifier's expectation that the material will be used, reused, reclaimed, or transferred for these purposes, taking into account: the past practices, market factors, and contractual arrangements; the character and quantity of the material being accumulated; and the manner in which the material is being stored. The notifier must keep appropriate records to demonstrate why he reasonably expects the accumulated material to be used, reused, reclaimed, or transferred for these purposes.

(B) After the second year without use, reuse, reclamation, or transfer of at least

75 percent of the total volume accumulated at the beginning of that year, the Regional Administrator may again determine that the accumulated material will not be a solid waste during the following year. To do this, he must receive in writing the same information set out in paragraph (c)(3)(ii)(A) of this section from the person accumulating the material; and at least 50 percent of the total volume accumulated at the beginning of the year must have been used, reused, reclaimed, or transferred.

(C) If the material accumulates for a third year without use, reuse, reclamation, or transfer of at least 75 percent of the total volume accumulated at the beginning of that year, all material not actually used, reused, reclaimed, or transferred is a solid waste.

(d) Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they are actually using, reusing, or reclaiming materials must show that they have the necessary equipment to do so.

8. Section 261.3 is amended by revising paragraph (c)(2) to read as follows:

§ 261.3 Definition of hazardous waste.

(c) * * *

(2) Any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off), is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision.)

7. Section 261.5 is amended by revising paragraph (c) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

(c) Hazardous waste that is used, reused, or reclaimed and that is

excluded from regulation under §§ 261.6(b) and 261.6(f)(2) is not included in the quantity determinations of this section, and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of §§ 261.6 (c) and (d), and 261.6(f)(1) is included in the quantity determinations of this section and is subject to the requirements of this section.

8. Section 261.6 is revised to read as follows:

§ 261.6 Special requirements for regulated recyclable materials.

(a) Hazardous wastes that are used, reused, or reclaimed will be known as 'regulated recyclable materials.' (b)(1) The following regulated recyclable materials are not subject to regulation under Parts 262 through 266 or Parts 122 through 124 of this Chapter and are not subject to the notification requirements of Section 3010 of RCRA:

(i) Regulated recyclable materials that are reclaimed by the person generating them, provided that sufficient amounts of materials are reclaimed during a one-year period (as defined in § 261.2(c)(3)). This exemption does not apply, however, when the regulated recyclable materials are stored in a surface impoundment prior to reclamation, or are reclaimed or otherwise processed in a surface impoundment. This exemption also does not apply to spent lead-acid batteries being reclaimed.

(ii) Regulated recyclable materials that are reclaimed by a person who subsequently uses the reclaimed material in his own operation, provided that sufficient amounts of materials are reclaimed during a one-year period (as defined in § 261.2(c)(3)). This exemption does not apply, however, when the regulated recyclable materials are stored in a surface impoundment prior to reclamation, or are reclaimed or otherwise processed in a surface impoundment. This exemption also does not apply to spent lead-acid batteries being reclaimed.

(iii) Regulated recyclable materials utilized for precious metal recovery, provided that sufficient amounts of materials are reclaimed during a one-year period (as described in § 261.2(c)(3)).

(iv) Regulated recyclable materials reclaimed pursuant to batch tolling agreements. For purposes of this paragraph, a "batch tolling agreement" is a contractual arrangement pursuant to which the person generating the material retains ownership of the material, possession of the material is

transferred within 180 days of generation to a reclaimer who reclaims that material and returns the reclaimed portion to the owner, reclamation and return of the reclaimed materials is completed within 90 days, the material is not commingled with that of any other person prior to or while being reclaimed, the reclaimer is paid according to the amount of reclaimed material returned to the owner, and the reclaimer is paid more as the amount of reclaimed material returned to the owner increases.

(v) Regulated recyclable materials (including any fuel produced from one or more of these materials) burned for energy recovery in an industrial furnace or in a boiler that is not regulated under Subpart O of Part 264 of this chapter. ("Industrial furnace" and "boiler" are defined in § 260.10 of this chapter.) This exemption does not apply when any of these materials are accumulated, treated, or stored prior to being used to produce fuels by a person who did not generate them and who is not using the fuel in its own operation, or when regulated recyclable materials that are sludges or are listed as hazardous wastes in §§ 261.31 or 261.32 of this chapter are accumulated, treated, or stored prior to burning as a fuel or prior to use to produce a fuel. This exemption also does not apply when these materials are accumulated prior to burning as a fuel or prior to use to produce a fuel without sufficient amounts being used during a one-year period (as defined in § 261.2(c)(3)).

(vi) Used oil that exhibits one or more of the characteristics of hazardous waste identified in Subpart C of Part 261.

(vii) Used batteries returned to a battery manufacturer for regeneration (a used battery can be "regenerated" by addition of electrolyte, replacement of defective cells, or other minor processing).

(2) The Regional Administrator may decide on a case-by-case basis that persons accumulating, storing, or burning the regulated recyclable materials described in paragraphs (b)(1)(i)-(v) of this section should be subject to regulation under otherwise applicable provisions of this section or Subpart O of Part 264 of this chapter. The standard and procedures for this decisions are set forth in paragraph (g) of this section.

(c) Generators and transporters of regulated recyclable materials are subject to the following requirements, unless the materials are regulated under Subparts C or D of Part 266 of this chapter, or exempted under paragraph (b)(1) of this section:

(1) Generators: Part 262 of this Chapter;

(2) Transporters: Part 263 of this Chapter.

(d) Owners or operators of facilities that store regulated recyclable materials are subject to the following requirements, unless regulated under Subpart C or D of Part 266 of this Chapter, or exempted under paragraph (b)(1) of this section:

(1) Notification requirements under Section 3010 of RCRA;

(2) All applicable provisions in Subparts A through L of Part 264 of this chapter;

(3) All applicable provisions in Subparts A through L of Part 265 of this chapter;

(4) All applicable provisions in Parts 122 and 124 of this chapter.

(e) Owners or operators of a facility that uses regulated recyclable materials in a manner that constitutes disposal (within the meaning of § 261.2(a)(2)(i) of the chapter) are subject to the following requirements:

(1) Notification requirements under Section 3010 of RCRA;

(2) All applicable provisions in Subparts A through F and M through N of Part 264 of this chapter;

(3) All applicable provisions in Subparts A through F and M through N of Part 265 of this chapter;

(4) All applicable provisions in Parts 122 and 124 of this chapter.

(f) The following regulated recyclable materials are regulated under Subparts C and D of Part 266 of this chapter and all applicable provisions in Parts 122 and 124 of this chapter:

(1) Regulated recyclable materials reclaimed pursuant to non-batch tolling agreements (Subpart C); and

(2) Spent lead-acid batteries being reclaimed (Subpart D).

(g)(1) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the regulated recyclable materials described in paragraphs (b)(1)(i)-(v) of this section are subject to regulation under otherwise applicable provisions of this section. The basis for this decision is that the materials are being accumulated or stored in a manner insufficient to protect human health and the environment due to failure to contain the materials or their toxic constituents, or incompatibility of the materials being accumulated or stored. In making this decision, the Regional Administrator will consider the following factors:

(i) The materials accumulated or stored by the person, and the amounts accumulated or stored;

(ii) The method of accumulation or storage;

(iii) The length of time the materials have been accumulated or stored prior to being reclaimed;

(iv) Whether any contaminants are being released into the environment, or are likely to be so released; and

(v) Other relevant factors.

(2) The Regional Administrator may also decide on a case-by-case basis that persons who are burning regulated recyclable materials as fuels in boilers or in industrial furnaces are subject to regulation under Subpart O of Part 264 of this chapter. The basis for this decision is that the materials are being burned in a manner that is insufficient to protect human health and the environment based upon the quantity and toxicity of the stack emissions. In making this decision, the Regional Administrator will consider the following factors:

(i) The content and mass of the input;

(ii) The conditions under which the unit is operated;

(iii) The potential for stack emissions to pose a hazard to human health and the environment; and

(iv) Other relevant factors.

(3) The following procedures will be used in making the determination set forth in paragraphs (g)(1) and (g)(2) of this section.

(i) The Regional Administrator will issue a notice setting forth the factual basis for the decision. If the person is accumulating the regulated recyclable material as a generator, the notice will state that the person must comply with the applicable requirements of Part 262 of this chapter. The notice will become final within 30 days unless the person served requests a public hearing to challenge the decision. Upon such request, the Regional Administrator will hold a public hearing, and after the conclusion of the hearing, will issue an appropriate final order. This final order may be appealed to the Administrator.

(ii) If the person is accumulating the regulated recyclable material as a storage facility or burning the material in a unit subject to regulation under Subpart O of Part 264 of this chapter, the notice will state further that the person must obtain a permit in accordance with all applicable provisions of Parts 122 and 124 of this chapter. The owner or operator of the facility must apply for a permit within 60 days of notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, he can do so in his permit application, or in a public hearing held on the draft permit. The question of whether the Regional

Administrator's decision was proper will remain open for consideration during the public comment period under § 124.11 of this chapter and in any subsequent hearing.

9. Section 261.31 is amended by revising the hazardous waste listings F007, F008, F009, F010, F011, and F012 to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

Industry	EPA hazardous waste No.	Hazardous waste	Hazard code
Generic	F007	Spent cyanide plating bath solutions from electroplating operations.	(R, T).
	F008	Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R, T).
	F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R, T).
	F010	Quenching bath sludges from oil baths from metal heat treating operations where cyanides are used in the process.	(R, T).
	F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R, T).
	F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T).

10. Section 261.33 is amended by revising the introductory text to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes when they are discarded or intended to be discarded in a manner described in § 261.2(a)(1), when they are burned for purposes of energy recovery in lieu of their original intended use, when they are used to produce fuels in lieu of their original intended use, and when they are applied to the land in lieu of their original intended use:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

11. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

12. In § 264.1, paragraph (g)(2) is revised to read as follows:

§ 264.1 Purpose, scope, and applicability.

(g) * * *

(2) The owner or operator of a facility managing regulated recyclable materials described in §§ 261.6(b) or 261.6(f) of this chapter (except to the extent that requirements of this Part are referred to in Subparts C or D of Part 266 of this chapter).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

13. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

14. In § 265.1, paragraph (c)(6) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

(c) * * *

(6) The owner or operator of a facility managing regulated recyclable materials described in §§ 261.6(b) or 261.6(f) of this chapter (except to the extent that requirements of this Part are referred to in Subparts C or D of Part 266 of this chapter).

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

15. The authority citation for Part 266 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

16. In Part 266, Subparts C and D are added to read as follows:

Subpart C—Regulated Recyclable Materials Reclaimed Pursuant to Nonbatch Tolling Agreements

§ 266.20 Applicability and requirements.

(a) The regulations of this Subpart apply to generators and transporters of regulated recyclable materials being reclaimed pursuant to nonbatch tolling agreements, and to owners or operators of facilities that store regulated recyclable materials pursuant to nonbatch tolling agreements. For purposes of this Subpart, a "nonbatch tolling agreement" is a contractual arrangement pursuant to which the person generating the regulated recyclable material transfers the material to a claimer who returns reclaimed material to the person generating the material.

(b) Generators and transporters of regulated recyclable materials reclaimed pursuant to nonbatch tolling agreements are subject to the following requirements:

(1) Generators: Subparts A, C, D, and E of Part 262 of this chapter.

(2) Transporters: Subparts A and C of Part 263 of this chapter.

(c) Owners or operators of facilities that store regulated recyclable materials being reclaimed pursuant to nonbatch tolling agreements are subject to the following requirements:

(1) Notification requirements under Section 3010 of RCRA;

(2) All applicable provisions in Subparts A, B (but not § 264.13 (waste analysis)), C, D, E (but not §§ 264.71 and 264.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of Part 264 of this chapter;

(3) All applicable provisions in Subparts A, B (but not § 265.13 (waste analysis)), C, D, E (but not §§ 265.71 and 265.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of Part 265 of this chapter;

(4) All applicable provisions in Parts 122 and 124 of this chapter.

Subpart D—Spent Lead-Acid Batteries Being Reclaimed

§ 266.30 Applicability and requirements.

(a) The regulations of this Subpart apply to persons who reclaim spent lead-acid batteries that are regulated recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under Parts

262-266 or Parts 122-124 of this chapter, and also are not subject to the requirements of Section 3010 of RCRA.

(b) Owners or operators of facilities that store spent batteries prior to reclaiming them are subject to the following requirements:

(1) Notification requirements under Section 2010 of RCRA;

(2) All applicable provisions in Subparts A, B (but not § 264.13 (waste analysis)), C, D, E (but not §§ 264.71 or 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of Part 264 of this chapter;

(3) All applicable provisions in Subparts A, B (but not § 265.13 (waste

analysis)), C, D, E (but not §§ 265.71 and 265.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of Part 265 of this chapter;

(4) All applicable provisions in Parts 122 and 124 of this chapter.

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Part III

Environmental Protection Agency

**Hazardous Waste Management System;
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, and 775

[SWH-FRL 2315-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and Storage and Disposal of Waste Material: Prohibition of Disposal of Tetrachlorodibenzo-p-Dioxin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA), by listing additional hazardous wastes containing certain chlorinated dioxins, -dibenzofurans, and -phenols, and by specifying certain management standards for these wastes. These wastes are being listed as acutely hazardous. EPA is also proposing to delete several commercial chemical products from the list of hazardous wastes since these listings are duplicated in today's proposal. In addition, EPA is proposing to list these materials as solid wastes when they are recycled by being used or reused, so that these wastes remain subject to regulation when recycled in this manner. EPA also is proposing to revoke its regulation concerning the disposal of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)-contaminated wastes under the Toxic Substances Control Act (TSCA), when this regulation under RCRA becomes effective. This action extends regulatory control to certain hazardous wastes not covered by the existing regulation. It requires handlers of such wastes to comply with the appropriate regulatory standards.

DATE: EPA will accept public comment on this amendment until June 3, 1983.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Communications should identify the regulatory docket numbers "Section 3001/Dioxin" or "OPTS 62007".

Pursuant to provisions of RCRA and TSCA, requests for a hearing should be addressed to Eileen Claussen, Director, Office of Management, Information, and Analysis, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for 40 CFR Parts 261, 264, and 265 is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

The public docket for 40 CFR Part 775 is located in Room E-107 at the same address, and is available for viewing during the same hours.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000 or Judy Bellin (202) 382-4770.

SUPPLEMENTARY INFORMATION:

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- XII. List of Subjects

I. Background

On May 19, 1980, as part of the final and interim final regulations implementing Section 3001 of RCRA, EPA published a list of hazardous wastes that included hazardous wastes generated from non-specific sources. (See 40 CFR 261.31.) This list has been amended several times. In today's

action, EPA is proposing to amend this section to add particular wastes containing certain contaminants that are, for certain animal species, among the most toxic known; these wastes consequently are of particular environmental concern. EPA has evaluated these wastes against the criteria for listing acutely hazardous and hazardous wastes (40 CFR 261.11 (a) (2) and (a) (3)), and has determined that they: (1) Are capable of causing or significantly contributing to an increase in serious irreversible or incapacitating reversible, illness, and (2) also pose a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, and therefore are acutely hazardous wastes.¹

II. Summary of the Proposed Listing²

This proposed regulation covers principally wastes from the production of certain chlorophenols and of chlorophenoxy pesticides, as well as discarded unused formulations containing tri-, tetra-, or pentachlorophenol and their derivatives. Specifically, this proposed regulation designates as hazardous certain wastes (including reactor residues, still bottoms, brines, spent filter aids, spent carbon from product purification, and sludges from wastewater treatment, but not including untreated wastewater or spent carbon from hydrogen chloride purification) resulting from the following processes:^{3, 4}

¹ The RCRA definition of acutely hazardous waste is set forth at 40 CFR 261.11(a)(2). Under that definition, such a material is not necessarily "acutely toxic" in the way that term is used by toxicologists. Rather, the term is intended by EPA to identify wastes which are so hazardous that they may, either through acute or chronic exposure, "cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness", regardless of how they are managed.

² The following acronyms and definitions are used in this document (and in the background document for this regulation):

PCDDs = all isomers of all chlorinated dibenzo-p-dioxins.

PCDFs = all isomers of all chlorinated dibenzofurans.

CDDs and CDFs = all isomers of the tetra-, penta-, and hexachlorodibenzo-p-dioxins and -dibenzofurans, respectively.

TCDDs and TCDFs = all isomers of the tetrachlorodibenzo-p-dioxins and -dibenzofurans, respectively.

TCDD and TCDF = the respective 2,3,7,8-isomers. The prefixes D, Tr, T, Pe, and Hx denote the di-, tri-, tetra-, penta-, and hexachloro-congeners, respectively.

³ Not all of these wastes are generated by every process discussed in the text.

⁴ We are not proposing to list untreated wastewaters or spent carbon from hydrogen chloride purification because these wastes are not expected to contain CDDs or CDFs at levels of concern.

(a) The production and manufacturing use⁵ of tri-, tetra-, or pentachlorophenol and intermediates used to produce their derivatives;^{6, 7}

(b) The manufacturing use of tetra-, penta-, or hexachlorobenzenes under alkaline conditions;

(c) the production of materials on equipment previously used for the production or manufacturing use of materials listed under (a) and (b) above; and

(d) discarded unused formulations containing tri-, tetra-, or pentachlorophenols, or discarded unused formulations containing compounds derived from these chlorophenols.⁸

⁵In the context of this listing, "manufacturing use" means the use of the named chemical as a reactant or chemical intermediate (for instance, as in the use of 2,4,5-trichlorophenol (2,4,5-TCP) as a feedstock for the synthesis of 2,4,5-T), or as a component in a formulating process (as, for instance, in the formulation of a mixture of 2,4,5-TCP and 2,4,5-TeCP, in which these components retain their chemical identity). In the present context, the term "manufacturing use" does not include residues from the use of chlorophenoxy pesticide formulations, e.g., in wood preservation.

⁶The principal manufacturing use of chlorophenols is in the synthesis of chlorophenoxy acids, esters, and amines. They are also used in the synthesis of phenolic resins, and of dye and pigment intermediates. However, only wastes from chlorophenoxy synthesis are listed as hazardous wastes, because the Agency has no data on the conditions of synthesis, generation of wastes, and the level of chlorinated dibenzo-p-dioxin or dibenzofuran contamination of wastes from the synthesis of phenolic resins, dyes, and pigments. The Agency solicits data on the extent of CDD/CDF contamination of the latter wastes. We also are presently initiating sampling of some of these wastes in the course of our ongoing Industry Studies program.

⁷The 2,4,5-TCP derivative Hexachlorophene is now synthesized from a purified 2,4,5-TCP in an acid-catalyzed condensation reaction. Because the reaction occurs at rather low temperatures, and at acid pH, no CDD or CDF formation is expected to occur. Earlier production techniques resulted in TCDD contamination. Wastes resulting from Hexachlorophene production therefore are not included in this listing unless prepurified 2,4,5-TCP was not used, or the process took place on equipment contaminated with CDDs or CDFs.

