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federal register

Thursday
November 3, 1983

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Postal Rate Commission

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Food and Drug Administration

Cultural Exchange Programs
United States Information Agency

Flood Insurance
Federal Emergency Management Agency

Food Assistance Programs
Food and Nutrition Service

Foreign Investments in U.S.
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Environmental Protection Agency

Household Appliances
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Imports
Animal and Plant Health Inspection Service

Income Taxes
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5123 of November 1, 1983

National Drug Abuse Education Week, 1983

By the President of the United States of America

A Proclamation

Drug abuse in the United States continues to be a major threat to the future of our Nation. Millions of our citizens are risking their health and their future by abusing drugs. The effects are clearly demonstrated by the tragic reports in daily news accounts of innocent people killed by drunk drivers, death by overdose, drug-related murders, drug smuggling, and other public outrages. Less obvious, but more pervasive, are the individual tragedies which destroy a person or family and which may cause loss of a job, interruption of schooling, and a reduction in our Nation's productivity.

Federal, State, and local governments have established programs to reduce the supply of illegal drugs. Similarly, government has encouraged the establishment of facilities for providing medical treatment for those suffering from this problem and sponsored extensive research on the effects of drug use. However, government cannot hope to solve the problems of drug abuse without the help of every American.

Drug abuse is a national problem and a target of a nationwide program. All across America, our citizens, community organizations, and the private sector have recognized that they can make a difference in the battle against this serious concern. Expanded drug abuse awareness efforts, the banding together of concerned parents, and the involvement of many community groups are lowering the rate of drug abuse which prevailed during the Seventies. There has been increasing attention focused on the potential of mass communications to discourage drug abuse.

Numerous public education efforts are epitomized in the excellent Chemical People Project which will be presented on public broadcasting stations across the United States on November 2 and 9, 1983. The Chemical People Project is an example of how a grassroots approach to organizing town meetings and community efforts can break through the "wall of denial" common to alcohol and drug abuse and can stimulate constructive action where it counts—in ourselves. We must continue to encourage and support efforts to educate our citizens to the health and societal consequences of drug abuse. Such efforts are an essential foundation for a successful national program to reduce and prevent drug abuse in our country.

In order to draw attention to the seriousness of the drug abuse problem and to encourage the education of parents and children in the home, classroom, and community to the impact of illegal drug abuse, the Congress, by Senate Joint Resolution 57, has designated the week of November 2 through November 9, 1983, as National Drug Abuse Education Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 2 through November 9, 1983 as National Drug Abuse Education Week. I call on all Americans to join the battle against drug abuse to protect our children so that we ensure a healthy and productive generation of Americans as our contribution to the future.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-30042
Filed 11-2-83; 10:34 am]
Billing code 3195-01-M

Editorial Note: For the President's remarks of Nov. 1, 1983, on signing Proclamation 5123, see the *Weekly Compilation of Presidential Documents* (vol. 19, no. 44).

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 434, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of California-Arizona lemons that may be shipped to the fresh market during the period October 23–29, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: October 23–29, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met by telephone on October 27, 1983, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to present information and views on the amendment during the telephone meeting, and it relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.734 Lemon Regulation 434 (48 FR 48793) is revised to read as follows:

§ 910.734 Lemon regulation 434.

The quantity of lemons grown in California and Arizona which may be handled during the period October 23, 1983, through October 29, 1983, is established at 205,000 cartons.

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

Dated: October 28, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-29812 Filed 11-2-83; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 83-079]

9 CFR Part 92

Importation of Horses; Mares From Countries Affected With CEM

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which allowed mares over 731 days of age from countries affected with contagious equine metritis (CEM) to be moved from the port of importation to the University of California Veterinary College, Davis, California, when surgery required to be performed in the country of origin in order to qualify the mares for importation into the United States is found to be incomplete. This rule is needed to provide a place for treating such mares nearer to west coast ports than Ithaca, New York, which was the only place where such mares could be taken for treatment. The effect of this rule is to provide importers with a choice of facilities where they can obtain required treatment for certain mares over 731 days of age which would otherwise be refused entry into the United States.

EFFECTIVE DATE: November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, VS, APHIS, USDA, Room 844–AAA, Federal Building, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

Section 92.2(i)(2) of the regulations in 9 CFR Part 92, among other things, authorizes the importation of certain female horses (mares over 731 days of age) into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met. One of the requirements is that

a licensed veterinarian surgically removes the clitoral sinuses of such mares in the country of origin. This surgical procedure is new, difficult to perform, and difficult to evaluate. Some of the mares presented for importation under this provision have been found to have one or more complete or partial clitoral sinuses still present, even though they had been surgically treated and were accompanied by the required certificate.

Because of the severe hardship which would otherwise be imposed on the owners of such animals, a document was published in the **Federal Register** on April 1, 1983 (48 FR 13965–13966) amending § 92.2(i)(2)(v) of the regulations in 9 CFR Part 92 on an interim basis. This amendment allowed corrective surgery to be performed on such mares in the United States at the University of California Veterinary College, Davis, California. Prior to the publication of this amendment, such corrective surgery could only be performed at The School of Veterinary Medicine, Cornell University, Ithaca, New York.

The interim rule was made effective on the date it was published, April 1, 1983, in order to relieve as soon as possible unnecessary restrictions that had been placed on importers of these mares.

Comments were solicited for 60 days after publication of the amendment. No comments were received.

The factual situation which was set forth in the document of April 1, 1983, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment or investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291 and the Department of Agriculture has waived the requirements of Secretary's Memorandum 1512–1.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it is anticipated that it will affect only a portion of the approximately 20 mares out of 6,000 horses imported into the United States each year which come from countries where CEM is known to exist and which arrive in the United States without the required surgical treatment.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation, Contagious equine metritis (CEM).

Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on April 1, 1983.

(Sec. 2, 32 Stat. 792, as amended, secs. 2, 4, 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C. this 31st day of October, 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 83-29802 Filed 11-2-83; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3119]

Dillon Companies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Hutchinson, Kansas operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of 5 years, the company is prohibited from requiring price checkers to purchase items to be priced, as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. Additionally, the order requires the company to offer to reimburse TeleCable up to $1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, the company is further required to post signs and place newspaper ads notifying the public that such a program is being broadcast.