⁸This category of listed wastes includes discarded pesticides and formulations containing tri-, tetra-, or pentachlorophenol as ingredients. Some of these materials, namely EPA Hazardous Wastes U212, 230, 231, 242, and the chlorophenoxy pesticides U232 and U233 already are hazardous wastes under 40 CFR 261.33(f) when discarded in commercial grade, technical grade, or off-specification form, or when present as the sole active ingredient in a formulation. However, discarded formulations containing these chlorophenols or chlorophenoxy compounds as one of a number of ingredients (for example, in a mixture of 2,4,5-T and 2,4-D) are not presently considered to be hazardous wastes (unless they exhibit a characteristic of hazardous waste). These multi-ingredient formulations nevertheless are likely to be just as toxic as sole active ingredient mixtures, since the concentration of toxic ingredients is the same or higher. Today's action thus would remedy this gap in regulatory coverage by listing the multi-ingredient formulations containing the discarded

III. Basis for Listing

A. Toxicity of contaminants of concern

1. *Toxicity of chlorinated dioxins and dibenzofurans.* The contaminants of concern in these wastes are CDDs and CDFs, tri-, tetra-, and pentachlorophenols, and the chlorophenoxy derivatives of these chlorophenols. CDDs and CDFs are, for certain animal species, among the most potent toxic substances known.⁹ TCDD and two HxCDD isomers are among the most potent animal carcinogens tested. Since each of these substances are carcinogenic in well-conducted tests in both rats and mice, they are also considered by the Agency to be potential human carcinogens (see 44 FR 39858-39879 (July 6, 1979)). In laboratory studies, TCDD has also been shown to be teratogenic, fetotoxic, and embryotoxic at extremely low doses (ng/kg/day). Based on structure-activity relationships, TCDF also may have reproductive effects at extremely low doses. Many CDDs and CDFs are acute toxicants as tested in laboratory animals at the µg/kg/day dose rate, and, even at these very low concentrations, have many observable physiologic effects. Although an EPA Scientific Advisory Panel determined 1 ng/kg body weight to be "for all practical purposes" a no observed effect level in rodents (44 FR 72337 (December 13, 1979)), several other scientists have concluded that a NOEL has not been conclusively demonstrated. Moreover, the Scientific Advisory Panel concluded that a NOEL had not been demonstrated for primates. In addition, the U.S. Food and Drug Administration has established a guideline suggesting limitation of human consumption of fish containing TCDD concentrations greater than 25-50 ng/kg (ppt). Furthermore, in several enforcement actions and in two site-specific risk assessments conducted by the Agency regarding Times Beach and Imperial in Missouri, environmental concentrations in the ppt to ppb range were determined to be levels of concern, and were used to define clean-up levels.

The Agency emphasizes that, for purposes of this regulation, it considers all CDDs and CDFs as toxicants of concern in these wastes. Many biochemical and toxicology studies have

listed compounds. In addition, we are amending the basis for listing these commercial chemical products to include certain chlorinated dioxins and dibenzofurans as toxicants of concern.

⁹The statements on toxicity, persistence, and environmental contamination outlined in this preamble are more fully explained and substantiated in the background document for this listing which is available for review in the public docket.

demonstrated that there are well-defined structure/activity correlations defining the acute and chronic toxic effects of PCDDs and PCDFs. Those isomers that have halogens in at least three of the four lateral ring positions (numbers 2,3,7, or 8), and that have at least one ring hydrogen atom, are the most toxic isomers. All the CDDs and CDFs substituted in this manner have extremely high acute toxicity, bind strongly to a cytosolic protein receptor, and are potent inducers of several liver enzymes. The Agency recognizes that, even within such congeneric groupings, there are differences in toxicity. There is, for instance, a 370-fold difference in acute toxicity between the 1,2,3,7,8- and the 1,2,4,7,8-PeCDD isomers; however, even the less toxic isomer has extremely high acute toxicity (oral LD₅₀ in the guinea pig = 1.1 mg/kg).

Only limited toxicity information is available on certain of the CDD and CDF isomers. However, many are structurally similar to other CDD and CDF isomers that are potent toxicants. The Agency may permissibly infer that certain waste constituents are toxic, based upon structural similarity to known toxicants. See *EDF v. EPA*, 598 F. 2d 62, 78-83 (D.C. Cir. 1978) (prohibition of discharge to navigable waters of less chlorinated PCBs is permissible in the absence of specific toxicologic data due to their structural similarity to the more chlorinated PCBs).

Consequently, because most of the isomers of the listed CDDs and CDFs are toxic, albeit to different degrees, because identification of individual isomers in the waste would be an excessive regulatory burden, and because the Agency believes that these wastes would contain a certain percentage of the more toxic component, the Agency has determined that it is a conservative public health assumption that all the isomers of TCDD should be considered in estimating its toxicity. We have therefore determined that all the CDDs and CDFs identified or proposed to be identified in Appendix VIII should be considered as toxicants of concern in these wastes. This decision is analogous to the finding adopted by the Agency in the case of municipal waste resource recovery facilities.¹⁰

2. *Toxicity of chlorophenols and their chlorophenoxy derivatives.* The other toxicants of concern in these wastes also have serious adverse effects. EPA's Carcinogen Assessment Group has

¹⁰See Interim evaluation of the health risks associated with emissions of tetrachlorinated dioxins from municipal waste resource recovery facilities. U.S. EPA, Office of the Administrator, November 16, 1981.

determined that 2,4,6-TCP is a potential human carcinogen.¹¹ In addition, chlorophenols may cause liver and kidney damage. Some chlorophenoxy compounds are also known or potential human carcinogens, and may have reproductive and teratogenic effects. Water Quality Criteria have been established for many of these compounds. For example, for 2,4,6-TCP, the criterion for the protection of people from excess risk of developing cancer (10^{-5} risk level) from the lifetime consumption of contaminated fish and water is 12 ppb. The criterion for 2,4,5-TCP (based on its chronic systemic toxic effects) is 2.6 ppm.

For several other chlorophenols, the organoleptic water quality criteria are at the ppb level (see 45 FR 79318 November 28, 1980).

B. Contaminant concentration levels in these wastes

The toxicants of concern are likely to be present in the listed wastes at concentrations many orders of magnitude greater than the levels which, as cited above, are of concern in terms of human health. In some cases, the Agency has inferred the presence of these contaminants from knowledge of reaction chemistry and process operating conditions. In other cases, the contamination of chemical intermediates and commercial chemical products is analytically established. For example, analysis of distillation bottoms from manufacturing processes making or using trichlorophenols can contain several hundred ppm CDDs, filter aids may contain up to 6000 ppm TCDDs, and cooling pond muds were shown to contain as much as 1200 ppm CDDs. Still bottoms from 2,4,5-TCP and 2,4,5-T production generated by the Vertac Chemical Corporation contained up to 111 ppm TCDDs. (*U.S. v. Vertac Chemical Corp.*, 489 F. Supp. 870, 879 (D. Ark. 1980)) (improper storage and disposal of dioxin-containing wastes results in imminent and substantial endangerment warranting injunctive relief).

Some process wastes may be contaminated with CDDs or CDFs because they were generated in the course of a manufacturing process performed on equipment that was previously used for a CDD or CDF-generating process. In the manufacture of chemicals on a production train previously used for a process generating, e.g., CDDs, both the product and the wastes generated can be contaminated with CDDs. This was shown to be the

case, for instance, for wastes resulting from the manufacture of 2,4-D. These wastes contained TCDDs at the ppb level, presumably because the equipment, used previously to produce 2,4,5-T, remained contaminated with TCDD after production shifted to 2,4-D (45 FR 32677, May 19, 1980).

The contamination of tri-, tetra-, and pentachlorophenols, and their phenoxy derivatives with CDDs (30-100 ppm) and CDFs (50-140 ppm) also results in the contamination of biocides and their formulations.

The concentration of higher chlorinated phenols and chlorophenoxy derivatives in these wastes also is likely to be considerable. In the case of wastes from chlorophenol production, chlorophenols (because of their solubility characteristics) are likely to be present in reactor residues, in still bottoms, and in the sludges from wastewater treatment. Wastes from the manufacturing use of these compounds likewise will contain these chlorophenols—since they are the principal raw material in the process—as well as various chlorophenoxy derivatives. Because of the nature of the purification and precipitation processes, the latter compounds will occur principally in reactor residues, on adsorbents used for product purification, and on filter aids. These compounds are known to be present in the wastes from these processes. For example, a study of the aqueous waste of one herbicide manufacturing facility found that it contained 13.5 kg/day of mixed chlorophenols, and about 32.7 kg/day of phenoxy acid. These are discharged in fairly concentrated form: a typical untreated aqueous waste stream from phenoxy acid manufacture contains 112 ppm of mixed chlorophenols and 235 ppm of chlorophenoxy acids.

Discarded pesticides and pesticide formulations containing these chlorophenols as active ingredients obviously will contain these toxicants in high (percent) concentrations.

C. The wastes' potential to cause substantial harm if mismanaged

Not only are the contaminants of concern present in significant concentrations, but they are capable of migrating from waste matrices and reaching environmental receptors in potentially dangerous concentrations. These contaminants are persistent¹²—

¹² CDDs (and presumably CDFs) are highly resistant to microbial degradation. The Agency thus believes that these toxicants will be present in wastewater treatment sludges. The listed chlorophenols and their chlorophenoxy derivatives are biodegradable, but where overloading and

CDDs and CDFs extremely so—and several can accumulate in the food chain. The measured bioaccumulation factor (BCF) for TCDD is species dependent, and varies from 2,000 to 48,000; structure/activity considerations make it reasonable to assume that the BCF for other CDDs and CDFs are within the same range. The calculated BCF for the chlorophenols ranges from 290 for 2,4,5-TCP to 610 for 2,4,6-TCP (however, the measured steady state BCF for PCP is only 13). Thus, if these toxicants migrate from these wastes, even in extremely low concentrations, they can accumulate in biological organisms at much higher levels, increasing the likelihood of substantial harm to human health and the environment.

These toxicants, moreover, are mobile in the environment, particularly as a result of water run-off or wind dispersion of contaminated particles, and can migrate from these wastes if they are improperly managed. Although CDDs and CDFs are relatively water insoluble, and bind strongly to organic soil constituents, improper land disposal could cause substantial harm to environmental receptors. Pollution of air and surface waters can occur, perhaps as a result of windblown dust, water run-off or erosion, or flooding of waste disposal sites. All of these scenarios have occurred. In the *Vertac* case cited earlier, improper storage and disposal of wastes from the manufacture of 2,4,5-TCP, 2,4-D, and 2,4,5-T resulted in significant environmental contamination. Fish and other aquatic life in a local stream accumulated TCDD at levels as high as 600 ppt. The court concluded:

Dioxins * * * can and have been transported off the Vertac site on dust, by the action of landfill areas and equalization basin area, and when people and equipment move to and from the Vertac site. Samples show that dioxin has been transported off the Vertac site into fish and sediment in (a local stream), and also into the Jacksonville sewage treatment plant. (489 F. Supp. at 879)

TCDDs also have been detected at levels of concern in the sediments of streams, public sewers, and home sumps at other sites, including Love Canal. TCDD has been reported in fish and crayfish living in contaminated streams, in concentrations (600 ng/kg) up to fifteen times higher than that at which FDA advises that human consumption be limited. High ppt concentrations have been reported for other CDDs and CDFs in fish. Because of their insolubility in

inadequate treatment occur, and in the anaerobic environment of sludge disposal, they may persist.

¹¹ U.S. EPA. Ambient water quality criteria for chlorophenols. EPA 440/5-80-032.

water, and their strong binding to organic soil constituents, CDDs and CDFs are not ordinarily expected to leach to ground water if proper precautions are taken. However, if these wastes are co-disposed with solubilizing solvents, or disposed in situations where soil binding site are exhausted, ground water contamination could result.

Although chlorophenols and chlorophenoxy compounds are subject to environmental degradation, including biodegradation by adapted communities, environmental pollution from these constituents has occurred where wastes from the production and manufacturing use of chlorophenols were mismanaged. More than twenty-five years after the improper disposal of chlorophenolic wastes at Love Canal, tri-, tetra-, and pentachlorophenols were identified in soil, water, and storm sewer sediments at concentrations ranging from 14 ppb (PCP in sump water) to 496 ppm (TCPs in storm sewer sediment).

A further risk to human health may be posed by improper incineration of these wastes. Improper incineration of chlorophenols are predicted to form CDDs and CDFs as products of incomplete combustion,¹³ posing a further risk of substantial harm. Indeed, as discussed later in this preamble, the Agency is studying whether different criteria or management standards (e.g., higher destruction and removal efficiency for the incineration of these wastes) are appropriate and practical.

D. Listing as acutely hazardous wastes.

It is clear from this discussion that these wastes have the potential to cause substantial harm, if mismanaged. The Agency is further convinced that these are acutely hazardous wastes under 40 CFR 261.11(a)(2), since they contain contaminants which, when tested in animals, are among the most toxic contaminants known, and thus are capable of causing, or significantly contributing to serious irreversible, or incapacitating reversible, illness.¹⁴ This standard is taken directly from Section 1004(5) of RCRA, and is reserved for wastes particularly likely to pass a substantial risk to human health and the

environment (see preamble to Part 261, 45 FR 33106, May 19, 1980).

Additional reasons for listing these wastes as acutely hazardous are that the wastes have been implicated in a series of damage incidents, among them the incidents of Love Canal and Times Beach. The Agency also has been compelled to exert regulatory control over many of these wastes under the Toxic Substances Control Act in the face of the unreasonable risk posed by ongoing and contemplated waste management practices (see further discussion in Part VI. below).

The practical consequences of such a listing are two-fold. First, these wastes will be subject to the 1 kg/month small quantity generator limitation contained in 40 CFR 261.5(e).¹⁵

The Agency deems 1 kg to be equivalent, for all practical purposes, to total control of the management of these wastes since they are generated in amounts far greater than 1 kg. The Agency solicits comments on the appropriateness of this limitation, however. Second, the residues in empty containers that contain these listed wastes are subject to control under Subtitle C of RCRA, unless the container has been triple-rinsed using a solvent capable of cleaning the container, or the container has been otherwise cleaned by a method that has been shown to achieve equivalent removal. In addition, as explained more fully below, we are proposing that these wastes be managed only at treatment, storage, and disposal facilities that have been fully permitted under RCRA (except as discussed in Section VII.). In the Agency's judgment, these wastes should be managed pursuant to the most stringent appropriate standards that are contained in the RCRA hazardous waste management regulations.

IV. Removal of Certain Commercial Chemical Products Listed in 40 CFR 261.33(f)

As discussed in the previous section, the Agency is proposing to list as acutely hazardous those unused discarded formulations containing tri-, tetra-, or pentachlorophenol and discarded formulations containing as

ingredients compounds derived from these chlorophenols. Some of these materials already are hazardous wastes under 40 CFR 261.33(f) when discarded or intended for discard in commercial grade, technical grade, or off-specification form, or when the toxicant is present in formulations as the sole active ingredient. They were originally listed as toxic (rather than acutely hazardous) because the Agency did not at that time consider the presence of CDDs and CDFs. However, as shown above, these formulations will contain chlorinated dioxins and -dibenzofurans, because the chlorophenol or chlorophenoxy derivatives will themselves be contaminated with CDDs and CDFs. For this reason, we are now listing them as acutely hazardous under 40 CFR 261.11(a)(2).

To avoid listing the same waste under two different (and inconsistent) provisions, we are proposing to remove EPA Hazardous Wastes U212, U230, U231, U232, U233, and U242 from 40 CFR 261.33(f). As a consequence, there should be no confusion that these wastes will be subject to a small quantity generator exclusion of 1 kg/mo.

V. Regulatory Status of These Materials When Recycled by Being Used or Reused

On May 19, 1980, EPA promulgated a definition of solid waste which, among other things, states which materials are solid wastes when recycled. In promulgating this rule, EPA established broad jurisdiction over recycled materials and recycling operations. EPA is today proposing in a separate notice to revise this rule to state that certain types of activities involving secondary material use and reuse do not constitute solid waste management; in particular, the proposal states that secondary materials recycled by being used or reused as ingredients in new products, or by being used or reused directly as products, ordinarily are not solid wastes. The proposal provides that materials so used or reused may be listed individually in § 261.2(a)(3) as solid wastes if they meet two conditions: (1) They are ordinarily disposed of (on a nationwide basis), or contain toxic constituents which are not ordinarily found in raw materials or products used for the same purpose which constituents are not used during the recycling process; and (2) the materials could pose a substantial hazard to human health or the environment when so used or reused.

Both these conditions are met here. These wastes are typically disposed of or incinerated, rather than recycled.

¹³ Shaub, W. M. and W. Tsang, Physical and chemical properties of dioxins in relation to their disposal. Proceedings 2nd. International Symposium on Dioxins, Arlington, VA, October 1981.

¹⁴ By means of a site-specific exclusion petition, a generator may be able to show that a waste does not contain CDDs and/or CDFs at levels sufficient to sustain regulatory concern as acutely hazardous waste. Such levels, however, as well as the presence of chlorophenols or chlorophenoxy compounds, may still render such wastes hazardous.

¹⁵ The Agency is proposing today to amend this provision to apply to all acutely hazardous wastes, not just to the acutely hazardous wastes listed in 40 CFR 261.33(e). At the time § 261.5 was written, there were no acutely hazardous wastes other than those in § 261.33(e). Now that we are proposing to list wastes in § 261.31 as acutely hazardous, we are proposing to conform the reference to acutely hazardous waste in § 261.5. For the same reason, we are proposing to make the same type of conforming change to § 261.7(b)—the provision stating when containers that have held acutely hazardous wastes are "empty."

They also contain significant levels of hazardous constituents—CDDs and CDFs—not ordinarily found in raw materials or analogous commercial products, nor would these toxicants contribute to the efficacy of the recycling practice. In addition, in light of their toxicity and their environmental persistence, these wastes could pose the same potential for causing substantial harm when used or reused as when disposed. Since use or reuse would be unregulated, the potential for harm in fact is probably greater.¹⁶

Accordingly, we are proposing elsewhere in today's *Federal Register* to list these materials as solid wastes when they are used or reused. As a result, these wastes will remain subject to regulation when transported and stored under the Subtitle C regulations even when recycled by being used or reused as ingredients in new products, or by being used or reused directly as products.

VI. Relation of Today's Proposal to Regulation of TCDD-Contaminated Wastes Under the Toxic Substances Control Act

Many wastes containing TCDD are presently regulated under 40 CFR Part 775, a regulation issued under Section 6 of the Toxic Substances Control Act (TSCA).¹⁷ This regulation, promulgated on May 19, 1980 (45 FR 32676), prohibits the Vertac Chemical Company from disposing of certain wastes containing TCDD, and requires the company to store and monitor these wastes until a long-term management solution can be determined. The regulation also requires other persons intending to dispose of TCDD wastes (defined as those resulting from the production of 2,4,5-TCP or its pesticide derivatives, or substances produced on equipment that was previously used for the production of 2,4,5-TCP or its pesticide derivatives) to notify the Agency 60 days in advance of such disposal. The regulation does not apply, however, "to persons disposing of wastes containing TCDD at facilities permitted for disposal of TCDD under

Section 3005(c) of RCRA." (See 40 CFR 775.197.)

On January 5, 1982, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) (47 FR 193), announcing the Agency's intent to review the TCDD disposal rule (40 CFR 775), and solicited comment to aid the Agency in determining the most appropriate long-term solution for TCDD-contaminated wastes. Several comments received on this ANPRM stated that the regulation of treatment and disposal of hazardous wastes properly belongs under RCRA, and that the Agency should avoid overlapping and potentially contradictory approaches to the same problem under different regulatory authority, e.g., TSCA and RCRA. Section 1006(b) of RCRA in fact provides that, in implementing the Act, EPA "shall avoid duplication" with other statutes administered by the Agency. Section 9(b) of TSCA provides that the Agency must utilize its authority under the other environmental laws it administers where these laws are adequate to protect against unreasonable risk, and where there is no strong public interest in taking action under TSCA.

EPA agrees that RCRA provides the appropriate long-term solution for controlling the management of TCDD-contaminated wastes. The disposal rule under TSCA was only meant as a temporary solution. See 45 FR 32682. EPA, in fact, acknowledged the advantages of using RCRA, by providing that final permits issued under RCRA for disposal of TCDD-contaminated wastes would supersede the TSCA rule. The rule proposed today under RCRA will provide the safeguards of a final permit, and will, therefore, render the TSCA rule unnecessary.

Accordingly, only the RCRA rule becomes effective, EPA proposes to revoke the TSCA rule that applies to disposal of TCDD-contaminated wastes. The basis for this revocation is stated in the following paragraphs.