DATE: Complaint and Order issued Oct. 13, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS–6, Patricia A. Bremer, Washington, D.C. 20580 (202) 724–1256.

SUPPLEMENTARY INFORMATION: On Wednesday, August 3, 1983, there was published in the **Federal Register**, 48 FR 35132, a proposed consent agreement with analysis In the Matter of Dillon Companies, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.395 To control marketing practices and conditions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements: § 13.533–25 Displays, in-house.

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 83-29791 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket C-3121]

Great Dane Distributor Council; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits an unincorporated association of truck trailer dealers, and its individual members, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. The dealer's association must distribute a copy of the order to all current and future members and ensure that members' sales personnel are provided with a copy of the order.

DATES: Complaint and Order issued Oct. 13, 1983.[1]

FOR FURTHER INFORMATION CONTACT: Roger E. Meiners, Director, 1R, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367, (404) 881-4836.

SUPPLEMENTARY INFORMATION: On Wednesday, May 11, 1983, there was published in the **Federal Register**, 48 FR 21156, *correction*, 48 FR 24092, a proposed consent agreement with analysis In the Matter of Great Dane Trailers, Inc., a corporation; and Great Dane Distributor Council, an unincorporated association, and its members, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.388 To control allocation and solicitation of customers; § 13.395 To control marketing practices & conditions; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Subpart—Cutting Off Access to Customers or Market: § 13.580 Organizing and controlling seller-suppliers.

List of Subjects in 16 CFR Part 13

Trade practices, Truck trailers.

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

Emily H. Rock,

Secretary.

[FR Doc. 83-29787 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket C-3120]

Great Dane Trailers, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits the manufacturer and seller of Great Dane truck trailers, among other things, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. Great Dane Trailers, Inc. is barred from entering into any agreement with the Great Dane Distributor Council, a dealer's association, or its members, to restrict sales to certain territories or customers; and from formulating or utilizing exclusive territories until Dec. 1, 1984. The manufacturer must make available to dealers and customers a brochure listing all independent dealers and advise customers that any dealer may be contacted regarding the purchase of a new Great Dane truck trailer.

DATES: Complaint and Order issued Oct. 13, 1983.[1]

FOR FURTHER INFORMATION CONTACT: Roger E. Meiners, Director, 1R, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367, (404) 881-4836.

SUPPLEMENTARY INFORMATION: On Wednesday, May 11, 1983, there was published in the **Federal Register**, 48 FR 21156, *correction*, 48 FR 24092, a proposed consent agreement with analysis in the Matter of Great Dane Trailers, Inc., a corporation; and Great Dane Distributor Council, an unincorporated association, and its members, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.388 To control allocation and solicitation of customers; § 13.395 To control marketing practices and conditions; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Subpart—Cutting Off Access to Customers or Market: § 13.580 Organizing and controlling seller-suppliers.

List of Subjects in 16 CFR Part 13

Trade practices, Truck trailers.

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

Emily H. Rock,

Secretary.

[FR Doc. 83-29786 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket 6235]

New York Coffee and Sugar Exchange, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Vacating order.

SUMMARY: The Federal Trade Commission has reopened this proceeding and vacated its order issued on April 1, 1955 (20 FR 3427), in light of the Commodity Futures Trading Commission's exclusive jurisdiction over respondents' activities.

DATES: Consent Order Issued April 1, 1955. Vacating Order Issued Oct. 18, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Elliot Feinberg, Washington, D.C. 20580. (202) 634–4606.

SUPPLEMENTARY INFORMATION: In the Matter of New York Coffee and Sugar Exchange, Inc., et al., a corporation. Codification appearing at 20 FR 3427 is deleted.

List of Subjects in 16 CFR Part 13

Commodities exchange, Trade practices.

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

Order Vacating Cease and Desist Order Issued on April 1, 1955

[Docket No. 6235]

In the matter of New York Coffee and Sugar Exchange, Inc., et. al., a corporation.

On April 1, 1955, the Federal Trade Commission, pursuant to Section 5 of the Federal Trade Commission Act, as amended, issued the consent order in this case against the New York Coffee and Sugar Exchange, Inc., et al. (now known as the Coffee, Sugar and Cocoa Exchange), prohibiting, among other things, the use of certain restrictive contracts for trading in coffee futures.

Since enactment of the Commodity Futures Trading Commission Act, in 1974, 7 USC §§ 1 et seq., the Exchange's activities have come under the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC"). Because the conduct covered by the Commission's order is now specifically regulated by the CFTC, the Commission has determined that it would be in the public interest to vacate its order in Docket No. 6235.

On August 1, 1983, the Commission issued an order to show cause why the order in Docket No. 6235 should not be vacated. The proposed action was accepted by the respondents.

Accordingly,

It is ordered, that this matter be, and it hereby is, reopened and that the order in Docket No. 6235 be vacated.

By direction of the Commission.

Issued: October 18, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-29788 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3122]

Spinal Health Services, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires two Florida chiropractors and the two companies which they operate, among other things, to cease representing without competent and reliable scientific tests or evidence, that their "laser face lift" or "biostimulation face lift" will reduce, smooth out or remove facial lines, depressions and wrinkles or otherwise give the recipient a more youthful facial appearance; or that their cosmetic treatment will provide as long-lasting an improvement as that of a surgical face lift. The order also requires that respondents retain documentation substantiating claims for a period of three years, and provide its sales and advertising personnel with a copy of the order and an acknowledgement form.

DATES: Complaint and Order issued Oct. 13, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PS, Matthew Daynard, Washington, D.C. 20580. (202) 523–3427.

SUPPLEMENTARY INFORMATION: On Monday, August 1, 1983, there was published in the **Federal Register**, 48 FR 34764, a proposed consent agreement with analysis In the Matter of Spinal Health Services, Inc., a corporation, Laser Toning Center, Inc., a corporation, Fred J. Gehl, D.C., and Samuel Lux, D.C., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections to the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation.

List of Subjects in 16 CFR Part 13

Doctors, Medical care, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 83-29789 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

16 CFR Part 13

[Docket C-3118]

Washington, D.C., Dermatological Society; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Washington, D.C. medical society, among other things, to cease inhibiting competition by restricting or advising member dermatologists against the truthful advertising of their fees and services; and by declaring such activities unethical. The society is required to remove from its Principals of Professional Conduct, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order also requires that the society take no formal action against a person charged with violating an ethical standard without first providing that person with a reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of 5 years, the society is required to provide each new member with a copy of the complaint and order in this matter.

DATES: Complaint and order issued Oct. 5, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS–6, Jill M. Frumin, Washington, D.C. 20580. (202) 724–1342.

SUPPLEMENTARY INFORMATION: On Monday, July 18, 1983, there was published in the **Federal Register**, 48 FR 32600, a proposed consent agreement

[1] Copies of the Complaint and the Decision and Order filed with the original document.

with analysis In the Matter of Washington, D.C., Dematological Society, a corporation, for the purpose of soliciting pubic comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements.

List of Subjects in 16 CFR Part 13

Medical societies, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 83-29790 Filed 11-2-83; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1406

Performance and Technical Data for Coal and Wood Burning Appliances; Reporting Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues a requirement that manufacturers and importers of coal and wood burning stoves, freestanding fireplaces, and similar appliances provide to the Commission copies of performance and technical data that are required to be supplied with these appliances by a previously-issued Commission regulation. Part of the required data is in the form of labeling on the device, including the depiction of installation clearance distances; also, complete installation, operation, and maintenance directions are required to be furnished with the appliance. The rule being issued also requires the submission of a statement of how the clearance distances (required by the previous rule to be stated on the appliance and in the instructions) were determined. The Commission is requiring the submission of this information, along with the required labeling and directions, in order to assist the Commission in determining that the proper information is being furnished with the appliances. This requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act. [Control No. 3041-0040.]

DATE: This rule is effective December 6, 1983. Copies of the required data shall be furnished to the Commission by that date or within 30 days after any change in the data or introduction of a new model.

ADDRESSES: All materials the Commission has that are relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, Room 326, 5401 Westbard Avenue, Bethesda, Maryland 20207, phone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Wade Anderson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1983, the Commission issued a rule under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e), requiring that certain performance and technical data be provided with coal and wood burning stoves, freestanding fireplaces, and similar appliances. 16 CFR Part 1406; 48 FR 21898.[1] Part of the data required to be furnished is in the form of labeling on the device, including the depiction of installation clearance distances, and complete installation, operation, and maintenance directions are also required to be furnished with the appliance.

A complete explanation of the provisions and rationale for this rule is set forth in the **Federal Register** notice that issued the rule.

When this rule was initially proposed, it included a requirement that manufacturers, including importers, of the appliances provide the Commission with copies of the directions and labeling that they are using to satisfy the requirements of 16 CFR Part 1406. Under the proposal, manufacturers would also provide to the Commission a statement of how the clearance distances that are required by the rule to be stated on the appliance were determined. Submission of these data is required so the staff can determine (1) that the specific statements required by the rule are present, (2) that other types of information required by the rule, but not required to be in specific language, are present, and (3) whether the clearance distances stated appear appropriate or whether further investigation is necessary.

When 16 CFR Part 1406 was issued, the Commission stated that these proposed information submission requirements would be issued after they had been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This approval has now been obtained (OMB Control No. 3041-0040), and the requirements are issued below.

Comment on the Proposal

One comment on the proposed rule related to the requirement to submit data to the Commission. This commenter stated that the proposed rule did not provide any protection against disclosure of test data submitted to the Commission to a party who requested it under the Freedom of Information Act. The commenter stated that the rule should provide such protection.

In general, the Commission does not have the authority to withhold information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, unless the information fits into one of the exemptions provided in 5 U.S.C. 552(b). The exemption that could fit the situation described by this commenter is in paragraph (4) of that section, which concerns "trade secrets and commercial or financial information obtained from a person and privileged or confidential." If the information submitted fits into this category, under 15 U.S.C. 2055(a)(2) the Commission would be prohibited from disclosing it. Therefore, exemption (3) of the FOIA (which exempts items that are specifically exempted from disclosure by statute, under certain conditions) would also be applicable. Disclosure of trade secrets and certain other types of confidential information is also prohibited by 18 U.S.C. 1905. Furthermore, under 15 U.S.C. 2055 (with certain exceptions), the Commission may not release information that would enable the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product unless (1) the Commission notifies the manufacturer or private labeler of the intended disclosure, (2) provides them an opportunity to comment, and (3) takes the reasonable steps provided in 15 U.S.C. 2055(b). This section provides

[1] The rule was approved by a 4-0 vote of the Commission. Newly appointed Commissioner Terrance Scanlon abstained.

such party with an opportunity to seek an injuction barring the disclosure if the party believes the information to be disclosed is inaccurate.

These statutory procedures should provide adequate protection against the disclosure of test data submitted to the Commission under the requirement of 16 CFR 1406.5. Therefore, no changes in the rule are needed in this regard.

Economic and Environmental Effects

The possible effects of the requirement for manufacturers to provide data to the Commission were considered as part of the rule issued by the Commission on May 16, 1983 (48 FR 21898). In the **Federal Register** notice issuing those requirements, the Commission noted that the overall estimated cost of the rule to manufacturers, including the cost of providing information to the agency, would be up to about $2.05 per stove for most firms. As mentioned in that notice, the information submission requirement accounts for a negligible portion of the overall cost, and issuance of this requirement would have no significant economic impact on manufacturers, distributors, or consumers. Therefore, in accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Commission certifies that issuance of this rule will not have a significant economic impact on a substantial number of small entities, including small manufacturers and distributors, testing organizations, and local governments. Similarly, issuance of the information submission requirement would have no significant environmental effects; thus, no environmental impact assessment is needed.

Penalties

Failure to submit the data as required by this regulation is a prohibited act, as specified in section 19(A)(9) of the CPSA, 15 U.S.C. 2068(a)(9), and could lead to civil and criminal penalties under sections 20 and 21 of the CPSA, 15 U.S.C. 2069, 2070. Section 21 provides criminal penalties for violations after notice, consisting of fines of not more than $50,000 and imprisonment for not more than one year. Section 20 provides for a civil penalty not to exceed $2,000 for each violation, with a maximum civil penalty of $500,000 for any related series of violations. In addition, section 22 of the act, 15 U.S.C. 2071, authorizes the Commission to obtain an injunction from a United States district court to restrain a violation of the notification requirement.