EPA promulgated the TSCA rule under Section 6(a) of that Act. Section 6(a) provides that EPA may prohibit or otherwise regulate any manner or method of disposal of chemical substances or mixtures if the Agency finds that there is a reasonable basis to conclude that such activities present or will present "an unreasonable risk of injury to health or the environment." Determining unreasonable risk involves an administrative judgment which is reached by balancing "the probability that harm will occur and the magnitude and severity of that harm against the effect of proposed regulatory action on

the availability to society of the benefits of the substance or mixture, taking into account the availability of substitutes for the substance or mixture which do not require regulation, and other adverse effects which such proposed action may have on society." (TSCA Legislative History at 422).

In the May 19, 1980 regulation, EPA determined that removal for disposal of certain TCDD wastes at Vertac's Jacksonville, Arkansas site would present unreasonable risks. The Agency found that maintaining drummed wastes on-site, with monitoring, presented a relatively known and correctable risk, while disposing of the wastes, as proposed by Vertac, posed a substantially greater risk, particularly where a case-specific assessment on the management of these wastes had not been performed. (See Preamble to Final Rule at 45 FR 32680; Preamble to Proposed Rule at 45 FR 15595.) Similar considerations led EPA to determine that disposal of TCDD wastes by other persons without prior notification to EPA would present unreasonable risks. The minimal costs of notifying EPA sixty days before disposal, so that EPA could evaluate the management scheme proposed by the notifier, was determined to be outweighed by the risks of harm that could occur from exposure to TCDD disposed of improperly.

We now propose to regulate these wastes under RCRA. On May 19, 1980, EPA believed that the then existing RCRA regulations for treatment and disposal of hazardous waste were not appropriate for TCDD-contaminated waste because EPA had not yet developed final permit standards for land disposal or incineration of hazardous wastes. These final regulations are not effective, and provide a means of properly evaluating the various management alternatives for TCDD-contaminated wastes to ensure that these wastes are managed in a manner that does not present an unreasonable risk. Thus, when the rules proposed today under RCRA become final, it will no longer present an unreasonable risk for these wastes to be treated and disposed of in RCRA facilities, and this will be the only legal waste management option. Since promulgation of these RCRA regulations will vitiate the unreasonable risk finding under TSCA, we will at the same time revoke the TSCA May 19, 1980 regulation.

It should be noted that by doing this, we are eliminating the 60-day notification requirement under TSCA for waste disposed at facilities not

¹⁶ We note, however, that when secondary materials that are derived from commercial pesticides (such as rinse waters from pesticide containers) are put to use as pesticides, they are not considered to be RCRA solid wastes. The Agency considers this activity to constitute continued use of the pesticide, and so not to involve waste management. Any such use, of course, would have to comply with requirements for use of the pesticide imposed under the Federal Insecticide, Fungicide, and Rodenticide Act.

¹⁷ The hazardous waste listings proposed today are more inclusive than those regulated under TSCA, including for example, wastes from the production of certain tetrachlorophenols and chlorobenzenes.

permitted under Section 3005(c) of RCRA. However, when this rule becomes effective, it will be illegal to dispose of these wastes at facilities that have not been fully permitted. Therefore, we believe the TSCA 60-day notification requirement is unnecessary; in addition, notification under Section 3010(b) will still be required and thus, the Agency will still be informed of who is handling these types of wastes.

We also believe that it will be less confusing for the regulated community, and more cost effective, both with respect to compliance and regulatory enforcement, for waste disposal to be regulated under RCRA alone, rather than under both statutes. Moreover, the technical expertise needed to issue permits for these wastes is chiefly within the Agency's office administering RCRA. We consequently believe that the public interest warrants rescission of the TSCA rule once this RCRA regulation becomes effective.

VII. Proposed Management of These Wastes

A. Management at RCRA Interim Status Facilities

As noted, the TSCA rule presently does not allow these wastes to be disposed or treated at interim status facilities without prior approval, because management of such waste at unscrutinized interim status facilities ordinarily presents an unreasonable risk (45 FR 32682). To avoid a decrease in regulatory coverage, and in light of the waste contaminants' high toxicity, persistence, and potential to bioaccumulate, we are proposing to amend the RCRA regulations, except as noted below, for landfills, waste piles, surface impoundments, land treatment facilities, and incinerators, to require that these wastes be managed only at fully permitted facilities. The reasons for the unreasonable risk finding still hold. Interim status incinerators need not perform at 99.99% destruction and removal efficiencies, or meet the other performance standards contained in Subpart O of Part 264. Interim status landfills, waste piles, surface impoundments, and land treatment facilities need not meet the monitoring requirements in Subpart F or many of the design and operating standards of Subparts K, L, M, and N of Part 264 until they are permitted. In addition, we believe that any facility that manages these wastes should be evaluated individually by EPA before accepting them in order to ensure that the facility is designed and operated properly. The proposed regulation consequently

prohibits interim status facilities from managing these wastes.

We have proposed three exceptions to this prohibition. The first applies to surface impoundments in which wastewater treatment sludges are generated. The Agency has the authority to prohibit interim status surface impoundments from receiving these wastes. If we propose this action, however, the facilities now generating the listed wastewater treatment sludges would probably have to close down until they obtain permits for their impoundments, or build alternative treatment facilities that can efficiently treat these wastes. The Agency is not proposing this course of action, and notes that Section 3004 of RCRA (as amended by the Solid Waste Disposal Act Amendments of 1980) specifically allows the Administrator, in setting standards for hazardous waste management facilities, to distinguish between new and existing facilities. The legislative history indicates that Congress was concerned with the costs of modifying existing wastewater treatment impoundments installed to meet Clean Water Act requirements (although the Agency has the authority to require such modification where appropriate). See S. Rep. No. 96-172, 96th Cong. 1st Sess., at 3. We are drawing this distinction in today's proposal.

Allowing these wastewater treatment sludges at interim status surface impoundments in which they are generated should be environmentally acceptable for the period until a permit is issued. These sludges are expected to contain lower concentrations of CDDs, CDFs, and chlorophenols than the other waste we are listing. The CDDs and CDFs present also will be adsorbed to the organic matter present; in addition, we believe that there should be little chance that solubilizing solvents, such as benzene, toluene, xylene, or halogenated benzenes, will be present in significant concentrations (since these solvents have very limited water solubility). This situation therefore should not present a significant risk of leaching. Risk of wind dispersal, one of the principal exposure pathways for CDD and CDF-containing wastes which are stored in open piles or disposed in landfills, is not present for these wastewater treatment sludges when they are in an impoundment.

We are not proposing to allow other interim status surface impoundments to manage these sludges, however, because other impoundments could contain CDD- or CDF-solubilizing residues from processes not related to chlorophenol or

chlorophenoxy manufacture. In addition, manufacturing operations will not be curtailed if these impoundments have to obtain permits before receiving these wastes.

For all of these reasons, therefore, we are proposing to allow the listed wastewater treatment sludges to be managed at the interim status surface impoundments in which they are generated. However, we expect, as a first priority, to evaluate the Part B permit applications of those interim status surface impoundments that manage these wastes, in order to minimize any potential risk. In addition, if monitoring data, or a review of site management make it apparent that the wastes cannot be prevented from migrating, the owner or operator of the facility will be required to remove the waste from the surface impoundment.

The second exception is for interim status tank and container facilities, which will be allowed to accept these wastes. These facilities, although not providing maximum protection, do provide control of these wastes to prevent them from posing a substantial environmental hazard or an unreasonable risk since tanks or containers at interim status facilities must meet most of the requirements (e.g., storage in non-leaking units, periodic inspections) required for fully permitted tank and container facilities. Therefore, these facilities should provide adequate management of these wastes in the short term. However, we do expect to give highest priority to examining the Part B permit applications of those interim status tank and container storage facilities that store these wastes, in order to minimize any potential risk.

The final exception is for enclosed waste piles. An "enclosed waste pile" is defined in this proposed rule as a pile that meets the requirements of § 264.250(c)—namely, that the pile is inside a structure that provides protection from run-on, precipitation, and wind dispersal; does not generate leachate, and does not contain free liquids. Under existing regulations, waste piles meeting these requirements are exempt from the otherwise-applicable permitting provisions of Subpart L of Part 264 relating to containment. (See 46 FR 55112, November 6, 1981.)

We are proposing that enclosed waste piles be allowed to accept these wastes without first obtaining a permit because enclosure of this type will guard in the short-term against the means of exposure of concern—run-off, wind dispersal, and leaching. In addition,

allowing this type of interim status facility to accept these wastes should help provide management capacity until disposal facilities receive permits to manage these wastes.

We are proposing that interim status enclosed waste piles accepting these wastes still must meet the remaining applicable requirements of Subpart L of Part 265: waste analysis, special requirements for ignitable, reactive, or incompatible wastes, and closure requirements. (Post-closure requirements would not be applicable because we are assuming that these wastes will be removed from these piles.) We note, in addition, that to be eligible for interim status, the facility must have been in existence on November 19, 1980, submitted a Part A permit application, and (if required) submitted a notification of hazardous waste activity. (See § 122.23(a) and 45 FR 76636, November 19, 1980.) Enclosed piles added at interim status facilities after November 19, 1980, or accepting these wastes after that date, may be eligible for interim status provided they meet the requirements for adding waste, increasing design capacity, and (possibly) adding a new management process. (See § 122.23(c) (1), (2), and (3) (permissible changes during interim status)).

B. Management at Fully Permitted RCRA Facilities

1. *Management at fully permitted landfills, waste piles, surface impoundments, lagoons, and land treatment facilities.* Except as described in the previous sections, the storage, treatment, and disposal of these wastes will be allowed only at fully permitted RCRA landfills, surface impoundments, waste piles that are not enclosed, and land treatment facilities. Enclosed waste piles that are permitted under Part 264 would not require a waste management plan prior to accepting these wastes. (The Agency made this determination because it judged that the means of enclosure satisfies the concerns the plan would address.)

In addition, before any of these particular facilities can obtain a permit and, thus, before it can accept any of the wastes proposed to be listed today, it must have a "waste management plan" that is approved by the Regional Administrator. EPA believes that the inherent hazard of these wastes, and their mismanagement history, warrants regulatory controls on potential migration above those contained in the existing permit requirements. The management plan will be the vehicle for assuring individualized consideration that the wastes will be managed safely.

The plan must be submitted by the owner or operator of the facility as part of the permit application; it must describe the potential for migration of toxicants from the site via any media, and, where migration is possible, it must address measures to be taken, over and above the applicable permitting requirement, to reduce migration of the wastes or waste constituents.

At a minimum, the proposed plan must address the volume and toxicant concentrations in the wastes to be managed at the facility, the propensity of toxicants to be emitted to the air through volatilization or as aerosols or dusts during placement of the wastes, whether toxicants may migrate from or with the wastes, whether the wastes will be co-disposed with other materials having mobilizing properties, and the potential for soils to attenuate migrating toxicants if the liner system (when one is required by the regulations) is damaged and breached. Where a potential for migration is identified, the proposed plan must identify design provisions and/or operating practices to be adopted to prevent that migration. These design and operating features are in addition to those that would otherwise be required by the regulations. For example, if the facility also disposes of dioxin solubilizing solvents, the applicant may propose to segregate the wastes to prevent contact. If leaching is possible, the applicant might propose lining the unit or mixing the waste with activated carbon, organic sorbents, or other materials designed to immobilize the migrating toxicants. Whatever is proposed by the applicant must be supported by data or a technical rationale. The Regional Administrator will evaluate whether these additional management and design features are adequate to prevent migration.

As a general matter, the additional measures required under a waste management plan will focus on control measures not currently specifically required by the Part 264 land disposal regulations. For example, the plan may include specific waste treatment processes that will reduce the likelihood that dioxin will migrate out of the unit. In addition, the plan may include a demonstration that siting factors (e.g., the attenuative properties of the soil beneath the site) would operate to control migration of dioxin. In most cases, EPA does not believe that it will be necessary to impose additional structural requirements (e.g., liner specifications) for the unit. The Agency intends to provide detailed guidance for the preparation of a waste management

plan for managing these wastes prior to issuing this regulation in final form.

Waste management plans will be considered in the normal course of the permitting process, so that no special EPA review procedures are required.

2. *Management at fully permitted incinerators.* As stated, we also are proposing to allow incineration of these wastes only at fully permitted incinerators. It is the Agency's view that incineration often is a preferred management option for these wastes, because high temperature destroys the chlorinated dioxins and -dibenzofurans. If incineration is not properly performed, however, the original toxicants may be released undestroyed, or chlorinated -dioxins, -dibenzofurans, biphenyls, and -phenols can be formed from precursors such as chlorinated biphenyls, benzenes, and -phenols.

The proposed regulation, therefore, allows these wastes to be burned only at fully permitted RCRA incinerators which have proven capability to assure 99.99% DRE for principal organic hazardous constituents (POHCs) which are as difficult, or more difficult to incinerate than CDDs or CDFs.¹⁸ The Agency judges that such a demonstration of DRE is sufficiently rigorous to ensure the proper management of these wastes, and therefore feels that it is not necessary to require an additional management plan for incinerator facilities treating these wastes.

3. *Management at fully permitted tank and container storage facilities.* We also have tentatively decided against requiring fully permitted tank and container storage facilities to have a waste management plan approved by the Regional Administrator, before storing these wastes. The current storage regulations provide the Agency with sufficient information to evaluate the storage facility's ability to contain these wastes. Therefore, an additional management plan for tank and container storage facilities storing these wastes appears unnecessary.

C. Other Management Options Considered for These Wastes

1. *Standards for Interim Status Landfills, Waste Piles, Surface Impoundments, Land Treatment Facilities, and Incinerators.* The Agency considered proposing a regulation that would allow interim status land disposal and incineration facilities to manage these wastes if they obtained prior

¹⁸ The requirements for trial burn permits are described in 40 CFR 122.27. See also, "Guidance manual for hazardous waste incinerator permits," U.S. EPA, Office of Solid Waste, November 1982.

approval from the Regional Administrator. It was felt that the Agency could provide interim status facilities the same opportunities to handle these wastes as are provided to fully permitted facilities if the Agency can be assured that such management can be accomplished safely. The vehicle to be used to assure individualized consideration of prospective waste management would be a waste management plan that would address the factors outlined in the previous section as well as other design and operating conditions contained in the Part 264 regulations, as deemed appropriate by the Regional or State officials.

The procedures we considered for approving a waste management plan would be the same as, or similar to, those for approving a closure plan. They would allow for public participation on the plan submitted by the facility, and on a tentative decision (and a rationale therefor) of the Regional Administrator. The Regional Administrator could hold a public hearing if he believed it would aid in elucidating the issues.

However, the Agency believes that most interim status facilities probably could not adequately manage these wastes without significant changes. In addition, the amount and detail of information to be provided in the management plan could be almost equivalent to the information needed to obtain a permit. For example, as part of the waste management plan for incineration, the owner or operator of the incinerator would need to conduct a trial burn to ensure that destruction and removal efficiencies could be met. EPA thinks it is unlikely that interim status facilities would go to the expense of preparing and receiving approval on a plan, only to have to go through a later permit proceeding when their Part B application is processed.

However, the Agency solicits comments on the desirability of allowing disposal and treatment of these wastes at interim status facilities having an approved management plan for these wastes.

2. Additional Standards for Container and Tank Storage Facilities. The Agency believes that container storage facilities storing these wastes should meet the most stringent requirements under Part 264. Present regulations (Subpart I) do not require secondary containment for non-liquid wastes (e.g. lumpy materials) if the storage area slopes, or the container is elevated. However, the Agency believes that secondary containment might appropriately be required for container storage areas that store all non-liquid

CDD and CDF-contaminated wastes, due to the toxicity of these wastes, their potential to ooze and to spill, and the long time periods these wastes may be stored before a disposal or incinerator treatment facility can be found that is willing to accept these wastes. (For example, the wastes at the Vertac site have been stored for many years, despite the repeated attempts by the company to find a disposal site.) This requirement may be necessary to ensure that any spillage or release of these wastes is contained and not released into the environment. The Vertac damage incident, where improper storage of these wastes was responsible for considerable harm, serves as an example of these wastes' potential for harm if stored improperly. The Agency therefore is considering a provision that would require secondary containment at container storage facilities that store non-liquid CDD- and CDF-contaminated wastes.

The Agency is also considering a provision that would require secondary containment at tank storage facilities that store CDD- and CDF-contaminated wastes, due to the wastes' toxicity and the long periods of time they might be stored. The damage incident at Neosho, Missouri, when a concrete tank holding chlorophenol production still bottoms (a waste covered by this proposal) and wastewater cracked, and caused considerable contamination, illustrates the potential for harm that secondary containment could address. The Agency solicits comment on the suitability of these two provisions.

3. Optional Standards Considered for Permitted Incinerators. Under current regulations, a facility which has shown that it can achieve 99.99% DRE for POHCs which are more resistant to thermal degradation than are CDDs or CDFs (such as carbon tetrachloride or pentachlorophenol), may be permitted to incinerate CDD or CDF-containing wastes without conducting an additional trial burn or modifying its permit (40 CFR 264.342 and 264.343). Because of their hazardousness, the Agency is considering proposing that a facility burning these wastes notify the Regional Administrator of that fact. We are considering this requirement because it is felt that Regional authorities might wish to prioritize compliance monitoring for facilities incinerating these wastes.

The Agency solicits comments on the desirability of requiring notification to the Regional Administrator on the part of a facility that is burning CDD or CDF wastes.

4. Development of Special Management Standards. The Agency is considering the development of special

management standards for CDD/CDF-contaminated wastes. For some wastes, high temperature incineration might be the preferred method of treatment, whereas for other wastes land disposal might be a better alternative. For the latter, disposal at sites having particular hydrogeological and topographic or surface water characteristics might be needed. The Agency is presently reviewing these problems, and may, for example, propose incineration standards that could require levels of destruction and removal efficiency (DRE's) for these wastes that are greater than the 99.99% DRE presently required under RCRA. For some wastes, land disposal controls ensuring the prevention of dust formation could be imposed, and for some wastes the Agency could prescribe the application of special technologies, such as photodechlorination, or molten salt or critical water oxidation, which are known to cause the destruction of chlorinated aromatics such as CDDs.

The Agency solicits comment with respect to the regulatory alternatives discussed above, as well as any other approaches which might realistically be considered.

VIII. Analytical Method for Tetra-, Penta-, and Hexachloro-Dibenzo-p-Dioxins and -Dibenzofurans

In order to assist generators in the determination of the contamination of wastes with the above compounds, (e.g., for delisting purposes under §§ 260.20 and 260.22 of the RCRA regulations), the Agency is proposing a method of analysis for tetra-, penta-, and hexachlorodibenzo-p-dioxins and -dibenzofurans (see Appendix A). The method proposed in this regulation was largely developed by the workers at Wright State University, and has been used for the analysis of TCDDs in a variety of wastes.¹⁹ If adopted, this method will replace the method for analysis of TCDD presently listed in the solid waste test manual ("Test Methods for Evaluating Solid Waste Physical/Chemical Methods", EPA publication number SW-846). The present method is inappropriate because it is not sufficiently sensitive, and does not sufficiently eliminate interfering substances. It also does not specify the procedure to be followed for the

¹⁹ "Analytical protocol for determination of TCDDs in phenolic chemical wastes and soil samples obtained from the proximity of chemical dumps", and "Analytical protocol for determination of chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans in river water", Brehm Laboratory, Wright State University, Dayton, OH 45435, January 7, 1982. These protocols are available in the Docket for this listing.

analysis of the chlorinated dibenzofurans.