Statutory Findings

The rule is issued under section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 207(e), which authorizes the Commission to require manufacturers of consumer products to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the purposes of the act. As provided in section 2(b) of the CPSA, 15 U.S.C. 2051(b), two of the purposes of the act are (a) to protect the public against unreasonable risks of injury associated with consumer products and (b) to assist consumers in evaluating the comparative safety of consumer products.

1. *Protecting the public from unreasonable risks of injury.* The estimates of fire incidents that are associated with coal and wood burning appliances show that there is a substantial risk associated with their use. This risk has been addressed by the requirements of 16 CFR Part 1406 at a minimal cost to the consumer. Providing this information to consumers should reduce the number of improperly installed appliances and increase the number of consumers who know how to operate and maintain these devices properly. The Commission therefore concluded that there is an unreasonable risk of injury associated with those coal and wood burning appliances that do not provide the notices and directions required by Part 1406.

2. *Comparative safety.* The requirements of Part 1406 will aid the public in determining which appliances can be safely installed in the space available. This knowledge facilitates the consumer's choice of an appliance to suit his or her installation situation.

Therefore, in order to carry out the purposes of the CPSA to protect the public against unreasonable risks of injury and to assist the public in evaluating the comparative safety of consumer products, the Commission concluded that it is necessary to require the manufacturers of these products to provide the notifications described in Part 1406. The Commission concludes at this time that it is also necessary to require manufacturers (including importers) of these products to submit to the Commission copies of the labels and directions required by Part 1406, as well as to submit to the Commission a statement of how the distances to combustibles required to be stated by § 1406.4 (a)(1) were determined. These submissions are required to help ensure that the appropriate information is being provided to consumers as required by Part 1406.

List of Subjects in 16 CFR Part 1406

Advertising, Consumer protections, Fire prevention, Housing standards, Labeling.

PART 1406—[AMENDED]

Accordingly, under provisions of the Consumer Product Safety Act (secs. 2, 27(e), Pub. L. 92–573, 86 Stat. 1207, 1228; 15 U.S.C. 2051, 2076(e)), the Commission amends Part 1406, Subchapter B, Chapter II, of Title 16 of the Code of Federal Regulations as follows:

§ 1406.1 [Amended]

1. The following sentence is added to the end of § 1406.1(a):

* * * This Part 1406 also requires these manufacturers to provide to the Commission a copy of the notification to consumers and a statement of the reasons supporting the manufacturer's conclusion that certain clearance distances contained in the notification are appropriate for preventing fires.

(OMB Control No. 3041–0040)

2. The following new paragraph (c)(3) is added to § 1406.1:

(c) * * *

(3) Section 1406.5 is effective December 6, 1983.

3. In § 1406.1(c)(1), the introductory phrase "Except as provided in paragraph (c)(2) of this section" is changed to read "Except as provided in paragraphs (c)(2) and (c)(3) of this section".

§ 1406.2 [Amended]

4. The following new paragraph (c) is added to § 1406.2:

* * * * *

(c) The Commission has also determined that in carrying out these purposes of the act, it is necessary for manufacturers to provide to the Commission a copy of the information provided to consumers and a statement of the reasons why some of the information was selected, in accordance with § 1406.5.

5. The following new § 1406.5 is added:

§ 1406.5 Performance and technical data to be furnished to the Commission.

Manufacturers, including importers, of coal and wood burning appliances as defined in § 1406.3(a) shall provide to the Commission the following performance and technical data related to performance and safety.

(a) *Written notice.* Manufacturers shall provide to the Commission copies of the written notice required by § 1406.4(a). If the written notice is provided to purchasers in a way, such as by casting or stamping the notice into the stove, that makes it impractical to furnish a sample of the actual notice to the Commission, the manufacturer will provide an actual-size copy of the notice and a description of the forming process.

(b) *Directions.* Manufacturers shall provide to the Commission a copy of the directions required by § 1406.4(b).

(c) *Rationale.* Manufacturers shall provide to the Commission a statement of how the distances to combustibles required to be stated by § 1406.4(a)(1) were determined. In addition, the maufacturer will state the type of appliance, its fuel, size, and weight, and the material of which it is constructed, unless this information is included in the directions submitted under paragraph (b) of this section.

(d) *General.* (1) The information required to be submitted under paragraph (a) through (c) of this section shall be submitted for each distinct design or model of appliance manufactured. An appliance will be considered to be a distinct design or model if it differs from other appliances of the same manufacturer by functional differences such as performance, weight, size, or capacity. Differences in cosmetic or other nonfunctional features do not require the submission of additional information.

(2) The written notice, directions, and rationale shall be provided to the Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207, by December 6, 1983. If there is a susequent change in the component materials or design features of a model for which this information was proviously submitted that could cause the model to require different clearances from combustibles or a different type of chimney, or if a new product is introduced into United States commerce, the required information shall be submitted within 30 days after the change or introduction.

(Approved by Office of Management and Budget under control number 3041-0040)

Dated: October 31, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-29881 Filed 11-2-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ralston-Purina Co. providing for use of a 48-gram-per-pound pyrantel tartrate premix to make a 19.2-gram-per-pound pyrantel tartrate intermediate premix for making complete swine feeds.

EFFECTIVE DATE: November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63164, is sponsor of NADA 135-941. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix supplied by Pfizer, Inc., to make a 19.2-gram-per-pound pyrantel tartrate intermediate premix for making complete swine feeds used for aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; for aid in prevention of establishment, removal, and control of nodular worm (*Oesophagostomum* spp.) infections; and for removal and control of large roundworm (*Ascaris suum*) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.485 is amended by revising paragraph (a)(2) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(2) To 017800: 19.2 and 48 grams per pound, paragraph (e)(1) through (3) of this section

* * * * *

Effective date. November 3, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 27, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-29815 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Programs

AGENCY: United States Information Agency.