The proposed method subjects the sample to extraction with petroleum ether (waste not amenable to petroleum ether as an extractant, such as tar-like or carbonaceous wastes, will require extraction with other organic solvents, such as toluene, hexane, or dichloromethane).²⁰ The extract is successively washed with alkali and acid, subjected to fractionation on alumina, and the eluate is analyzed by high-resolution gas chromatography, using a capillary glass column, and by low-resolution mass spectrometry. In case of interference, the alumina eluate is subjected to further cleanup with high pressure liquid chromatography (HPLC).

The Agency has chosen the proposed method because it is the one that has been most successfully applied to chemical wastes. In addition, its originators have indicated to the Agency that it can be used for the analysis of both CDDs and CDFs.^{21, 24} For example, the proposed method has been used for the analysis of TCDD in chlorophenol still bottoms, reactor residues, oxidation pond sediments, cooling pond muds, contaminated soils, and sludge samples. The detection limit for TCDD established in these different matrices varied from 15 ppt (soils, 0.5 ppb (cooling pond muds), and 1 ppb (sludges) to 0.1–1300 ppb (still bottoms, highly variable). The recovery of added TCDD varied from 14–111 percent, averaging 76 percent. In incinerator stack effluents, the minimum detectable quantity was 3.8 ng for CDDs and 3.5 ng for CDFs, and the recovery of added CDDs or CDFs averaged 80 percent.

IX. Questions for Comment

The Agency welcomes public comment on all aspects of this proposed rule. However, public comment is especially solicited with respect to the following questions.

1. Should EPA develop, for CDD or CDF-containing wastes, a

"characteristic" definition of hazardousness under Subpart C of Section 261 of the RCRA regulations? Instead of listing CDD/CDF-containing wastes as hazardous under Subpart D of the Part 261 regulations, EPA considered an alternative approach, namely, identifying such wastes as "characteristic" hazardous wastes under Subpart C of Part 261. This approach would oblige the Agency to make a generic determination as to the lower level of concern regarding CDD/CDF contamination, and would then require generators to either analyze or estimate the amount of CDD's or CDF's in a waste (by actual analysis or, for example, from a knowledge of reaction chemistry, process technology, and chemical engineering principles).

The Agency judged that this approach, although at first glance appealing because of its apparent simplicity, would not be a suitable regulatory alternative. It would require that the Agency set a concentration (as in the EP hazardous waste characteristic) defining the level at which CDD's and CDF's constitute a minimum level of concern. Heretofore, EPA has not attempted to set a lower limit for the concentration of a toxicant of concern in a waste, except in a limited manner. Instead, EPA has made qualitative assessments in determining that certain wastes should be listed in the RCRA regulations because they present a potential threat to human health and the environment, if mismanaged.

Because of the high acute and chronic toxicity properties of many of the CDD's and CDF's, as evidenced in animal studies, the Agency considered that, if a lower limit of concern were to be developed it would be very low. Additionally, because biological availability of these toxicants is expected to be dependent on waste matrix characteristics, it was felt that a generic risk estimation for all wastes would be extremely difficult to perform. One alternative was to set the lower limit at the limit of detection of CDD's and CDF's in the waste. However, this is not a fixed concentration. As outlined above, the limit of detection is sample and matrix-dependent. Since industrial wastes are highly variable, it may not be realistic to establish generally applicable standards for the level of detection, recovery, and reproducibility for the analytical determination of CDD's and CDF's in these wastes.

Within the above limitations, the Agency could nevertheless set a lower level of concern for the concentration of CDD's and CDF's in these wastes. The Agency solicits comment on the

advisability, practicality, and desirability of doing so. If a lower level of concern is to be established, at what level should it be set, and how could this level be justified?

2. *Analytical Methodology*—The Agency solicits comment on the proposed method of analysis for CDD's and CDF's; in particular, evidence that some extraction media may be more efficacious than others for particular wastes. The Agency considered whether it might be useful to develop a method of analysis that would be less detailed, and therefore less expensive, than that proposed, since a high degree of specificity with respect to isomeric content is not necessary in the present instance. For delisting purposes, for instance, it might be sufficient for a petitioner to show that a waste does not contain any CDD's or CDF's—even though, for example, dichloro- or hepta- and octachlorodioxins are present. The Agency solicits comments with respect to the usefulness, practicability, and cost, for instance, of a GC/MS analytical method which would detect total CDD's and CDF's at low levels in a waste in one analytical determination.

3. *Wastes resulting from manufacturing processes conducted on equipment contaminated with CDD's or CDF's*—The Agency is proposing to list as hazardous, wastes resulting from processes conducted on equipment previously used for a manufacturing process that generated CDD's or CDF's. A generator could legitimately question how this regulation can be enforced: how can they know whether the equipment in question was previously used for these processes? The Agency considers that a demonstration of historical knowledge would be deemed sufficient for this purpose (45 FR 32678 (May 19, 1980); see also the Listing Background Document). If historical records are not available, or inaccurate, analysis of the listed wastes on several occasions for total CDD's and CDF's would be sufficient to establish their absence. The Agency solicits comments on the appropriate historical records and time periods to be used, and the appropriate analytical detection limit to be used if historical records are not available.

4. *Identification of commercial chemical products subject to this listing*—The Agency is concerned that some users of commercial chemical products may not be able to identify which commercial chemical products contain tri-, tetra-, or pentachlorophenol, or their chlorophenoxy derivative acids, esters, and amine salts, and which, therefore, would be regulated (when discarded) as

²⁰ "Capabilities on methodology for the analysis of tetrachlorodibenzo-p-dioxin", Battelle Columbus Laboratories, Columbus, OH 43201, August 10, 1981.

²¹ Dr. M. Taylor, Wright State University, to C. Gozda, U.S. EPA, Report of analytical data (December 6, 1979).

²² Dr. T. O. Tiernan, Wright State University, to D. L. Rosengren, Viar and Company, Inc., Report on sample analyses (June 1, 1982).

²³ Dr. T. O. Tiernan, Wright State University, to L. Haas, Viar and Company, Inc., Report on sample analyses (August 6, 1982).

²⁴ T. O. Tiernan et al., Incineration of chemical wastes containing polychlorinated biphenyl: assessment of tests conducted at Rollins Environmental Services, Deer Park, Texas, and Energy Systems Company, El Dorado, Arkansas. In: Detoxification of Hazardous Waste, J. H. Exner, Ed., Ann Arbor Science, 1982, pp 143–183.

EPA Hazardous Waste Nos. F023. Although the FIFRA regulations (40 CFR 162) do require that active ingredients be identified by their chemical name or by a usual common name, and an EPA publication ("Accepted common names and chemical names for the ingredient statement on pesticide labels", EPA 540/9-7-017) is available to aid in their chemical identification, these aids may not convey sufficient information to the unsophisticated user. Non-pesticide products may also be hard to identify. Therefore, the Agency is considering various mechanisms to solve this potential problem (*i.e.*, labeling requirements for manufacturers, publishing a list of all products which contain these compounds, etc.). The Agency solicits comment on this potential problem.

5. *Wastes which may contain CDDs and CDFs but which are not covered by the present regulation.* The Agency has some data indicating that wastes, other than those covered by this proposal, may contain CDDs and CDFs. This may be the case, for instance for residuals such as fly ash from low temperature combustion of certain industrial wastes (especially of wastes containing chlorophenols, or chlorobenzenes); residuals from dichlorophenol manufacture; and sludges from wood preserving using pentachlorophenols. In the case of the first two wastes, although the Agency, on the grounds of knowledge of reaction chemistry and process technology, believes this may be the case, it lacks sufficient data to support this supposition. For this reason, studies are being conducted in order to gather more data. These wastes may be listed at a future date if further evidence demonstrates that they indeed are hazardous.

With regard to waste from wood preserving, we are presently investigating whether additional wastes from this process should be listed as hazardous, and whether CDDs and CDFs should be constituents of concern in the process wastes already listed (EPA Hazardous Waste K001, Wastewater treatment sludges). Pending completion of those studies we may take further regulatory action.

X. Economic, Environmental, and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The effect of the present amendment is judged not to be major, since it in part replaces regulation under

a different statute (Section 6(d) of the Toxic Substances Control Act), and imposes an additional regulatory burden only on three manufacturers of chlorophenols, and five manufacturers of chlorophenols and their chlorophenoxy derivatives. In addition, some number of manufacturers who use equipment that may be contaminated with CDDs or CDFs may also have additional regulatory burden. However, we presume that this part of the regulation is unlikely to affect many additional manufacturers other than the eight referred to above. In addition, this regulation imposes a regulatory burden on persons or entities discarding some unused formulations containing tri-, tetra-, or pentachlorophenol or unused formulations containing compounds derived from these phenols. The disposal of many of these formulations, however, is already regulated under § 261.33 of RCRA. Additionally, because of their inherent value, we do not believe that the regulated community will usually discard substantial quantities of these materials, further minimizing any impact.

In addition, we believe that there will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, since the Agency does not expect that the proposed action will result in either an effect on the economy of \$100 million or more, or an adverse impact on U.S. based enterprises, this proposed regulation is not considered to be a major action. Because this proposed amendment is not a major regulation, no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA responses to those comments are available for public inspection in Room S-269C at EPA.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic

impact on a substantial number of small entities.

Only one of the hazardous wastes proposed to be listed in § 261.31 is expected to be generated by small entities. The Agency anticipates that pesticide aerial applicators will constitute the main segment of small business entities affected by this regulation.²⁰ However, these persons are probably already regulated under RCRA since a large number of pesticides (both acutely hazardous and toxic) are currently covered by existing regulations. Therefore, we would not expect any aerial applicators to be newly regulated as a result of this rule. In addition, the Agency does not believe that small entities will dispose of significant quantities of the commercial chemical products proposed for regulation. Thus, today's amendment is unlikely to have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paper Reduction Act of 1980

The reporting or recordkeeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

XII. Rulemaking Record

The public docket for 40 CFR Part 775 is located in Room E-107 at the address listed for the U.S. Environmental Protection Agency in the address section of this preamble. The entire rulemaking docket for the rule being proposed today is included in the record for 40 CFR Part 775. EPA will identify the complete rulemaking record for 40 CFR part 775 on or before the date of repeal. EPA will consider any time between the publication of this notice and the date the Agency identifies the final record.

XII List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

²⁰ Farmers may also generate some of these wastes—discarded unused formulations—however, farmers are exempt from regulation provided the waste pesticides are from their own use and are disposed of on their own farm in a manner consistent with the disposal instructions on the pesticide label. Therefore, we do not expect farmers to be severely impacted.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 276

Environmental protection, Hazardous materials, Pesticides and pests, Waste treatment and disposal.

Dated: March 21, 1983.

John W. Hernandez,
Acting Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.5, paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators

(e) * * *

(1) A total of one kilogram of acutely hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acutely hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

3. In § 261.7, the introductory text of paragraphs (b)(1) and (b)(3) is revised to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acutely hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) of this chapter is empty if:

3. A container or an inner liner removed from a container that has held an acutely hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) is empty if:

4. In § 261.31, add the following waste streams:

§ 261.31 Hazardous waste from nonspecific sources.

Industry and EPA hazardous waste no.	Hazardous waste	Hazard code
Generic:		
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-, tetra-, or pentachlorophenol, or of intermediates used to produce their derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate or component in a formulating process) of materials listed under F020 and F021.	(H)
F023	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols.	(H)

5. In § 261.33(f), remove the following waste streams:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

Hazardous waste No.	Substance
U212	2,3,4,6-Tetrachlorophenol.
U212	Phenol, 2,3,4,6-tetrachloro-
U230	2,4,5-Trichlorophenol.
U230	Phenol, 2,4,5-trichloro-
U231	2,4,6-Trichlorophenol.
U231	Phenol, 2,4,6-trichloro-
U232	2,4,5-Trichlorophenoxyacetic acid.
U232	2,4,5-T.
U233	Silver.
U233	Propionic acid, 2-(2,4,5-trichlorophenoxy)-.
U242	Pentachlorophenol.
U242	Phenol, pentachloro-

6. Amend Table I in Appendix III of Part 261, by removing the entry "chlorinated dibenzodioxins", and adding the following entries in alphabetical order:

Appendix III—Chemical Analysis Test Methods

TABLE 1.—ANALYTICAL CHARACTERISTICS OF ORGANIC CHEMICALS

Compound	Sample handling class/traction	Non-GC methods	Measurement techniques	
			GC/MS	Conventional GC Detector
Chlorinated dibenzo-p-dioxins	Extractable/BN		8280	
Chlorinated dibenzofurans	Extractable/BN		8280	

7. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Wastes

EPA hazardous waste No.	Hazardous constituents for which listed	EPA hazardous waste No.	Hazardous constituents for which listed
F020	tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, and amine salts.	F022	tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, and amine salts.
F021	tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, and amine salts.	F023	tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, and amine salts.

8. Add the following constituents in alphabetical order to Appendix VIII of Part 261:

Appendix VIII—Hazardous Constituents

hexachlorodibenzo-p-dioxins
hexachlorodibenzofurans
pentachlorodibenzo-p-dioxins
pentachlorodibenzofurans
tetrachlorodibenzo-p-dioxins
tetrachlorodibenzofurans

9. Appendix IX is added to Part 261 to read as follows:

Appendix IX—Method of Analysis for Chlorinated dibenzo-p-dioxins and -dibenzofurans^{1,2,3,4}

Method 8280

1. Scope and Application.

¹This method is appropriate for the analysis of tetra-, penta-, and hexachlorinated dibenzo-p-dioxins and -dibenzofurans.

²Analytical protocol for determination of TCDDs in phenolic chemical wastes and soil samples obtained from the proximity of chemical dumps. T.O. Tiernan and M. Taylor, Brehm Laboratory, Wright State University, Dayton, OH 45435.

³Analytical protocol for determination of chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans in river water. T.O. Tiernan and M. Taylor, Brehm Laboratory, Wright State University, Dayton, OH 45435.

⁴In general, the techniques that should be used to handle these materials are those which are followed for radioactive or infectious laboratory materials. Assistance in evaluating laboratory practices may be obtained from industrial hygienists and persons specializing in safe laboratory practice. Typical

1.1 This method covers the determination of chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans in chemical wastes including still bottoms, filter aids, sludges, spent carbon, and reactor residues, and in soils.

1.2 The sensitivity of this method is dependent upon the level of interferences.

1.3 This method is recommended for use only by analysts experienced with residue analysis and skilled in mass spectral analytical techniques.

1.4 Because of the extreme toxicity of these compounds, the analyst must take necessary precautions to prevent exposure to himself, or to others, of materials known or believed to contain CDDs or CDFs.

infectious waste incinerators are probably not satisfactory devices for disposal of materials highly contaminated with CDDs or CDFs. A laboratory planning to use these compounds should prepare a disposal plan to be reviewed and approved by EPA's Dioxin Task Force (Contact Conrad Kleveno, WH-548A, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460).

2. Summary of the Method.

2.1 This method is an analytical extraction cleanup procedure, and capillary column gas chromatography-low resolution mass spectrometry method, using capillary column GC/MS conditions and internal standard techniques, which allow for the measurement of PCDDs and PCDFs in the extract.

2.2 If interferences are encountered, the method provides selected general purpose cleanup procedures to aid the analyst in their elimination.

3. Interferences.

3.1 Solvents, reagents, glassware, and other sample processing hardware may yield discrete artifacts and/or elevated baselines causing misinterpretation of gas chromatograms. All of these materials must be demonstrated to be free from interferences under the conditions of the analysis by running method blanks. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required.

3.2 Interferences co-extracted from the samples will vary considerably from source to source, depending upon the diversity of the industry being sampled. PCDD is often associated with other interfering chlorinated compounds such as PCB's which may be at concentrations several orders of magnitude higher than that of PCDD. While general cleanup techniques are provided as part of this method, unique samples may require additional cleanup approaches to achieve the sensitivity stated in Table 1.

3.3 The other isomers of tetrachlorodibenzo-p-dioxin may interfere with the measurement of 2,3,7,8-TCDD. Capillary column gas chromatography is required to resolve those isomers that yield virtually identical mass fragmentation patterns.

4. Apparatus and Materials.

4.1 Sampling equipment for discrete or composite sampling.

4.1.1 Grab sample bottle—amber glass, 1-liter or 1-quart volume. French or Boston Round design is recommended. The container must be washed and solvent rinsed before use to minimize interferences.

4.1.2 Bottle caps—threaded to screw on to the sample bottles. Caps must be lined with Teflon. Solvent washed foil, used with the shiny side towards the sample, may be substituted for the Teflon if sample is not corrosive.

4.1.3 Compositing equipment—automatic or manual compositing system. No tygon or rubber tubing may be used, and the system must incorporate glass sample containers for the collection of a minimum of 250 ml. Sample containers must be kept refrigerated after sampling.

4.2 Water bath—heated, with concentric ring cover, capable of temperature control ($\pm 2^\circ\text{C}$). The bath should be used in a hood.

4.3 Gas chromatograph/mass spectrometer data system

4.3.1 Gas chromatograph: An analytical system with a temperature-programmable gas chromatograph and all required accessories including syringes, analytical columns, and gases.

4.3.2 Column: SP-2250 coated on a 30 m long x 0.25 mm I.D. glass column (Supelco No. 2-3714 or equivalent). Glass capillary column conditions: Helium carrier gas at 30 cm/sec linear velocity run splitless. Column temperature is 210° C.

4.3.3 Mass spectrometer: Capable of scanning from 35 to 450 amu every 1 sec or less, utilizing 70 volts (nominal) electron energy in the electron impact ionization mode and producing a mass spectrum which meets all the criteria in Table 2 when 50 ng of decafluorotriphenyl-phosphine (DFTPP) is injected through the GC inlet. The system must also be capable of selected ion monitoring (SIM) for at least 4 ions simultaneously, with a cycle time of 1 sec or less. Minimum integration time for SIM is 100 ms. Selected ion monitoring is verified by injecting .015 ng of TCDD Cl³⁷ to give a minimum signal to noise ratio of 5 to 1 at mass 320.

4.3.4 GC/MS interface: Any GC-to-MS interface that gives acceptable calibration points at 50 ng per injection for each compound of interest and achieves acceptable tuning performance criteria [see Sections 6.1-6.3] may be used. GC-to-MS interfaces constructed of all glass or glass-lined materials are recommended. Glass can be deactivated by silanizing with dichlorodimethylsilane. The interface must be capable of transporting at least 10 ng of the components of interest from the GC to the MS.

4.3.5 Data system: A computer system must be interfaced to the mass spectrometer. The system must allow the continuous acquisition and storage on machine-readable media of all mass spectra obtained throughout the duration of the chromatographic program. The computer must have software that can search any GC/MS data file for ions of a specific mass and that can plot such ion abundances versus time or scan number. This type of plot is defined as an Extracted Ion Current Profile (EICP). Software must also be able to integrate the abundance, in any EICP, between specified time or scan number limits.

4.4 Pipettes-Disposable, Pasteur, 150 mm long x 5 mm ID (Fisher Scientific Co., No. 13-678-6A or equivalent).

4.5 Flint glass bottle (Teflon-lined screw cap).

4.6 Reacti-vital (silanized) (Pierce Chemical Co.).

5. Reagents.

5.1 Potassium hydroxide-(ACS), 2 percent in distilled water.

5.2 Sulfuric acid-(ACS), concentrated.

5.3 Methylene chloride, hexane, benzene, petroleum ether, methanol, tetradecane-pesticide quality or equivalent.

5.4 Stock standards in a glovebox, prepare stock standard solutions of TCDD and Cl-TCDD (molecular weight 328). The stock solutions are stored in a glovebox, and checked frequently for signs of degradation or evaporation, especially just prior to the preparation of working standards.

5.5 Alumina-basic, Woelm; 80/200 mesh. Before use activate overnight at 600°C, cool to room temperature in a desiccator.

5.6 Purified nitrogen gas

6.0 Calibration.

6.1 Before using any cleanup procedure, the analyst must process a series of calibration standards through the procedure to validate elution patterns and the absence of interferences from reagents.