ACTION: Interim rule and request for comments.

SUMMARY: 22 CFR §§ 514.11, 514.13(b) and 514.17 are modified (1) to reflect organizational changes at the U.S.I.A., (2) to update minimum requirements for designating Teenage Exchange Visitor Programs, and (3) to develop a due process procedure for revocation or suspension of designation of an Exchange Visitor Program. The modifications clarify and update existing regulations.

EFFECTIVE DATE: Comments are due December 5, 1983. The interim rule shall be effective November 3, 1983 and shall remain in effect until the publication of a final rule. However, the effective date for § 514.13(b)(12) shall be published at a later date.

ADDRESSES: Send comments to: Richard L. Fruchterman, Assistant General Counsel, United States Information

Agency, 400 "C" Street, SW., Room 700, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Richard L. Fruchterman Assistant General Counsel, United States Information Agency 400, "C" Street, SW., Room 700, Washington, D.C. 20547 (202) 485–7976.

SUPPLEMENTARY INFORMATION: The United States Information Agency (USIA) modifies its regulations regarding exchange visitors (1) to reflect organizational changes at the USIA, (2) to update minimum requirements for designating Teenage Exchange Visitor Programs, and (3) to develop a due process procedure for revocation or suspension of designation of an Exchange Visitor Program. The modifications clarify and update existing regulations.

Under § 514.11, intending sponsors are to apply to the Director of the USIA. By Delegation Order No. 83–5 dated January 13, 1983, Charles Z. Wick the Director of USIA, delegated his authority to designate Exchange Visitor Programs to the General Counsel and Congressional Liaison. Therefore, § 514.11 is modified to reflect this organizational change.

Additionally, a new subsection is added regarding misrepresentation of the designation. It has come to our attention that some designated sponsors have been using their designation number in such a way that would imply that their program is approved or sponsored by the Agency, or that the Agency or U.S. Government supports the program. Further, some parties apparently have used this designation which governs J–1 visas for foreign visitors in the U.S., in a manner which implies that this Agency has examined their programs for U.S. citizens abroad. Accordingly, we are adding a new subsection on misrepresentation, so that misuse of the designation could result in revocation or suspension of designation.

Section 514.13(b) has been rewritten and re-ordered so that existing obligations of sponsors are clarified. There are several changes which are significant. Discussion of the changes and the reasons therefore follows.

Under the present regulation at § 514.13(b)(2) a sponsor is responsible for providing minimum medical/accident coverage of $2,000 per injury or illness, and for a minimum of $1,500 for preparation and transportation of remains to the home country. Because inflation has affected the cost of medical care it is thought that the minimum of $2,000 and $1,500 could be inadequate in serious cases. Therefore, under the renumbered § 514.13(b)(4), the minimum medical and accident coverage is raised to $15,000 per injury or illness and to $5,000 for preparation and transportation to home country.

Under § 514.13(b)(3)(ii)(D) sponsors are required to notify students of their home placement at least five weeks prior to their departure for the United States. This five week requirement has worked a hardship on the sponsors. Therefore, in the new interim §514.13(b)(7) the time frame is changed from five weeks to three weeks.

The requirement in new §514.13(b)(8) that a student is to be placed with a single host family for the entire academic year is new. It is in the best interest of the student and the formation of good relationships with the host family, that one sound relationship be developed. This can be facilitated by limiting a student's experience to one family only. The regulation allows re-assignment of host families only in extraordinary situations. Whenever a re-assignment is made, the sponsor is required to document the reasons therefore, retain the documents in the sponsor's records, and to make these records available to USIA for inspection. Additionally, because sound host family exchange student relations are delicate, it allows only one teenage Exchange-Visitor with any one host family at any one time without prior written permission of the USIA.

The interim § 514.13(b)(12) specifies the content of the annual report to the USIA. The present regulation at § 514.13(b)(7) requires submission of an annual report but does not specify the content. It is hoped that the new regulation will aid sponsors and the Agency in developing annual reports that are useful to both parties. This requirement is presently before OMB for review pursuant to the Paperwork Reduction Act. Upon approval by OMB, USIA will notify the public, by publication in the **Federal Register**, that this paragraph is effective.

Interim § 514.13(b)(13) is new. However, it merely codifies existing Agency practice so that the public is aware of Agency procedure. This new section states that the Agency will determine the number of Forms IAP–66 to be issued to each sponsor on the basis of information contained in the annual report so as to ensure that sponsor does not bring in more teenage Exchange-Visitors then the sponsor can supervise in accordance with the provisions set forth in the regulations.

Section 514.17, "Revocation or Suspension of Designation", has been completely revised. The section provides that the Agency may suspend or revoke the designation of the sponsor's program for violation of any of the provision of the regulations. The section outlines a procedure whereby due process is provided whenever a program is challenged.

Interim § 514.17(a) provides that the General Counsel or his delegate, upon no less than 10 days written notice, may suspend a sponsor for a period not to exceed 60 days where there is found to be a willful violation of one of the provisions and that violation could endanger the health, safety or welfare of the participants in the program. The section provides for response by the sponsor and written notice to all agencies which would be affected by the suspension.

Interim § 514.17(b) sets forth the bases for revocation of designation of a sponsor. The designation could be revoked for any sufficient cause including but not limited to (1) a continued or repeated failure to comply with the provision, (2) failure to submit required complete, current and accurate reports, or (3) conduct which brings the program into disrepute.

Section 514.17(e) provides for a formal proceeding and a hearing pursuant to Title 5, United States Code, Sections 556 and 557.

Section 514.17(d) requires notification of the revocation to all affected organizations. However, this section provides that revocation does not invalidate visas issued under the sponsor's programs nor diminish the sponsor's legal or financial responsibilities toward visitors already enrolled in the programs.

Section 514.18 states that authority to act under this Subpart resides in the General Counsel, his or her Deputy or delegate.

Section 514.19 states that a program which has been inactive for more than two years may be revoked.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export

markets. Accordingly, the following modifications to Chapter V, Part 514 are adopted on an interim basis.