6.2 Prepare GC/MS calibration standards for the internal standard technique that will allow for measurement of relative response factors of at least three TCDD/³⁷Cl-TCDD and TCDF/³⁷Cl-TCDF ratios.^a The ³⁷Cl-TCDD/³⁷Cl-TCDF concentration in the standard should be fixed and selected to yield a reproducible response at the most sensitive setting of the mass spectrometer.

6.3 Assemble the necessary GC/MS apparatus and establish operating parameters equivalent to those indicated in Section 11.1 of this method. Calibrate the GC/MS system according to Eichelberger, et al. (1975) by the use of decafluorotriphenyl phosphine (DFTPP). By injecting calibration standards, establish the response factors for CDDs vs. ³⁷Cl-TCDF. The detection limit provided in Table 1 should be verified by injecting .015 ng of ³⁷Cl-TCDD which should give a minimum signal to noise ratio of 5 to 1 at mass 320.

7. Quality Control.

7.1 Before processing any samples, the analyst should demonstrate through the analysis of a distilled water method blank, that all glassware and reagents are interference-free. Each time a set of samples is extracted or there is a change in reagents, a method blank should be processed as a safeguard against laboratory contamination.

7.2 Standard quality assurance practices must be used with this method. Field replicates must be collected to validate the precision of the sampling technique. Laboratory replicates must be analyzed to validate the precision of the analysis. Fortified samples must be analyzed to establish the accuracy of the analysis.

8. Sample Collection, Preservation, and Handling.

8.1 Grab and composite samples must be collected in glass containers. Conventional sampling practices should be followed, except that the bottle must not be prewashed with sample before collection. Composite samples should be collected in glass containers in accordance with the requirements of the RCRA program. Sampling equipment must be free of tygon and other potential sources of contamination.

8.2 The samples must be iced or refrigerated from the time of collection until extraction. Chemical preservatives should not be used in the field unless more than 24 hours will elapse before delivery to the laboratory. If an aqueous sample is taken and the sample will not be extracted within 49 hours of collection, the sample should be adjusted to a pH range of 6.0-8.0 with sodium hydroxide or sulfuric acid.

^a ³⁷Cl-labelled TCDD and TCDF are available from K.O.R. Isotopes, Cambridge, MA. Proper standardization requires the use of a specific labelled isomer for each congener to be determined. However, the only labelled isomers readily available are ³⁷Cl-2,3,7,8-TCDD and ³⁷Cl-2,3,7,8-TCDF. This method therefore uses these isomers as surrogates for the CDDs and CDFs. When labelled CDDs and CDFs are available, their use will be required.

8.3 All samples must be extracted with 7 days and completely analyzed within 30 days of collection.

9. Extraction and Cleanup Procedures.

9.1 Use an aliquot of 1-10 g sample of the chemical waste or soil to be analyzed. Soils should be dried using a stream of prepurified nitrogen and pulverized in a ball-mill or similar device. Transfer the sample to a tared 125 ml flint glass bottle (Teflon-lined screw cap) and determine the weight of the sample. Add an appropriate quantity of ³⁷Cl-labelled 2,3,7,8-TCDD (adjust the quantity according to the required minimum detectable concentration), which is employed as an internal standard.

9.2 Extraction.

9.2.1 Extract chemical waste samples by adding 10 ml methanol, 40 ml petroleum ether, 50 ml doubly distilled water, and then shaking the mixture for 2 minutes. Tars should be completely dissolved in any of the recommended neat solvents. Activated carbon samples must be extracted with benzene using method 3540 in SW-846 (Test Methods for Evaluating Solid Waste—Physical/Chemical Methods, available from G.P.O. Stock #055-002-81001-2). Quantitatively transfer the organic extract or dissolved sample to a clean 250 ml flint glass bottle (Teflon lined screw cap), add 50 ml doubly distilled water and shake for 2 minutes. Discard the aqueous layer and proceed with Step 9.3.

9.2.2 Extract soil samples by adding 40 ml of petroleum ether to the sample, and then shaking for 20 minutes. Quantitatively transfer the organic extract to a clean 250 ml flint glass bottle (Teflon-lined screw cap), add 50 ml doubly distilled water and shake for 2 minutes. Discard the aqueous layer and proceed with Step 9.3.

9.3 Wash the organic layer with 50 ml of 20% aqueous potassium hydroxide by shaking for 10 minutes and then remove and discard the aqueous layer.

9.4 Wash the organic layer with 50 ml of doubly distilled water by shaking for 2 minutes and discard the aqueous layer.

9.5 Cautiously add 50 ml concentrated sulfuric acid and shake for 10 minutes. Allow the mixture to stand until layers separate (approximately 10 minutes), and remove and discard the acid layer. Repeat acid washing until no color is visible in the acid layer.

9.6 Add 50 ml of doubly distilled water to the organic extract and shake for 2 minutes. Remove and discard the aqueous layer and dry the organic layer by adding 10g of anhydrous sodium sulfate.

9.7 Concentrate the extract to incipient dryness by heating in a 50° C water bath and simultaneously flowing a stream of prepurified nitrogen over the extract. Quantitatively transfer the residue to an alumina microcolumn fabricated as follows:

9.7.1 Cut off the top section of a 10 ml disposable Pyrex pipette at the 4.0 ml mark and insert a plug of silanized glass wool into the tip of the lower portion of the pipette.

9.7.2 Add 2.8g of Woelm basic alumina (previously activated at 600° C overnight and then cooled to room temperature in a desiccator just prior to use).

9.8 Elute the microcolumn with 10 ml of 3% methylene chloride-in-hexane followed by 15 ml of 20% methylene chloride-in-hexane and discard these effluents. Elute the column with 15 ml of 50% methylene chloride-in-hexane and concentrate this effluent (55° C water bath, stream of prepurified nitrogen) to about 0.3-0.5 ml.

9.9 Quantitatively transfer the residue (using methylene chloride to rinse the container) to a silanized Reacti-Vial (Pierce Chemical Co.). Evaporate, using a stream of prepurified nitrogen, almost to dryness, rinse the walls of the vessel with approximately 0.5 ml methylene chloride, evaporate just to dryness, and tightly cap the vial. Store the vial at 5°C until analysis, at which time the sample is reconstituted by the addition of tridecane.

9.10 Approximately 1 hour before GC-MS (HRGC-LRMS) analysis, dilute the residue in the micro-reaction vessel with an appropriate quantity of tridecane. Gently swirl the tridecane on the lower portion of the vessel to ensure dissolution of the CDDs and CDFs. Analyze a sample by GC/EC to provide insight into the complexity of the problem, and to determine the manner in which the mass spectrometer should be used. Inject an appropriate aliquot of the sample into the GC-MS instrument, using a syringe.

9.11 If, upon preliminary GC-MS analysis, the sample appears to contain interfering substances which obscure the analyses for CDDs and CDFs, high performance liquid chromatographic (HPLC) cleanup of the extract is accomplished, prior to further GC-MS analysis.

10. HPLC Cleanup Procedure.

10.1 Place approximately 2 ml of hexane in a 50 ml flint glass sample bottle fitted with a Teflon-lined cap.

10.2 At the appropriate retention time, position sample bottle to collect the required fraction.

10.3 Add 2 ml of 5% (w/v) sodium carbonate to the sample fraction collected and shake for one minute.

10.4 Quantitatively remove the hexane layer (top layer) and transfer to a micro-reaction vessel.

10.5 Concentrate the fraction to dryness and retain for further analysis.

11. GC/MS Analysis

11.1 The following column conditions are recommended: Glass capillary column conditions: SP-2250 coated on a 30 m long x 0.25 mm I.D. glass column (Supelco No. 2-3714, or equivalent) with helium carrier gas at 30 cm/sec linear velocity, run splitless. Column temperature is 210°C. Under these conditions the retention time for TCDDs is about 9.5 minutes. Calibrate the system daily with, a minimum, three injections of standard mixtures.

11.2 Calculate response factors for standards relative to ³⁵Cl-TCDD/F (see Section 12).

11.3 Analyze samples with selected ion monitoring of at least two ions from Table 3. Proof of the presence of CDD or CDF exists if the following conditions are met:

11.3.1 The retention time of the peak in the sample must match that in the standard, within the performance specifications of the analytical system.

11.3.2 The ratio of ions must agree within 10% with that of the standard.

11.3.3 The retention time of the peak maximum for the ions of interest must exactly match that of the peak.

11.4 Quantitate the CDD and CDF peaks from the response relative to the ³⁵Cl-TCDD/F internal standards. Recovery of the internal standard should be greater than 50 percent.

11.5 If a response is obtained for the appropriate set of ions, but is outside the expected ratio, a co-eluting impurity may be suspected. In this case, another set of ions characteristic of the CDD/CDF molecules should be analyzed. For TCDD a good choice of ions is m/e 257 and m/e 259. For TCDF a good choice of ions is m/e 241 and 243. These ions are useful in characterizing the molecular structure of TCDD or TCDF. For analysis of TCDD good analytical technique would require using all four ions, m/e 257, 320, 322, 323, to verify detection and signal to noise ratio of 5 to 1. Suspected impurities such as DDE, DDD, or PCB residues can be confirmed by checking for their major fragments. These materials can be removed by the cleanup columns. Failure to meet criteria should be explained in the report or the sample reanalyzed.

11.6 If broad background interference restricts the sensitivity of the GC/MS analysis, the analyst should employ cleanup procedures and reanalyze by GC/MS.

11.7 In those circumstances where these procedures do not yield a definitive conclusion, the use of high resolution mass spectrometry is suggested.

12. Calculations

12.1 Determine the concentration of individual compounds according to the formula:

$$\text{Concentration, } \mu\text{g/gm} = \frac{A \times A_s}{G \times A_{is} \times R_f}$$

Where:

A = μg of internal standard added to the sample.*

G = gm of sample extracted

A_s = area of characteristic ion of the compound being quantified

A_{is} = area of characteristic ion of the internal standard

R_f = response factor

Response factors are calculated using data obtained from the analysis of standards according to the formula:

$$R_f = \frac{A_s \times C_{is}}{A_{is} \times C_s}$$

*The proper amount of standard to be used is determined from the calibration curve (See Section 6.0).

Where:

C_{is} = concentration of the internal standard

C_s = concentration of the standard compound

12.2 Report results in micrograms per gram without correction for recovery data. When duplicate and spiked samples are analyzed, all data obtained should be reported.

12.3 Accuracy and Precision. No data are available at this time.

TABLE 1—Gas Chromatography of TCDD.

Column	Retention time (min.)	Detection limit ($\mu\text{g/kg}$) ¹
Glass Capillary	9.5	0.003

¹Detection limit for liquid samples is 0.003 $\mu\text{g/l}$. This is calculated from the minimum detectable GC response being equal to five times the GC background noise assuming a 1 ml effective final volume of the 1 liter sample extract, and a GC injection of 5 microliters. Detection levels apply to both electron capture and GC/MS detection. For further details see 44 FR 69526 (December 3, 1979).

TABLE 2—DFTPP KEY IONS AND ION ABUNDANCE CRITERIA¹

Mass	Ion abundance criteria
51	30 to 60 percent of mass 198.
68	Less than 2 percent of mass 69.
70	Do.
127	40 to 60 percent of mass 198.
197	Less than 1 percent of mass 198.
198	Base peak, 100 percent relative abundance.
199	5 to 9 percent of mass 198.
275	10 to 30 percent of mass 198.
365	Greater than 1 percent of mass 198.
441	Present but less than mass 443.
442	Greater than 40 percent of mass 198.
443	17 to 23 percent of mass 442.

¹J. W. Eichelberger, L. E. Harris, and W. L. Budde, 1975. Reference compound to calibrate ion abundance measurement in gas chromatography-mass spectrometry. *Analytical Chemistry* 47:995.

TABLE 3—LIST OF ACCURATE MASSES MONITORED USING GC SELECTED-ION MONITORING, LOW RESOLUTION, MASS SPECTROMETRY FOR SIMULTANEOUS DETERMINATION OF TETRA-, PENTA-, AND HEXACHLORINATED DIBENZO-p-DIOXINS AND DIBENZOFURANS

Class of chlorinated dibenzodioxin or dibenzofuran	Number of chlorine substituents (x)	Monitored M/z for dibenzofurans C ₁₂ H ₈ OCl _x	Monitored m/z for dibenzodioxins C ₁₂ H ₆ O ₂ Cl _x	Approximate theoretical ratio expected on basis of isotopic abundance
Tetra	4	¹ 319.897	¹ 303.902	0.74
		321.894	321.899	1.00
		² 327.885		
		² 256.933		.21
Penta	5	² 258.930		.20
		¹ 353.858	¹ 337.863	.57
		355.855	339.860	1.00
Hexa	6	359.816	373.821	1.00
		391.813	375.818	.87

¹Molecular ion peak.

²Cl₂-labelled standard peaks.

³Ions which can be monitored in TCDD analyses for confirmation purposes.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

11. In Subpart K of Part 264, add the following § 264.231:

§ 264.231 Special requirements for hazardous wastes F020, F021, F022, and F023.

(a) Hazardous wastes F020, F021, F022, and F023 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co-disposed with these wastes;

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, and F023 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

12. In Subpart L of Part 264, add the following § 264.259:

§ 264.259 Special requirements for hazardous wastes F020, F021, F022, and F023.

(a) Hazardous wastes F020, F021, F022, and F023 must not be placed in waste piles that are not enclosed (as defined in § 264.250(c)) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and

in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils, or other materials;

(3) the mobilizing properties of other materials co-disposed with these wastes;

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, and F023 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

13. In Subpart M of Part 264, add the following § 264.283:

§ 264.283 Special requirements for hazardous wastes F020, F021, F022, and F023.

(a) Hazardous wastes F020, F021, F022, and F023 must not be placed in a land treatment facility unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of the Part. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co-disposed with these wastes;

(4) the effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, and F023 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

14. In Subpart N of Part 264, add the following § 264.317:

§ 264.317 Special requirements for hazardous wastes F020, F021, F022, and F023.

(a) Hazardous wastes F020, F021, F022, and F023 must not be placed in landfills unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) the volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) the attenuative properties of underlying and surrounding soils or other materials;

(3) the mobilizing properties of other materials co-disposed with these wastes;

(4) the effectiveness of additional treatment, design, or monitoring requirements.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, and F023 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

PART 265—INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

15. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

16. § 265.1 is amended by adding paragraph (d).

§ 265.1 Purpose, scope and applicability.

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this Part.

(1) EPA Hazardous Waste Nos. F020, F021, F022, and F023 unless:

(i) The waste is generated in a surface impoundment as part of the plant's wastewater treatment system.

(ii) The waste is stored in tanks or containers.

(iii) The waste is stored or treated in waste piles that meet the requirements of § 264.250(c) as well as all other applicable requirements of Subpart L of this Part.

PART 775 [REMOVED]

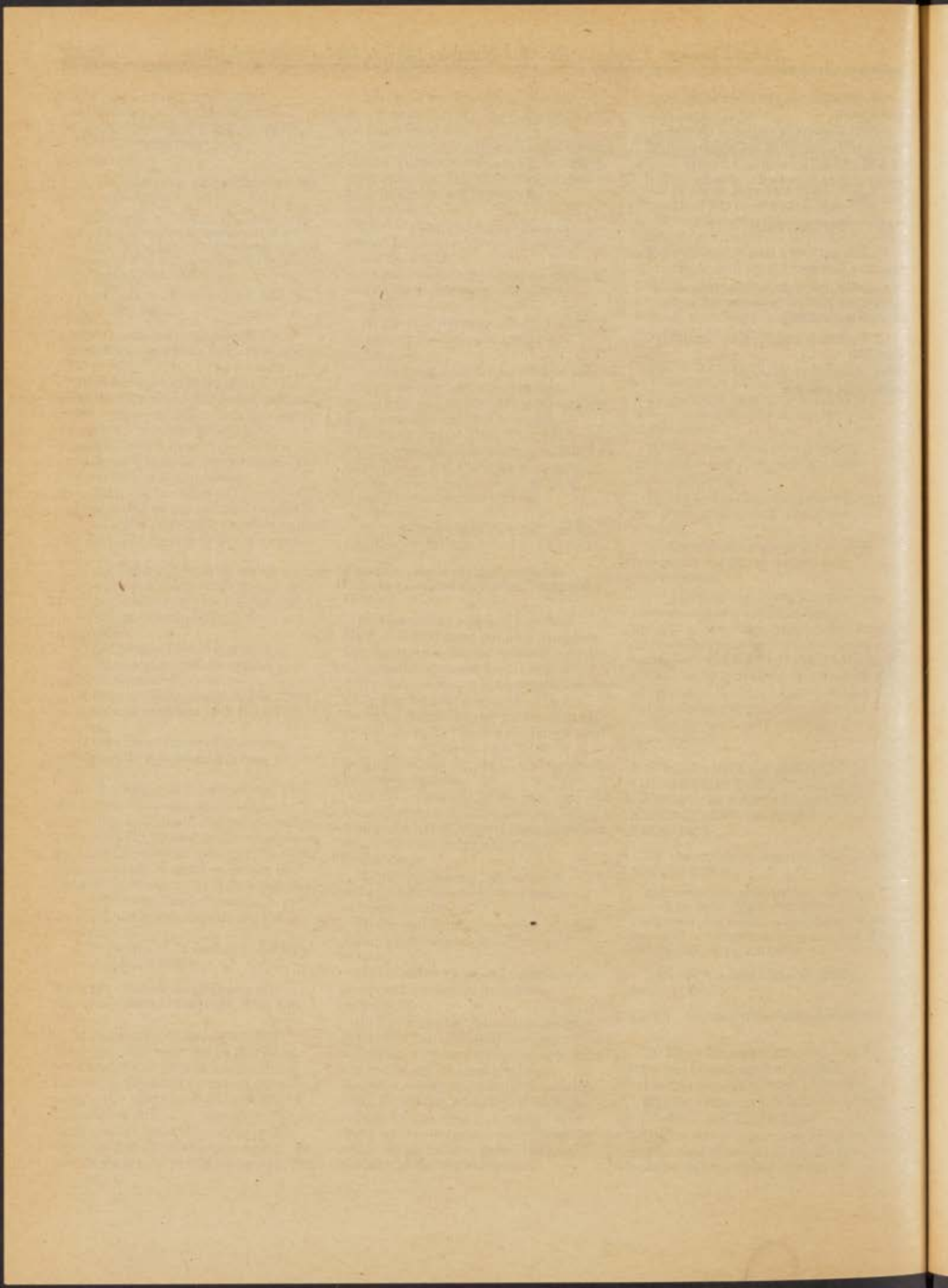
17. The authority citation for Part 775 reads as follows:

Authority. Sec. 6 of the Toxic Substances Control Act (TSCA) Pub. L. 94-469, 90 Stat. 2020 [15 U.S.C. 2605].

18. Title 40 is amended by removing Part 775.

[FR Doc. 83-7990 Filed 4-1-83; 8:45 am]

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Federal Register

Monday
April 4, 1983

Part IV

Federal Election Commission

**Presidential Election Campaign Fund;
Proposed Rulemaking**

FEDERAL ELECTION COMMISSION

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9007a

(Notice 1983-9)

Presidential Election Campaign Fund

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed rules to govern its administration of the Presidential Election Campaign Fund pursuant to 26 U.S.C. 9001 *et seq.* The proposed regulations seek public comment on issues not presently covered in the regulations, most significantly the ability of independent candidates to receive federal funds. The proposed regulations would also revise the provisions of current 11 CFR Parts 9001 *et seq.* in light of the Commission's experiences during the 1980 election. Furthermore, the proposed rules reflect the Commission's recent revision of the regulations governing the primary matching fund process. For example, the proposed revisions would change the current rules on allocation of travel expenses and more fully set forth the audit process. Additional information on the proposed revisions is contained in the supplemental information which follows.

DATES: Comments must be received on or before May 4, 1983. The Commission will also set a date for public hearings on these proposed regulations if requests to appear are received no later than May 4, 1983. A notice of the hearing date will be published in a future edition of the *Federal Register*.

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The proposed rules contain revisions which accomplish several different purposes. The Commission has not yet taken any position regarding any of the changes or the proposed resolution of the substantive issues raised by this proposal. The Commission has therefore put forward this notice to elicit public comment to aid its consideration of the questions presented.

Most significantly, the draft rules propose, for comment purposes, revisions of the Presidential Election Campaign Fund regulations that would allow candidates who run independent of a political party organization to receive pre-election and/or post election

funding provided such candidates satisfy the eligibility requirements set forth at 26 U.S.C. 9003. Thus, the proposed regulations would provide that an individual will become a "candidate" for purposes of the Fund Act by qualifying to have his or her name on the general election ballot in at least 10 states, whether or not the individual's name appears as a candidate of a particular political party. The portions of the draft regulations addressing the status of independent candidates have been printed in bold type to make their identification easier for comment purposes.

Many of the proposed revisions have been included in this draft to achieve consistency where appropriate with the Presidential Primary Matching Fund regulations. The draft also seeks to clarify existing rules by, for example, providing a fuller explanation of the audit process. Moreover, a third focus of the proposed regulations is the addition of new provisions to cover aspects of the Presidential general election process not previously addressed.

For example, the proposed regulations would conform to the Primary Matching Fund regulations with regard to allocation of travel expenditures (11 CFR 9004.7). Travel by government conveyance would be valued either at the first class air fare or at the commercial charter rate, as appropriate, rather than at actual cost. In addition, the draft contains a new section which would establish requirements consistent with past Commission practice for each candidate's statement of net outstanding qualified campaign expenses. This statement is similar to the statement of net outstanding campaign obligations filed by candidates receiving primary matching funds. The draft regulations also contain proposed revisions to 11 CFR Part 9007. 11 CFR 9007.1 would be revised to detail more fully the process involved in conducting a mandatory audit after each Presidential election. Specifically this section would describe the various stages of an audit, as well as the preparation, contents and public release of an audit report.

Candidates would have an opportunity to contest, at an early stage, disputes over documentation sought in connection with the audit by way of a written statement to the Commission. Further, candidates would continue to have an opportunity to contest or comment on the audit report prior to its release to the public. Additional provisions would explain the interaction of the audit and the compliance procedures under 2 U.S.C. § 437g and the connection between a mandatory audit and any repayment determination

under 11 CFR 9007.2 based upon its results. The proposed rules would also revise 11 CFR 9004.2 to provide that candidates who have submitted written statements may be granted an oral hearing upon the affirmative vote of four Commission members.

A new Part 9007a has also been included in the proposed regulations. This part would follow the provisions of 26 U.S.C. 9012.

The Commission will set a date for public hearings on these proposed regulations at a later time. Persons interested in testifying at this hearing should indicate in their written comments on the proposed rules.

List of Subjects

11 CFR Parts 9001, 9002, 9003, 9004, and 9005

Campaign funds,
Political candidate,
Elections.

11 CFR Part 9006

Campaign funds,
Reporting and recordkeeping
requirements,
Political candidates,
Elections.

11 CFR Part 9007

Campaign funds,
Administrative practice and
procedure,
Political candidate.

11 CFR Part 9007a

Political candidates,
Political committees and parties,
Elections.

It is proposed to amend 11 CFR as follows:

1. By revising Parts 9001 through 9007 and adding new part 9007a to read as follows:

PART 9001—SCOPE

§ 900.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431-455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431-455 of Title 2 United States Code, or regulations prescribed

thereunder (11 CFR Parts 100 through 115).

(26 U.S.C. 9009(b))

PART 9002—DEFINITIONS

Sec.

- 9002.1 Authorized committee.
- 9002.2 Candidate.
- 9002.3 Commission.
- 9002.4 Eligible candidate.
- 9002.5 Fund.
- 9002.6 Major party.
- 9002.7 Minor party.
- 9002.8 New party.
- 9002.9 Political committee.
- 9002.10 Presidential election.
- 9002.11 Qualified campaign expense.
- 9002.12 Expenditure report period.
- 9002.13 Contribution.
- 9002.14 Secretary.
- 9002.15 Political party.

Authority: 26 U.S.C. 9002, 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the Office of President of the United States or the Office of Vice-President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(3) Has qualified to have his or her name on the general election ballot for the Office of President in at least 10 states.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

(c) For purposes of this subchapter, all references to "candidate(s) of a political party" shall include independent candidates.

§ 9002.3 Commission.

"Commission" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

§ 9002.4 Eligible candidates.

"Eligible candidates" means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR Part 9003.

§ 9002.5 Fund.

"Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major Party.

"Major party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

"Minor party" means a political party whose candidate for the office of President in the preceding Presidential

election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

"New party" means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, "political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purpose of 11 CFR 9007a.6, the term "political committee" shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

"Presidential election" means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) "Qualified campaign expense" means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law or the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the

candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or
(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Any expenditure incurred by a candidate or his or her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense.

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.*, or 26 U.S.C. 9001, *et seq.*, shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account

established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. [If payments for such services are made by a minor or new party candidate, or an independent candidate, from an account containing private contributions, the payments do not count against that candidate's expenditure limitation.] The amount paid by the committee shall be reported in accordance with 11 CFR Part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

"Expenditure report period" means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, or an independent candidate's committee, the period will be the same as that of the major party with the shortest expenditure report period for the Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

"Contribution" has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

"Secretary" means the Secretary of the Treasury.

§ 9002.15 Political party.

"Political party" means an association, committee, or organization which nominates or selects an individual for election to any Federal

office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

9003.1 Candidate and committee agreements.

9003.2 Candidate certifications.

9003.3 Allowable contributions.

9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

9003.5 Documentation of disbursements.

Authority: 26 U.S.C. 9003, 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) General.

(1) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). An independent candidate shall sign and submit such letter within 14 days after qualifying to appear on the general election ballot in at least 10 States pursuant to 11 CFR 9002.2(a)(3). The Commission, on written request by a minor or new party candidate or an independent candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(B) Conditions. The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any

disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request.

(5) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9007.

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR Part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(7) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR Parts 100-115, and 9001-9007a.

(8) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR Part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and New Party Candidates; Independent Candidates.* To be eligible to receive any payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a minor or new party or independent candidates for the office of President and Vice President shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates or a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All Candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party and each independent candidate for President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of \$50,000 in the aggregate.

(1) For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with

respect to which the candidate had either:

- (A) legal and rightful title, or
- (B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's \$50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). Independent candidates shall sign and submit such letter within 14 days after qualifying to appear on the general election ballot in at least 10 States pursuant to 11 CFR 9002.2(a)(3). The Commission, upon written request by a minor or new party candidate or an independent candidate made at any

time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) Legal and Accounting Compliance Fund—Major Party Candidates.

(1) Sources.

(i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund and used for any purpose permitted under this section.

(iii) Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund. Provided, That the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign; and the candidate notifies the contributor that his or her contribution will be deposited in the compliance fund. If after such notification the contributor objects to the funds being so used, the contribution shall be returned. The contributions so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(a)(2)(ii)(B).

(2) Uses.

(i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001, *et seq.*, in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of

expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund; and

(F) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and telephone base service charges. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with Title 2 or Chapter 95 of Title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

(B) Reimbursement from the compliance fund to the separate account maintained for federal funds under 11 CFR 9005.2 must be made prior to any

final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15)). When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113, including payment of primary election debts.

(3) Deposit and disclosure.

(i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) Contributions to Defray Qualified Campaign Expenses—Major Party Candidates

(1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions shall be deposited in a separate account. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the amount which a candidate is permitted to raise in private contributions under 11 CFR 9003.3(b). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

(5) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(c) Contributions to Defray Qualified Campaign Expenses—Non Major Party Candidates

(1) A minor or new party candidate or an independent candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

- (i) To defray qualified campaign expenses;
- (ii) To make repayments under 11 CFR 9007.2;
- (iii) To defray the cost of soliciting contributions to such account;
- (iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Part 104.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the amount which a candidate is permitted to raise in private contributions under 11 CFR 9003.3(c). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone base services charges.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6), the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

(8) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c)(6) and (7) and shall report such disbursements in accordance with 11 CFR Part 104.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) Permissible Expenditures

(1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited

to: expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR Part 9005.

(b) Sources

(1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR Part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR Part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor, new party or independent candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR Part 9031 *et seq.*, may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary campaign from payments received by

the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her \$50,000 limit, to defray such expenditures.

(c) Deposit and disclosure.

Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committee(s) and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of \$200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR

9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives \$500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of Records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

9004.1 Major parties.

9004.2 Pre-election payments for non-major party candidates.

9004.3 Post-election payments.

9004.4 Use of payments.

9004.5 Investment of public funds.

9004.6 Reimbursements for transportation and services made available to media personnel.

9004.7 Allocation of travel expenditures.

9004.8 Withdrawal by candidate.

9004.9 Net outstanding qualified campaign expenses.

9004.10 Sale of assets acquired for fundraising purposes.

Authority: 28 U.S.C. 9004, 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR Part 9005 in an amount which, in the aggregate, shall not exceed \$20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for non-major party candidates.

(a) *Candidate of A Minor Party in The Preceding Election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1. The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of A Minor Party in The Current Election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New Party Candidate.* A candidate of a new party who was a candidate for

the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a).

(d) *Independent Candidate.* An independent candidate who was a candidate for the office of President in at least 10 states in the preceding election and who received at least 5% but less than 25% of the total popular vote for the office of President in the preceding election shall be treated as an eligible candidate entitled to pre-election payments. The amount to which a candidate is entitled under this paragraph shall be calculated as provided in 11 CFR 9004.2(a). If an independent candidate is entitled to pre-election payments under this paragraph, the entitlement shall be reduced by the amount of the entitlement allowed under 11 CFR 9004.2(a).

§ 9004.3 Post-election payments.

(a) *Minor and New Party Candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Independent Candidates.* Eligible independent candidates for the office of President who receive 5% or more of the total number of popular votes shall be entitled to post-election payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for a major party candidate under 11 CFR 9004.1. The amount to which an independent candidate is entitled shall bear the same ratio to the

amount received by the major party candidates as the number of popular votes received by the independent candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(c) *Amount of Entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(d) *Amount of Entitlement Limited By Pre-Election Payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3 (a) or (b) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified Campaign Expenses.*

An eligible candidate shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses.

(i) Costs associated with the termination of that candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with

winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses.*

(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive Expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense.

(3) *Expenditures Incurred After the Close of the Expenditure Report Period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation Expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary.

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered

qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1), except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to

the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contracts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The Commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.3 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 60 days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates Receiving Post-Election Funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The preliminary statement shall be signed by the treasurer of the candidate's principal campaign committee. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election (including all contributions dated on or before that date);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) *All Candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 days after the end of the expenditure report period. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates Who Withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 60 days after he or she ceases to be a candidate. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required under 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital Assets.* For purposes of this section, the term "capital assets" means any property used in the operation of the campaign whose value exceeds \$500 on the last day of the expenditure report period or the day on which the individual ceases to be a candidate, whichever is earlier. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). The value of a capital asset shall be the fair market value on the last day of the expenditure report period or the day on which the individual ceases to be a candidate whichever is earlier, unless the item is acquired after these dates, in which case the item will be valued on the date it is acquired.

(2) *Other Assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds

\$5,000. The value of the "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired.

(e) *Review of Candidate Statement.*

(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR Part 9007.

(2) *Candidate Eligible for Post-Election Funding.*

(i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial Determination.* In making a determination under 11 CFR 9004.9(e)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final Determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election

funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds campaign assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

§ 9004.10 *Sale of assets acquired for fundraising purposes.*

(a) *General.* A minor or new party or independent candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, Title 2, United States Code, and 11 CFR Parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale After End of Expenditure Report Period.* A minor or new party or independent candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.

9005.1 Certification of payments for candidates.

9005.2 Payments to eligible candidates from the fund.

Authority.—26 U.S.C. 9005, 9009(b).

9005.1 Certification of payments for candidates.

(a) *Certification of Payments for Major Party Candidates.* Not later than

10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR Part 9004 should be made pursuant to 11 CFR 9005.2.

(b) Certification of Pre-election Payments for Minor and New Party Candidates and Independent Candidates.

(1) Not later than 10 days after a minor, new party or independent candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) Certification of Minor and New Party Candidates and Independent Candidates for Post-election Payments.

(1) Not later than 30 days after the general election, the Commission will determine whether a minor, new party or independent candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net

outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a) and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reason underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR Part 9007 and judicial review under 26 U.S.C. § 9011.

§ 9005.2 Payments to eligible candidates from the fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not

be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a candidate shall be deposited in a separate account maintained by his or her authorized committee. This account shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.

9006.1 Separate reports.

9006.2 Filing dates.

Authority—26 U.S.C. 9006, 9009.

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR Part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR Part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR Part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, new party or independent candidate for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1).

During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATION AND AUDITS; REPAYMENTS

Sec.

9007.1 Audits.

9007.2 Repayments.

9007.3 Extensions of time.

9007.4 Additional audits.

Authority.—28 U.S.C. 9007, 9009(b).

§ 9007.1 Audits.

(a) General

(1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a)(1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) Conduct of Fieldwork

(1) The Commission will give the candidate's authorized committee at least two week's notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork will be conducted at a site provided by the committee.

(i) *Office Space and Records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of Committee Personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to Provide Staff, Records or Office Space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance Conference.* At the outset of the fieldwork, Commission staff will

hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of Records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit Conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b)(1) and (2) will apply to any additional fieldwork conducted.

(c) Preparation of Interim Audit Report.

(1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue

an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of receipt of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of Publicly-Released Audit Report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public Release of Audit Report.*

(1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make

public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.*

(1) A candidate who has received payments from the Fund under 11 CFR Part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases For Repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in Excess of Candidate's Entitlement.* If the Commission determines that any portion of the payments made to candidate was in excess of the aggregate payments to which such candidate was entitled, it

will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of Funds for Non-qualified Campaign Expenses.*

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3(b) were used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund, or from any contributions received by a candidate under 11 CFR 9003.3 (b) or (c), were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund, or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on Investment of Payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful Acceptance of Contributions by an Eligible Candidate of a Major Party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment Determination Procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial Determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days of the candidate's receipt of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of Written Materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days of receipt of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30-day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral Presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final Determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment Period.*

(1) Within 90 calendar days of the candidate's receipt of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days of the candidate's receipt of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of Time.* The time periods established by this section shall

be computed in accordance with 11 CFR 111.2.

(f) *Additional Repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-Discovered Assets.* If, after any initial of final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refund, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on Repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9007 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 907 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing

of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

Part 9007a—Unauthorized Expenditures and Contributions

Sec.

9007a.1 Excessive expenses.

9007a.2 Unauthorized acceptance of contributions.

9007a.3 Unlawful use of payments received from the fund.

9007a.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission, refusal to furnish books and records.

9007a.5 Kickbacks and illegal payments.

9007a.6 Unauthorized expenditures and contributions by political committees.

Authority: 26 U.S.C. 9012.

§ 9007a.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR Part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur

expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR Part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9007a.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9007a.3 Unlawful use of payments received from the fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR Part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR Part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9007a.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR Parts 9001–9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR Parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR Parts 9001 *et seq.*

§ 9007a.5 Kickbacks and illegal payments

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nomination convention.

(c) Any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of any eligible candidate or his or her authorized committee(s), or in connection with any expense incurred by the national committee of a major or minor party with respect to a Presidential nominating convention shall pay to the United States Treasury, for deposit in the Treasury's general fund, an amount equal to 125% of the kickback or payments received.

§ 9007a.6 Unauthorized expenditures and contributions by political committees.

(a) It is unlawful for any political committee which is not an authorized committee of any eligible candidate of a political party for the Office of President or Vice President, knowingly and willfully to incur expenditures to further the election of such candidates which aggregate in excess of \$1,000 and which would constitute qualified campaign expenditures if incurred by the candidate's authorized committee.

(b) The unauthorized expenditures and contributions referred to in 11 CFR 9012.6(a) do not include:

(1) Expenditures by a broadcaster regulated by the Federal Communications Commission, or by a

periodical publication, in reporting the news or taking editorial positions; or

(2) Expenditures by any organization described in 26 U.S.C. § 501(c) which is exempt from tax under 26 U.S.C. § 501(a) in communicating to its members the views of that organization.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The

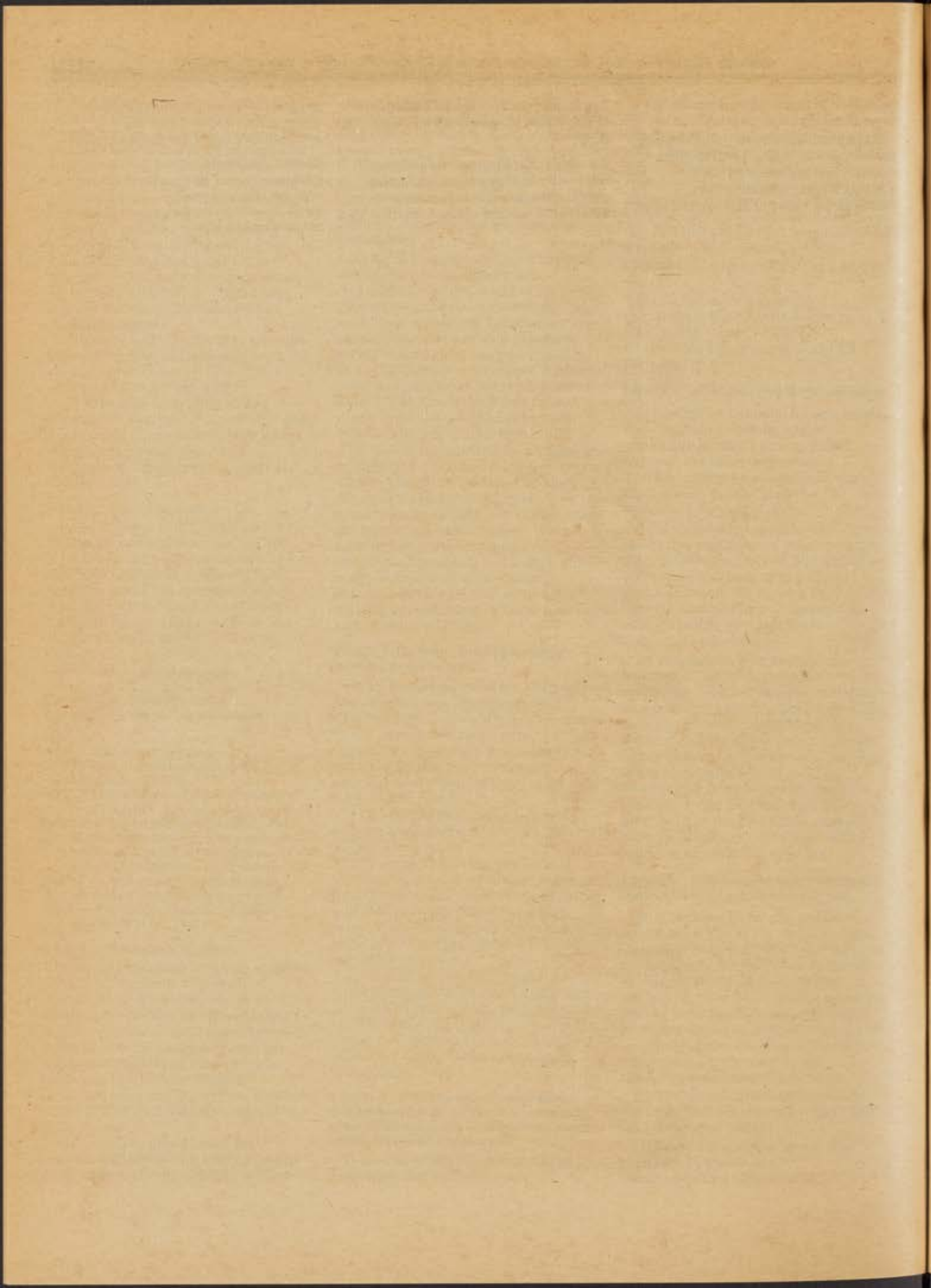
basis for this certification is that no entity is required to make any expenditures under the propose rules.