PART 514—[AMENDED]

1. § 514.11 is revised to read as follows:

§ 514.11 Application for Exchange-Visitor Program designation

(a) *Application.* Any intending sponsor may apply to the Exchange Visitor Facilitative Staff of the Office of General Counsel and Congressional Liaison of the U.S. Information Agency for designation of one of the organization's programs as an Exchange-Visitor Program. Such application should be made on Form IAP-37, "Exchange-Visitor Program Application." The application shall be completed in all details and shall be submitted to the *Exchange Visitor Facilitative Staff,* United States Information Agency, GC/V, Washington, D.C. 20547 with required supporting documentation, including an audited an certified financial statement if indicated. The officer who signs the application thereby indicates a willingness to assume the duties of Responsible Officer for administering the sponsor's program if it is designated. Official correspondence concerning a designated program will be conducted only between the Agency and the Responsible Officer or duly designated alternate.

(b) *Misrepresentation.* Organizations with designated programs may, in their literature, indicate that they have been designated as a program sponsor by the USIA for foreign exchange visitors in the United States. They shall not imply that the program is approved or sponsored by the Agency or U.S. Government or imply that the Agency or U.S. Government supports their programs. Further, the designation number shall not be used on literature or other materials used for the purpose of attracting U.S. Exchange Visitors into their programs.

2. 514.13 is amended by revising paragraph (b) to read as follows:

514.13 Sponsor obligations—specific.

* * * * *

(b) *Teenager-Exchange Visitors.* The Teenager-Exchange-Visitor Program is designed to give teenage students from other countries an opportunity to spend from six months to one year studying at a high school or other educational institution in the United States. Under this program a foreign student is placed by the Exchange-Visitor sponsor with a United States family which serves as the host family for the duration of the visit. The primary purpose of this program is to improve the foreign student's knowledge of American culture and language through active participation in family, school and community life. A secondary purpose is to improve American knowledge of a foreign culture. This sub-section sets forth the specific criteria and sponsor obligations applicable to the Teenager Exchange-Visitor Program.

(1) *Tax-exempt Status of Sponsor.* The Exchange-Visitor Program Sponsor shall maintain current tax-exempt status from the Internal Revenue Service pursuant to Section 501(c)(3) of the United States Internal Revenue Code as amended.

(2) *Selection of Student.* The sponsor shall be fully responsible for the selection of suitable students for participation in its teenage program. It may utilize the services of organizations engaged in student exchanges in other countries to assist in the selection of suitable students, but shall not under any circumstances use professional recruiters, or employment or travel agencies either in the United States or abroad for the recruitment of foreign students. Selection shall be limited to secondary school students or recent graduates between the ages of 15 and 19 years who have a sufficient command of the English language to enable them to function well in an English-speaking academic and community environment. Students shall also be screened for demonstrated maturity, good character and ability to derive maximum benefit from the program experience.

(3) *Orientation of Students and Host Families.* The sponsor shall provide all students with suitable orientation both prior to departure from their homes and upon arrival in the United States to acquaint them in advance, to the maximum extent feasible, with the United States, its people, and its family and school life as well as providing each of them with detailed knowledge of the nature of the particular academic program in which he or she will be participating. Wherever feasible the sponsor shall include former participants in predeparture orientation sessions. Orientation shall also be provided to each host family in advance of the student's arrival, including information on family and school life, customs, religion and more of the student's native country, information on the academic program in which the student will be enrolled, and information on potential problems in hosting exchange students and suggestions on how to cope with such problems. Each student shall be provided in advance with an identification card which includes: (i) The student's name, and host family name, address and telephone number; (ii) the name and number of the Exchange-Visitor Program in which he or she is sponsored; (iii) the name, address and telephone number of a responsible official of the sponsor; and (iv) the address and telephone number of the Exchange-Visitor Facilitative Staff, Office of the General Counsel and Congressional Liaison, United States Information Agency, Washington, D.C. 20547. In addition, each student, each host family and each school to be attended shall be provided by the sponsor with a copy of the Agency's current "Criteria for Exchange-Visitor Teenager Programs." The host family shall acknowledge, in writing the receipt of this publication and the sponsor shall maintain that acknowledgement in its files.

(4) *Health and Accident Insurance.* The sponsor shall ensure that every student selected to participate in its program has health and accident insurance coverage from the time of departure from home until the student returns to his or her home country. Minimum acceptable insurance is (i) medical and accident coverage of $15,000 per injury or illness and (ii) preparation and transportation of remains to home country (at least $5,000). Coverage may be provided in one of the following ways, with the written approval of the United States Information Agency.

(A) By health and accident insurance coverage arranged for by the student;

(B) By health and accident insurance coverage arranged for by the sponsor;

(C) By the sponsor's assuming all financial responsibilities for a student's illnesses and accidents from the time the student leaves his or her home country until he or she returns home.

(5) *Dispersion of Students.* Each sponsor shall make every effort to ensure that foreign students are widely dispersed throughout the United States. Under no circumstances shall a sponsor place more than four foreign students or more than two of the same nationality in a single school.

(6) *Acceptance of Students.* No teenage Exchange-Visitor student shall be brought into the United States by the sponsor unless he or she has been accepted in writing as a student by the principal or superintendent of the high school or someone designated in writing to authorize the enrollment of foreign students in the school in which he or she is to be enrolled. Copies of such documents authorizing enrollment shall be maintained by the sponsor and will

be made available for inspection by the Agency upon request. Clear and specific arrangements in writing shall be made in advance by the sponsor and the school regarding any tuition payments or waivers of tuition.

(7) *Host Family Arrangements.* The sponsor is responsible for making all arrangments for the placement of each teenage Exchange-Visitor student with a host family whose home is located in a place convenient to the high school or other educational institution in which the student is to be enrolled. The sponsor shall make every effort to assure the maximum degree of compatibility between the family and the student, including, wherever possible, the presence in the family of at least one teenage student who attends the same school as the Exchange-Visitor. A representative of the sponsor shall visit the home of, and personally interview, each host family before an Exchange-Visitor student is assigned to such family. The sponsor shall ensure that its representative selects only those homes which reflect the high quality expected of the Teenage Exchange Visitor Program. A written record shall be made of this visit and interview by the representative. Under no circumstances shall an employment or travel agency be used for this purpose. Selection of host families and assignment of students shall be made as far in advance of the student's arrival as possible, but in no event less than three weeks prior to departure from the student's home. No sponsor shall issue a form IPA–66 for an Exchange-Visitor student without including on the form a notation giving the name and address of host with which he or she is to be placed. The host family shall be advised in writing of the name, age, educational status, other background information and anticipated arrival time of the assigned student, and the student's natural family shall be advised in writing of the name, address, family makeup, and other background information concerning the host family at the earliest possible time, to permit exchange of correspondence between the respective families in advance of the Exchange-Visitor's arrival.