Danny L. McDonald,
Chairman, Federal Election Commission.

Dated: March 29, 1983.

[FR Doc. 83-8508 Filed 4-1-83; 8:45 am]

BILLING CODE 6715-01-M



test Federal Register

Monday
April 4, 1983

Part V

Equal Employment Opportunity Commission

Voluntary Assistance Program;
Development

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Voluntary Assistance Program

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit input into and inform the public about EEOC's development of a voluntary assistance program. This program is designed to assist both employers and individuals.

DATE: Comments must be received on or before May 6, 1983.

ADDRESS: Interested persons should submit comments to Treva McCall, Executive Secretariat, Room 5215, EEOC, 2401 E Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Leonora L. Guarraia, Director, Office of Special Projects, or Roy Rodriguez, Senior Management Analyst, Office of Special Projects, Room 316, 2401 E Street, NW., Washington, D.C. 20506. Telephone: (202) 634-7674.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (the Commission) enforces Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (Title VII), which makes it illegal to discriminate in employment on the basis of race, color, religion, sex, or national origin; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.* (ADEA), which makes it illegal to discriminate in employment on the basis of age; the Equal Pay Act of 1963, 29 U.S.C. 206(d) *et seq.* (EPA), which prohibits pay discrimination based on sex; and Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791 (Section 501), which prohibits discrimination because of handicap in Federal employment.

In enacting Title VII, the Congress placed special emphasis on cooperation and voluntary compliance as a means of achieving the goal of equality of employment opportunities. For this purpose, section 705(g) of Title VII empowers the Commission to provide assistance to all protected by or subject to the statute.

Section 705(g) states that the Commission shall have power:

1. To cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals; * * *
3. To furnish to persons subject to this title such technical assistance as they may request to further their compliance

with this title or an order issued thereunder.

Under section 6 of the age Discrimination in Employment Act, the Commission is authorized:

To cooperate with regional, State, local and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

In order to better fulfill its obligations to provide the assistance contemplated under these statutes and to complement an operational effort to establish service to currently underserved areas, the Commission will formalize and institute pilot programs of voluntary assistance starting in October 1983. The voluntary assistance initiative will include educational and technical assistance for both employers, labor organizations, employment agencies and individuals. It will be designed to increase the public's awareness of its rights and responsibilities under the various statutes and give employers guidance designed to prevent adoption of potentially discriminatory employment policies or procedures.

Educational assistance, as currently contemplated, will utilize and expand the Commission's public information program of general information brochures, conferences and seminars, public service announcements for radio and television, and news releases. Technical assistance to employers and unions, as currently contemplated, will consist of training sessions, an enhanced and coordinated level of response to questions frequently raised by employers regarding forms or procedures, interpretation of statutes, regulations, and case decisions, as well as an enhanced and coordinated level of provision of general advice, guidance and information about relevant laws and procedures.

For the purposes of this program, the Commission does not intend to approve or disapprove any specific test, test validation studies, or application forms. Guidance offered under this program will neither supplant nor modify instructions and directives provided by EEOC or other Federal agencies pursuant to an employer's equal employment opportunity responsibilities as a contractor or grantee. Rather, the Commission will offer general advice, guidance and information about relevant laws, policies and regulations. For example, EEOC will not, through this program, assist in the development of affirmative action plans, approve or disapprove such plans or take any action which might compromise its

enforcement posture or be considered Commission policy. Instead, the Commission will offer non-binding guidance as to the state of the law in this area.

One objective of this program is to ensure that information on equal employment responsibilities and rights reaches those employers, unions and classes of protected individuals who may have a greater need for such assistance, and as smaller businesses with limited resources, persons not located near Commission offices, language minorities and other communities which may not be using the service of the Commission to the extent necessary to provide an effective enforcement presence.

Consistent with the Commission's Field Reorganization Plan, approved by the Commission on January 25, 1983, the Commission anticipates pilot voluntary assistance programs to be in place by October 1, 1983.

In-house information, as well as information generated by this notice, will be analyzed to produce program components to be implemented nationwide. Relevant materials will be developed along with the training of appropriate staff on the operation of the program. EEOC will also design an evaluation program to measure the effectiveness of the program and identify areas that may need alteration at the conclusion of the pilot period.

This notice is designed to solicit comments and other pertinent information for use in developing an efficient and effective program.

The Commission welcomes information, suggestions and examples of materials or approaches successfully now in use or believed feasible which could be used to design the program. The Commission is particularly interested in receiving such information from employers, unions, civil rights and women's organizations, workers and individuals, including those who have experience in the provision of similar services to persons whose primary language is not English.

Responses to the following items would be particularly helpful.

1. If you have been involved in a program to provide equal employment opportunity for employees, please list and describe specific assistance activities that were successful and explain why. If available, submit copies of materials used in the effort. If you have found that in such programs, specific activities were unsuccessful, please list and describe those as well, including the reasons you feel they were unsuccessful.

2. Please identify recurrent employer-related issues or concerns and describe how you have dealt with them.

3. What kind of assistance is needed or wanted by employers, especially the smaller ones?

4. In what part(s) of the country were your employer-related efforts concentrated?

5. Do you feel that your successful employer-related assistance efforts could be used in other parts of the country? If not, why?

6. If you have operated a program to aid employable or employed persons become aware of their rights under the law, please list and describe those

activities which were successful and explain why. If available, submit a copy of related materials used in the effort. If in operating such a program, you have found specific activities to be unsuccessful, please list and describe those as well, and include the reasons you feel they were unsuccessful.

7. Please identify recurrent employee-related issues or concerns and describe how you have dealt with them.

8. In what part(s) of the country were your employee-related efforts concentrated?

9. Do you feel that your successful employee-related assistance activities

could be used in other parts of the country? If not, why?

10. If you have produced or used employment-related materials in a language other than English, please list the language(s) and types of materials used, and, if available, submit a copy of the material(s).

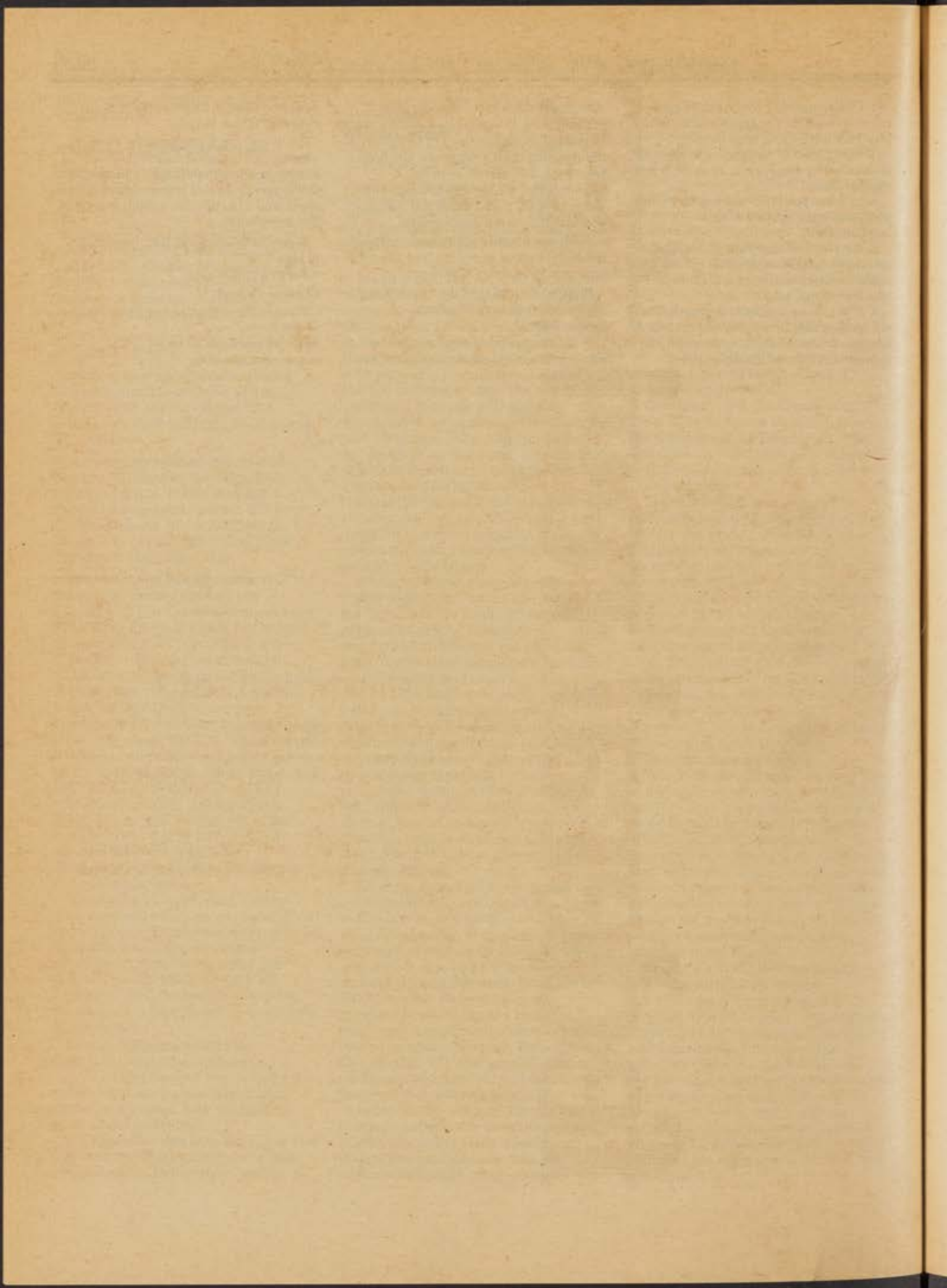
Signed at Washington, D.C., this 30th day of March 1983.

For The Commission.

Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 83-6903 Filed 4-1-83; 6:45 am]

BILLING CODE 6570-06-M



Federal Register

Monday
April 4, 1983

Part VI

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**Foreign Fishing, and Atlantic Mackerel,
Squid, and Butterfish Fisheries; Interim
Regulation**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 655, 656, and 657

[Docket No. 30105-03]

Foreign Fishing, and Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; notice of approval and availability of an amendment to fishery management plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has initially approved Amendment No. 3 to the Fishery Management Plans for the Atlantic Mackerel, Squid, and Butterfish Fisheries. The amendment merges the management measures for these three fisheries into a single management regime, and extends management through March 31, 1986. The amendment is intended to promote development and orderly operation of the U.S. fishery. NOAA issues emergency regulations to implement the amendment and requests comment.

DATE: Interim rule effective from April 1, 1983, through June 29, 1983. Comments must be received on or before May 19, 1983.

ADDRESSES: Comments should be sent to Frank Grice, Chief, Management Division, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097. Mark the outside of the envelope, "Comments on Atlantic Mackerel, Squid, and Butterfish—Amendment No. 3." Copies of Amendment No. 3, current regulations, the regulatory impact review, and the environmental assessment are available upon request.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, Plan Coordinator, 617-281-3600, Ext. 273.

SUPPLEMENTARY INFORMATION:**Background**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has approved Amendment No. 3, which provides one plan for the management of the fisheries now managed under the following fishery management plans (FMPs): Squid Fishery of the Northwest Atlantic Ocean (approved June 6, 1979, extended indefinitely on July 3, 1980, at 45 FR 45296); Mackerel Fishery of the Northwest Atlantic Ocean (approved July 3, 1979, extended through March 31, 1983, on April 9, 1982, at 47 FR 15341);

and the Fishery Management Plan for Atlantic Butterfish (approved November 9, 1979, also extended through March 31, 1983 on April 9, 1982 at 47 FR 15341).

The amendment, prepared by the Mid-Atlantic Fishery Management Council (Council), extends the management of the Atlantic mackerel, squid, and butterfish fisheries under a single management regime for three fishing years, ending on March 31, 1986. The management unit is all Atlantic mackerel (*Scomber scombrus*), squid (*Loligo pealei* and *Illex illecebrosus*) and butterfish (*Peprilus triacanthus*) under U.S. jurisdiction, excluding the Gulf of Mexico and the Caribbean Sea.

These regulations implement the amendment, which is designed to protect the fisheries from overfishing while promoting the growth and development of domestic recreational and commercial fisheries. Preparation of Amendment No. 3 and implementation of these regulations is authorized by the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act).

In addition to merging management of the mackerel, squid, and butterfish fisheries and extending the regulations for three years, key changes from the current individual FMPs include: (1) The Secretary of Commerce will make annual determinations of values (e.g., optimum yield); and (2) The total allowable levels of foreign fishing (TALFFs) for butterfish and mackerel are specified as percentages of allocations in other fisheries. The procedure and criteria for determination of values by the Secretary is discussed in detail below. A notice will be published soon proposing initial amounts for the 1983-84 fishing year of optimum yield, domestic annual harvest, domestic annual processing, TALFF, and Reserve. A comment period will be provided.

The amendment also adopts the Voluntary Three-Tier Fisheries Information Collection System (Three-Tier System) to collect data in the domestic squid, mackerel, and butterfish fisheries. The first two tiers (voluntary dealer/processor reports and interviews of vessel captains by National Marine Fisheries Service (NMFS) port agents) have been approved by the Office of Management and Budget (OMB). The third tier (voluntary reporting of specific tow information from a rotating sample of vessels) will be implemented at a later time; until then, section 655.5 is reserved. The Three-Tier System will provide uniform reporting procedures for all domestic fisheries within this area. The amendment and these regulations also require the Regional Director to continue to survey processors on

anticipated processing capacity. This survey has been approved by OMB under the current FMPs for use through December 31, 1983.

Determining Optimum Yield, DAH, DAP, and TALFF

The Magnuson Act requires that a fishery management plan assess and specify the optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), and TALFF. The Secretary determines these values in accordance with the procedures in the amendment, in consultation with the Council and with opportunity for public comment. The values are based on information gathered from an annual survey of processors, landings and catch reports, stock assessments prepared by NMFS, and other appropriate sources. More specifically, the amendment provides for determinations to be made for each species as follows:

A. Squid

The annual OY may not exceed 44,000 mt for *Loligo* and 30,000 mt for *Illex*. These limits are the same as the previous OYs. The regulations provide for a Reserve, equal to half of the difference between OY and DAH; the other half is the initial TALFF. The Council wishes to limit foreign allocations to give domestic fishermen an additional incentive to increase their catches and expand export markets. Thus, the OY determined annually may be less than the maximum possible value by the amount DAH is less than 7,000 mt for *Loligo* or 5,000 mt for *Illex*.

The Secretary considers the 1978-84 fishing year a trial period for domestic fishermen. Their performance this year will be analyzed carefully before DAH is determined for the 1984-85 fishing year.

The amendment establishes multiplication factors (which may be adjusted by the Regional Director) that, when applied to current U.S. harvests, would project the total amounts of squid that would be harvested by U.S. fishermen during the entire fishing year. After about six months of the fishing year has passed, actual U.S. catches (exclusive of joint venture harvests) are multiplied by these factors. Amounts authorized for joint ventures are then added to these projections. The resultant projection will be used to determine whether all or any part of the squid Reserve will be released to foreign fishermen.

B. Mackerel

The annual OY, DAH, DAP, and TALFF for Atlantic mackerel will be determined based upon the predicted mackerel spawning stock size.

The current OY is 30,000 mt. To continue rebuilding the stock, the amendment prohibits a directed foreign mackerel fishery unless the spawning stock size exceeds 600,000 mt after the entire predicted U.S. and Canadian harvests are taken. Two different procedures are used to assure appropriate distribution of this resource, depending on whether the predicted spawning stock size is greater than or less than 600,000 mt.

1. If the spawning stock size is predicted to be less than or equal to 600,000 mt after the predicted U.S. and Canadian harvests during the upcoming year are taken, the OY equals the sum of the DAH and TALFF, not to exceed 30,000 mt. "Canadian harvest" refers to the estimated mackerel catch in Canadian waters by all nations. The mackerel TALFF will be incidental catch only, with the actual amount being two percent of the allocations of silver hake plus one percent of the allocations of *Loligo*, *Illex*, and red hake. There will be no Reserve. The limitations that OY not exceed 30,000 mt, and that only an incidental catch TALFF is allowed, are considered necessary to prevent overharvest of the resource and to promote the growth of the U.S. fishery.

2. If the spawning stock size is predicted to be greater than 600,000 mt after the predicted U.S. and Canadian harvests during the upcoming year are taken, the OY will be the amount which would result in a spawning stock size of 600,000 mt the following year after the predicted Canadian harvest is taken. The OY is limited, however, and would be adjusted downward, to prevent a total mackerel catch from exceeding the present best estimate of the optimum fishing mortality rate. Thus, in no case can the total mackerel harvest, all waters and all nations, exceed that which would result in a fishing mortality rate greater than of $F_{0.1}$ (a reference point on the yield curve). The limitation on OY of this fishing mortality rate continues the management strategy for mackerel initiated with the approval of the preliminary fishery management plan in 1977, and adopted by the Council in its previous mackerel plan. This fishing pressure corresponds to the optimum fishing mortality rate derived by the Northeast Fisheries Center, which has been used as a management objective in managing Northwest Atlantic fisheries for several years. (Refer to Amendment No. 3 for more

discussion.) A minimum U.S. allocation of 30,000 mt is established (U.S. allocation is DAH or 30,000 mt, whichever is greater), except that the allocation cannot exceed OY.

C. Butterfish

The annual OY for butterfish will be the amount of fish U.S. fishermen harvest under the amendment, plus TALFF, the total not to exceed 16,000 mt, which is the level calculated to be the maximum sustainable yield (MSY) for this stock. (The current OY is 11,000 mt.) The TALFF will be six percent of the allocated portion of the *Loligo* TALFF plus one percent of the allocated portions of *Illex*, silver hake, and red hake TALFFs, plus one percent of the Atlantic mackerel TALFF if a directed fishery is allowed. Thus, allowable U.S. catch is whatever U.S. fishermen catch, not to exceed 16,000 mt, minus TALFF. This procedure will promote the growth of the U.S. butterfish fishery.

Emergency Action

Unless the regulations are implemented on an emergency basis, a regulatory hiatus will result during which mackerel and butterfish caught by foreign fishermen must be discarded, no joint ventures involving mackerel and butterfish could be authorized, and there would be no regulation of the domestic fishery.

The fishery resources would not be jeopardized by a short-term hiatus, but an on-going mackerel joint venture would be halted and no new ones could begin. This would adversely affect the domestic fishermen, and joint-venture companies, and the foreign processing interests. Foreign-caught mackerel and butterfish would be wasted by discard of the dead fish, and no foreign fees for these species would be received by the U.S. Treasury. The Council has consistently opposed treating mackerel and butterfish as prohibited species because this does not provide an incentive for minimizing the incidental catch.

Implementation of Amendment No. 3 will remove constraints under the previous FMPS: (1) Joint ventures for *Illex* will not be limited to 18,000 mt (5,000 initial DAH + 13,000 Reserve). There is strong interest in *Illex* joint ventures for the 1983-84 fishing year that could not be accommodated under the previous regulations.

(2) Domestic harvest of butterfish will not be limited to a 7,000 mt quota, which U.S. fishermen attained this year.

(3) A directed foreign fishery for mackerel will not be prescribed, as it is under the previous FMP.

The Assistant Administrator has determined, under section 305(e) of the Magnuson Act, that an emergency exists in the mackerel, squid, and butterfish fisheries, and that immediate implementation of Amendment No. 3 is necessary and consistent with the extent of the emergency. These regulations may be extended another 90 days if the Secretary and the Mid-Atlantic Council agree. Comments are requested which will be used in preparing final regulations.

Classification

The Assistant Administrator of NOAA has determined that Amendment No. 3 is necessary and appropriate for the conservation of Atlantic mackerel, squids, and butterfish, and that it is consistent with the national standards and other provisions of the Magnuson Act as well as other applicable law.

Executive Order 12291 and Regulatory Flexibility Act

The Administrator of NOAA has determined, after reviewing the criteria set forth in section 1(b) of E.O. 12291, that these regulations are not a major rule under E.O. 12291. A regulatory impact review (RIR) has been prepared. The RIR describes the problems addressed by the amendments and presents an analysis of the proposed and alternative regulatory systems. The RIR supports the determination that these regulations will not have a significant economic impact on a substantial number of small entities. Certification of this determination has been made by the General Counsel, Department of Commerce, to the Small Business Administration. The RIR is available at the above address.

National Environmental Policy Act

The Council prepared an environmental assessment (EA) under Section 102(2)(C) of the National Environmental Policy Act of 1969. The EA describes the affected marine, coastal, and human environments and discusses the possible impacts from the preferred and alternate management measures presented in the amendment. Because the maximum harvest levels in Amendment No. 3 are the same as the maximum sustainable yields previously established, the amendment will not impact upon the environment. Environmental impact statements for the original plans were filed with the Environmental Protection Agency and notice of availability published as follows: mackerel plan, January 2, 1979; squid plan, January 22, 1979; and butterfish plan, December 26, 1978. The

EA is available for review by the public at the above address.

Paperwork Reduction Act of 1980.

Amendment No. 3 adopts the voluntary Three-Tier Fisheries Information Collection System. Full implementation of the Three-Tier System is a separate action presently under review. Under the amendment, the current survey of fish processors will continue. This survey is conducted at least once each year to determine the amount of Atlantic mackerel, squid, and butterfish that will be processed during the season. This survey enables the Regional Director to determine DAP and the amounts that may later be made available to joint ventures. OMB has approved this survey (OMB Control #0648-0114). Also, the amendment continues the collection of information requirement for vessel permits, which has been approved though 1983 under OMB #0648-0097. Thus, under the amendment the paperwork burden is unchanged.

Administrative Procedure Act

For reasons stated in the "Emergency Action" section, the Assistant Administrator has found good cause to waive the period of delayed effectiveness under the APA.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Parts 655, 656 and 657

Fish, Fisheries, Fishing, Reporting requirements.

Dated: March 29, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 611, 655, 656, and 657 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*; unless otherwise noted.

2. Amend 50 CFR 611 by removing § 611.51 and § 611.52, and redesignating § 611.53 as § 611.51, and by revising § 611.50(b)(3) to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

(b) * * *

(3) TALFF. The TALFFs for the Northwest Atlantic Ocean fishery are

published in the Federal Register. Current TALFFs are also available from the Regional Director. The procedures for determining and adjusting the squid, mackerel, and butterfish TALFFs are set forth in 50 CFR Part 655.

§§ 611.51 and 611.52 [Removed]

§ 611.53 [Redesignated as § 611.51]

4. The authority citation for 50 CFR Parts 655, 656, and 657 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. 50 CFR Parts 655, 656, and 657 are consolidated and redesignated as Part 655 and revised to read as follows:

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Subpart A—General Provisions

Sec.

655.1 Purpose and scope.

655.2 Definitions.

655.3 Relation to other laws.

655.4 Vessel permits.

655.5 Recordkeeping and reporting requirements [Reserved].

655.6 Vessel identification.

655.7 General Prohibitions.

655.8 Enforcement.

655.9 Penalties.

Subpart B—Management Measures

655.20 Fishing year.

655.21 Allowable levels of harvest.

655.22 Procedures for determining initial annual amounts.

655.23 Reserve releases.

655.24 Closure of fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part govern fishing for Atlantic mackerel, *Illex*, *Loligo*, and butterfish by fishing vessels of the United States in the fishery conservation zone off the coasts of the Atlantic States.

(b) The regulations governing fishing for Atlantic mackerel, *Illex*, *Loligo*, and butterfish by vessels other than vessels of the United States are contained in 50 CFR Part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

§ 655.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

Area of custody means any vessel, building, vehicle, pier, or dock facility where Atlantic mackerel, squid, or butterfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or the individual to whom appropriate authority has been delegated.

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus*.

Atlantic mackerel or *mackerel* means the species *Scomber scombrus*.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying, and acting under the direction of, any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in the killing of any Atlantic mackerel, squid, or butterfish, or bringing any Atlantic mackerel, squid, or butterfish on board a vessel.

Charter or party boat means any vessel which carries passengers for hire to engage in fishing.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline used to measure the territorial sea.

Fishery management plan (FMP) means Amendment No. 3 to the Fishery Management Plans for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean, and any subsequent amendments.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Joint venture harvest means U.S.-harvested Atlantic mackerel, squid, or butterflyfish transferred to foreign vessels in the FCZ or in the internal waters of a State.

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Metric ton (mt) means 1,000 kilograms, or 2,204.6 pounds.

Official number means the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm St., Federal Building, Gloucester, MA, or a designee.

Secretary means the Secretary of Commerce, or a designee.

Squid means *Loligo pealei* and *Illex illecebrosus*.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel under five net tons which is registered under the laws of any State.

Vessel length means that length set forth in U.S. Coast Guard or State records.

§ 655.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles off the coast of North Carolina (35°00'23" N. latitude, 75°24'32" W. longitude).

§ 655.4 Vessel permits.

(a) *General.* Every vessel subject to this part must have a permit issued under this section. A vessel is exempt from this requirement if it catches no more than 100 pounds each of Atlantic mackerel, *Illex*, *Loligo*, or butterflyfish per trip.

(b) *Application.* (1) An application for a permit under this part must be submitted to the Regional Director and signed by the owner or operator of the vessel, on an appropriate form obtained from the Regional Director, at least 30 days before the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information (approved by the Office of Management and Budget under OMB control number 0648-0097):

(i) The name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the U.S. Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and the year the vessel was built;

(vi) The type of construction, type of propulsion, and the type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishing permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a range; and

(xi) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (b)(2) of this section must be reported by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Issuance.* The Regional Director will issue a permit to an applicant no later than 30 days from the receipt of a completed application.

(d) *Expiration.* A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(e) *Duration.* A permit will continue in effect until it expires or is revoked, suspended, or modified under 50 CFR Part 621.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request by any Authorized Officer.

(j) *Sanctions.* Subpart D of 50 CFR Part 621 governs the imposition of sanctions against a permit issued under this part. A permit may be revoked, modified, or suspended if the fishing vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or these regulations; or if a civil penalty or criminal fine imposed under the Magnuson Act is not paid.

(k) *Fees.* No fee is required for any permit issued under this part.

§ 655.5 Recordkeeping and reporting requirements. [Reserved]

§ 655.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* Number must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels equal to or over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length.

(c) The official number must be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the official number whenever the vessel is fishing for Atlantic mackerel, squid, or butterfish.

(d) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 655.7 General prohibitions.

It is unlawful for any person:

(a) To possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import, or export any Atlantic mackerel, squid, or butterfish taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(b) To refuse to allow an authorized officer to board a fishing vessel or to enter an area of custody subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation or permit under the Magnuson Act;

(c) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (b) of this section;

(d) To resist a lawful arrest for any act prohibited by this part;

(e) To interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by this part;

(f) To interfere with, obstruct, delay, or prevent by any means the lawful

investigation or search conducted in the process of enforcing this part;

(g) To transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel within the FCZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(h) To use any vessel for taking, catching, harvesting, or landing of any Atlantic mackerel, squid, or butterfish (except as provided in § 655.4 (a)) unless the vessel has on board a valid permit issued under § 655.4;

(i) To fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(b);

(j) To falsify or fail to affix and maintain vessel markings as required by § 655.6;

(k) To fail to comply immediately with enforcement and boarding procedures specified in § 655.8;

(l) To take and retain, or land more Atlantic mackerel, squid, or butterfish than specified under a notice issued under § 655.24;

(m) To violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

§ 655.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The VHF-FM radiotelephone is the normal method of communicating between vessels. Listen to VHF-FM channel 16 (emergency channel) for instructions to shift to another VHF-FM channel and to receive boarding instructions. Visual methods or loudhailer may also be used to communicate. The following signals, extracted from U.S. Hydrographic Office publication H.O. 102 International Code of Signals, may be communicated by flashing light or signal flags:

(1) "L", meaning "You should stop your vessel instantly."

(2) "SQ3", meaning "You should stop or heave to; I am going to board you".

(3) "AA AA AA etc.", is the call to an unknown station or general call. The operator should respond by identifying his vessel by radio, visual signs, or illuminating the vessels' official number.

(4) "RY—CY", meaning "You should proceed at slow speed. A boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and boarding party to come aboard;

(2) Provide a ladder, illumination, and a safety line when necessary or requested by the authorized officer to facilitate boarding and inspection; and

(3) Take such actions as the authorized officer deems necessary to facilitate and to ensure the safety of the authorized officer and the boarding party.

§ 655.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and 50 CFR Part 620 (Citations), 50 CFR Part 621, 15 CFR Part 904 (Civil Procedures), and other applicable laws.

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year is the 12-month period beginning April 1, and ending on March 31 of the following year.

§ 655.21 Allowable levels of harvest.

(a) *Maximum optimum yields.* (1) The optimum yields (OYs) during a fishing year may not exceed the following amounts:

Flax	30,000 mt.
Loigo	44,000 mt.
Butterfish	16,000 mt.

(2) For Atlantic mackerel, the OY may not exceed 30,000 mt if the spawning stock at the end of the upcoming year is estimated, under the procedures specified in the FMP, to be less than or equal to 600,000 mt. If the spawning stock at the end of the upcoming year is estimated to exceed 600,000 mt, the maximum OY is determined in accordance with paragraph (b)(ii) of this section.

(b) *Annual specifications.* Initial OYs and amounts for domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF) for each

species will be determined annually by the Secretary, under the procedures specified in § 655.22, consistent with the following:

(1) *Squid*. (i) Initial DAH is the amount of estimated domestic annual harvest.

(ii) Initial DAP is the estimated amount of initial DAH that domestic processors will process.

(iii) For *Illex*, TALFF plus Reserve equals 30,000 mt minus initial DAH, or 25,000 mt, whichever is less. For *Loligo*, TALFF plus Reserve equals 44,000 mt minus initial DAH, or 37,000 mt, whichever is less. TALFF and Reserve initially are equal amounts.

(iv) Initial OY is the sum of initial DAH and TALFF plus Reserve. However, OY may increase to the maximum OY specified in paragraph (a)(1) of this section if U.S. fishermen are able to harvest the difference between initial and maximum OY, in addition to the initial DAH and Reserve.

(2) *Atlantic mackerel*. In all cases, initial DAP is the estimated amount of initial DAH that domestic processors will process. In estimating the domestic annual harvest in the cases set forth below, the recreational catch will be predicted by the formula:

$Y = (0.008)(x) - (1.15)$, where "x" is equal to the current spawning stock size, and "Y" is the estimated recreational catch in thousands of metric tons.

(i) *Case 1*. If the spawning stock size at the end of the upcoming fishing year, estimated in accordance with the procedures specified in the FMP, is less than or equal to 600,000 mt, then:

(A) TALFF is a fixed percentage of the amount of other species allocated to foreign fishing vessels, as follows: 2 percent of the silver hake allocation and 1 percent each of the allocations for red hake, *Illex*, and *Loligo*.

(B) DAH is the amount of estimated domestic annual harvest.

(C) Optimum yield equals DAH plus TALFF.

(ii) *Case 2*. If the spawning stock size at the end of the upcoming fishing year, estimated under the procedures specified in the FMP, is more than 600,000 mt, then OY during that fishing year may not exceed the acceptable catch (AC). AC is that amount which, when taken in addition to the predicted catch in the Canadian fishery, would result in a spawning stock size of 600,000 mt at the end of the upcoming fishing year. AC plus the predicted Canadian catch may not exceed a fishing mortality rate of 0.4.

(A) If AC is less than 30,000 mt, then:

(1) TALFF equals the fixed percentages specified in paragraph (b)(2)(i)(C) of this section.

(2) DAH equals AC minus TALFF.

(3) OY equals DAH plus TALFF.

(B) If AC is greater than or equal to 30,000 mt, and DAH is less than 30,000 mt, then:

(1) TALFF equals the fixed percentages specified in paragraph (b)(2)(i)(C) of this section.

(2) OY equals 30,000 mt plus TALFF.

(C) If AC is greater than or equal to 30,000 mt, and DAH is greater than or equal to 30,000 mt, then:

(1) OY equals AC.

(2) Initial DAH is the estimated domestic annual harvest.

(3) TALFF plus Reserve. If OY minus DAH is less than 10,000 mt, then TALFF equals OY minus DAH (but no less than the fixed percentages specified in paragraph (b)(2)(i)(C) of this section), and there is no Reserve. If OY minus initial DAH is greater than or equal to 10,000 mt, then the difference between OY and initial DAH is divided evenly between TALFF and Reserve.

(3) *Butterfish*. (i) DAH is the estimated domestic annual harvest.

(ii) DAP is the estimated amount of DAH that domestic processors will process.

(iii) TALFF is a fixed percentage of the amount of other species allocated to foreign fishing vessels, as follows: 6 percent of the *Loligo* allocation, and 1 percent each of the allocations for *Illex*, Atlantic mackerel (when a directed fishery is allowed), silver hake, and red hake.

(iv) OY is the sum of DAH plus TALFF.

(c) *Allowable domestic harvest*. Fish taken in territorial waters (0-3 nautical miles) will be counted against the DAHs specified under this section. The allowable domestic harvest for each species is the OY (including OY as increased under paragraph (b)(1)(iv) of this section) minus TALFF.

§ 655.22 Procedures for determining initial annual amounts.

(a) On or about January 15 of each year, the Mid-Atlantic Council and its Scientific and Statistical Committee will prepare and submit recommendations to the Regional Director of the initial annual amounts for the fishing year beginning April 1, based on information gathered from sources specified in paragraph (e) of this section.

(b) By February 1 of each year, the Secretary will publish a notice in the Federal Register that specifies preliminary initial amounts of OY, DAH, DAP, TALFF, and Reserve (if any) for each species. The amounts will be based on information submitted by the Council and from the sources specified in paragraph (e) of this section; in the absence of a Council report, the

amounts will be based on information gathered from sources specified in paragraph (e) of this section and other information considered appropriate by the Regional Director. The Federal Register notice will provide for a 30-day comment period.

(c) The Council's recommendation and all relevant data will be available in aggregate form for inspection at the office of the Regional Director during the public comment period.

(d) On or about March 15 of each year, the Secretary will make a final determination of the initial amounts for each species, considering all relevant data and any public comments, and will publish a notice of the final determination and response to public comments in the Federal Register.

(e) Sources used to establish initial annual specifications include:

(1) Results of a survey of domestic processors and joint venture operators of estimated processing capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648-0114);

(2) Results of a survey of fishermen's trade associations of estimated fish harvesting capacity and intent to use that capacity (approved by OMB under OMB control number 0648-0114);

(3) Landings and catch statistics;

(4) Stock assessments; and

(5) Relevant scientific information.

§ 655.23 Reserve releases.

All or part of any Reserve may be allocated to TALFF following the procedures of this section.

(a) *Projections*. (1) *Squid*. (i) During August for *Illex*, and during September for *Loligo*, the Regional Director will project the total amounts of squid that will be harvested by U.S. fishermen during the entire fishing year. For *Illex*, catches from April through July (exclusive of joint venture harvest) will be multiplied by the factor determined under paragraph (a)(1)(ii) of this section to obtain a projected annual harvest. For *Loligo*, catches from April through August (exclusive of joint venture harvest) will be multiplied by the factor determined under paragraph (a)(1)(ii) of this section to obtain a projected annual harvest.

(ii) The multiplication factor for *Illex* will equal the proportion of the total U.S. landings (exclusive of joint venture harvest) during the previous fishing year, or the average annual U.S. landings since 1977, whichever is greater, compared to U.S. landings (exclusive of joint venture harvest) from April 1 through July 31 of the previous fishing year. The factor for *Loligo* will

equal the proportion of the total U.S. landings (exclusive of joint venture harvest) during the previous fishing year, or the average annual U.S. landings since 1977, whichever is greater, compared to U.S. landings (exclusive of joint venture harvest) from April 1 through August 31 of the previous fishing year.

(iii) If any permits authorizing receipt of joint venture harvest have been issued to foreign processing vessels, or if the Secretary intends to issue such permits during the remainder of the fishing season, the Secretary will add to the projected annual harvest the amounts of *Illex* or *Loligo* authorized or expected to be authorized under such permits.

(iv) If the projected amount of *Illex* or *Loligo* to be harvested by U.S. fishermen, including joint venture harvest, exceeds the initial DAH specified under § 655.21(b)(1), the Secretary will leave the necessary amount in Reserve. The Secretary will allocate all of the remainder of the Reserve to TALFF. If the projected amount of *Illex* or *Loligo* to be harvested by U.S. fishermen, including joint venture harvest, does not exceed the initial DAH, the Secretary will allocate the entire Reserve to TALFF.

(2) *Atlantic mackerel*. If there is a Reserve, the Regional Director during October will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year, based on U.S. landings through September and on the results of a survey of the intent of domestic fishermen to harvest mackerel during

the remainder of the year. If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial DAH specified in § 655.21(b)(2)(ii)(C), the Secretary will leave the necessary amount in Reserve. The Secretary will allocate all of the remainder of the Reserve to TALFF. If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial DAH, the Secretary will allocate the entire reserve to TALFF.

(b) *Notice of allocation*. (1) *Squid*. On or about September 1 for *Illex* and October 1 for *Loligo*, the Secretary will:

(i) Notify the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the decision whether to allocate any of the Reserve to TALFF; and

(ii) Publish a notice of the decision in the *Federal Register*.

(2) *Atlantic mackerel*. (i) If there is a Reserve, the Secretary, on or about November 1, will publish a notice in the *Federal Register* stating the amount of mackerel proposed to be allocated from Reserve to TALFF. The notice will contain the latest catch statistics available. The public may comment on the proposed allocation for 15 days after the date of publication.

(ii) The Secretary will publish a final notice of the Reserve allocation in the *Federal Register*. The notice will contain a summary of all comments and relevant information received during the comment period.

(c) *Subsequent Reserve allocation*. After the first Reserve allocation, the

Secretary may allocate any remaining portion of the Reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. The Secretary will notify the Executive Directors of the Councils of any subsequent allocation, and will publish a notice in the *Federal Register*.

§ 655.24 Closure of the fishery.

(a) *General*. The Secretary shall close any fishery in the FCZ for any species when U.S. fishermen have harvested 80 percent of the allowable domestic harvest (see § 655.21(c)), if such closure is necessary to prevent the allowable domestic harvest from being exceeded. The closure will be in effect for the remainder of the fishing year.

(b) *Notice*. If the Secretary determines that a closure is necessary, he will:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under § 655.5 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notice of the closure to recreational fishermen in the fishery; and

(4) Publish a notice of closure in the *Federal Register*.

(c) *Incidental catches*. During a period of closure, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board.

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H.R. 1936/Pub. L. 98-14 To amend title 37, United States Code, to extend certain expiring enlistment and reenlistment bonuses for the Armed Forces. (Mar. 30, 1983; 97 Stat. 55) Price: \$1.75