(8) *Changes in Host Family Assignments.* Placement arrangements shall be made with a single host family for the entire academic year or other authorized period of the Exchange Visitor student's visit, but a change in the host family assignment of a student may be made by the sponsor during such period when unforeseen events make a change necessary in the best interests of the student "Welcoming families", "receiving families", "arrival families", or "temporary families" shall not be used. Reports of any such changes and the reasons therefor shall be retained by the sponsor and upon request made available to the Agency for inspection and retention. No more than one teenage Exchange-Visitor shall be placed with any one host family at any one time without the prior written permission of the Agency.

(9) *Employment of Students.* Each sponsor shall advise its students that they may not accept or undertake full-time employment while enrolled in such program, but may engage in part-time employment not to exceed 10 hours per week in non-competitive jobs such as tutoring, grass-cutting, baby-sitting, newspaper delivery and the like. Students may not perform the duties of a household domestic for compensation or otherwise in the home of the host family or elsewhere, but may be asked to assist in normal daily chores in the host family household which other members of the host family must perform.

(10) *Supervision by Sponsor.* The sponsor shall maintain continuous personal contact with each of its Exchange-Visitor students, the host family, and the high-school or other educational institution in which each student is enrolled. The sponsor shall initiate action to resolve any problems which may arise with respect to the student's participation in his or her academic program or with respect to the student's relationship with his or her host family.

(11) *Financial Responsibility of Sponsor.* Each sponsor shall be responsible for the costs of travel of all students sponsored by it back to their homes by air and/or surface modes of commercial transportation, regularly scheduled or charter or a combination of the two, on conclusion or unexpected termination of their designated programs of study. This responsibility shall be carried out by the purchase of a roundtrip ticket or tickets for *each* student prior to the entry of each student into the United States. Such tickets shall be made available to the Agency for inspection upon request.

(12) *Annual Reports of Sponsor.* Each sponsor shall submit to the Agency an Annual Report on the operations of its program as of June of each year. As a minimum, the reports will include the following: The names of all Exchange-Visitors, school or institution of enrollment, location of host family, changes in host family and/school enrollment. Such report shall be submitted no later than September 1 of each year. The sponsor shall also submit such additional reports and information (including an Internal Revenue Service Form 990) as the agency may request from time to time.

(13) *Control and Issuance of Forms IAP–66.* The Agency shall determine the number of Forms IAP–66 to be issued to each sponsor each year for use in its program on the basis of the information contained in the reports submitted by the sponsor pursuant to the preceding paragraph and such other information as may be available, so as to ensure that a sponsor does not bring in more teenage Exchange-Visitors than can be adequately supervised and provided for by it in accordance with the provisions and standards set forth in this paragraph.

* * * * *

3. Section 514.17 is revised to read as follows:

§ 514.17 Revocation or Suspension of Designation.

For violation by a sponsor of any of the provisions of this subpart, the Agency may suspend or revoke the designation of such sponsor's program in the manner set forth below.

(a) The *General Counsel* or his delegate may in his or her discretion, upon not less than ten (10) calendar days written notice to the sponsor specifying the grounds therefor and the effective date thereof, summarily suspend the designation of the sponsor for a period not to exceed sixty (60) days if it is found: (1) That there has been willful violation by the sponsor of one or more provisions of his Subpart and (2) that such willful violation is of such a nature as to endanger the health, safety or welfare of participants in the sponsor's program, PROVIDED, that before effecting the suspension of the sponsor, the Agency shall consider and take into account any response, including any documentary evidence or affidavits submitted by the sponsor in response to such notice. Written notice of suspension shall be given on the effective date thereof to the sponsor, to the Immigration and Naturalization Service, to the Bureau of Consular Affairs of the Department of State, and such other agencies, public or private, as the General Counsel or his delegate shall deem necessary. During the period of such suspension no Forms IAP–66 issued by the sponsor shall be recognized or accepted for the issuance of non-immigrant visas for entry into the United States.

(b) The General Counsel or his delegate may revoke the designation of the sponsor for any sufficient cause, including but not limited to the

following: (1) Continued or repeated failure to comply with the provisions of this Subpart or (2) failure to submit complete, current and accurate reports as required by this Subpart or as requested by the Agency; or (3) conduct on the part of the sponsor having the effect of bringing the Exchange-Visitor programs administered by the Agency into disrepute, PROVIDED: that before the institution of formal proceedings for the revocation of designation, the sponsor shall be given notice in writing of the facts or conduct warranting such revocation and shall be given a reasonable opportunity to demonstrate or to achive compliance with all lawful requirements.

(c) In the event that the sponsor does not, after the written notice last above mentioned, demonstrate to the satisfaction of the Agency that revocation of its designation is not warranted, then the sponsor shall be given not less than thirty (30) days formal notice in writing of intention to revoke such designation, including a full statement of the facts and reasons to be relied on therefor, and advising the sponsor of its right to formal hearing and decision on such revocation pursuant to Title 5, United States Code, Sections 556 and 557, and its right to be represented by counsel and to cross-examine witnesses and to present oral or documentary evidence. If such a hearing is demanded in writing by the sponsor within ten days after receipt of formal notice as aforesaid, such hearing shall be promptly scheduled, after proper notice, and shall be conducted in accordance with Section 556. If such a hearing is not demanded, the Agency shall act on the proposed revocation on the basis of such evidence as is available, including any evidence submitted by the sponsor.

(d) If the Agency decides that the designation of the sponsor should be revoked, notice thereof shall be given to the sponsor, the Immigration and Naturalization Service, the Bureau of Consular Affairs of the Department of State, and to such other agencies, public or private, as the Agency shall deem necessary, and thereafter no Forms IAP-66 issued by the sponsor shall be recognized or accepted for the issuance of non-immigrant visas for entry into the United States, *Provided:* That no such revocation shall invalidate any such visas already issued for Exchange-Visitors enrolled in the sponsor's programs, nor in any way diminish or restrict the sponsor's legal or financial responsibilities toward such visitors.

4. Sections 514.18 and 514.19 are added to read as follows:

§ 514.18 Authority of General Counsel.

Any and all acts herein provided to be done by the Agency shall be performed on its behalf by the General Counsel or his or her Deputy or his or her delegate.

§ 514.19 Revocation for Inactivity.

Anything herein to the contrary not withstanding, the designation of any sponsor's program may be revoked when it is determined that the program has remained inactive for a period of more than two years.

Authority

(Sec. 4, 63 Stat. 11; secs. 102, 109 (a), (b), (d), 75 Stat. 527, 534, 535; secs. 101(a)(15)(J), 104(a), 212(e), 66 Stat. 166, 174, 182, 184; sec. 2, 84 Stat. 116, 117 (22 U.S.C. 2658, 2452); (8 U.S.C. 1101(a)(15)(J), 1104(a), 1182(e), 1258); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983, Pub. L. 97-241, Title III, August 24, 1982)

Delegation Order No. 83-5 48 FR 2490.

Dated: October 27, 1983.

Jonathan W. Sloat,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 83-29589 Filed 11-2-83; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7920]

Income Tax; Taxable Years Beginning After December 31, 1953; Withdrawal of Treasury Decision 7747 Relating to Debt and Equity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of a Treasury decision.

SUMMARY: This document provides for the withdrawal of Treasury decision 7747 (final regulations under section 385 relating to the treatment of certain interests in corporations as stock or indebtedness) that were originally published in the **Federal Register** for December 31, 1980 (45 FR 86438), and revised by Treasury decision 7774, published in the **Federal Register** for May 4, 1981 (46 FR 24945), Treasury decision 7801, published in the **Federal Register** for January 5, 1982, (47 FR 147), and Treasury decision 7822, published in the **Federal Register** for July 2, 1982 (47 FR 28915). The provisions stated in T.D. 7747 do not fully represent the position of the Treasury Department or the Internal Revenue Service on matters concerning debt and equity.

EFFECTIVE DATE: The withdrawal is effective August 5, 1983.

FOR FURTHER INFORMATION CONTACT: Carolyn Swift of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC: LR:T) (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1983, the **Federal Register** published a notice of proposed withdrawal of T.D. 7747 relating to final regulations under section 385 concerning classification of certain interests in corporations as stock or indebtedness (48 FR 31053). A small number of comments were received. Some commenters encouraged Treasury and the IRS to prepare new regulations to replace those being withdrawn and others suggested that the effort to develop regulations under section 385 be abandoned. Treasury and the IRS are now considering whether to publish new section 385 regulations. One commenter argued that the effective date of the regulations had been improperly postponed so that the regulations as published in T.D. 7747 had already become effective. Treasury and the IRS dispute this argument because the regulations were properly postponed in order to allow sufficient time to examine public comments on the published regulations and to properly respond to them. Most comments opposed allowing the regulations to become effective.

All the comments on the withdrawal supported the withdrawal of T.D. 7747. A public hearing was held on August 18, 1983. The two speakers at the hearing supported the withdrawal of TD 7747. Accordingly, the proposed withdrawal is being adopted without change.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefor not required. The Secretary of the Treasury has certified that this final rule will not have a significant impact on a

substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Carolyn Swift 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 proposed regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1—1.385–10

Income taxes, Corporations, Corporate distributions, Corporate adjustments, and Reorganizations.

Withdrawal of T.D. 7747

Accordingly, the withdrawal of T.D. 7747 as proposed in the **Federal Register** on July 6, 1983 (48 FR 31053) is adopted without change.

This Treasury decision is issued under the authority contained in section 385 and 7805 of the Internal Revenue Code of 1954 (83 Stat. 613 and 68A Stat. 917; 26 U.S.C. 385 and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 13, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

Treasury decision 7747, published in the **Federal Register** for December 31, 1980 (45 FR 86438) as revised by Treasury decision 7774, published in the **Federal Register** for May 4, 1981 (46 FR 24945), Treasury decision 7801, published in the **Federal Register** for January 5, 1982 (47 FR 147), and Treasury decision 7822, published in the **Federal Register** for July 2, 1982 (47 FR 28915) is hereby withdrawn.

In withdrawing T.D. 7747, the following changes to 26 CFR Part 1 are made:

PART 1—[AMENDED]

Paragraph 1. Section 1.166–9 (c) is revised to read as follows:

§ 1.166–9 Losses of guarantors, endorsers, and indemnitors incurred, on agreements made after December 31, 1975, in taxable years beginning after such date.

* * * * *

(c) *Obligations issued by corporations.* No treatment as a worthless debt is allowed with respect to a payment made by the taxpayer in discharge of part or all of the taxpayer's obligation as a guarantor, endorser, or indemnitor of an obligation issued by a corporation if, on the basis of the facts and circumstances at the time the obligation was entered into, the payment constitutes a contribution to capital by a shareholder. The rule of this paragraph (c) applies to payments whenever made (see paragraph (f) of this section).

* * * * *

§ 1.385–1—1.385–10 [Removed]

Par. 2. Sections 1.385–1 through 1.385–10 are removed.

§ 1.482–2 [Amended]

Par. 3. Section 1.482–2 is amended by removing "(applying section 385, where applicable)" after "bona fide indebtedness" in the first sentence of paragraph (a)(3) and by removing and reserving paragraph (a)(4), (a)(5), and (a)(6).

§ 1.992–1 [Amended]

Par. 4. Section 1.992–1 is amended by removing the phrase "(applying section 385, where applicable)" after the word "debt" in paragraph (d)(2)(i)(*a*) and by inserting the word "Qualifies" in lieu of the phrase "Notwithstanding section 385, qualifies" in paragraph (d)(2)(i)(*b*).

Par. 5. Section 1.1371–1 is amended by removing paragraph (h) and by inserting three sentences at the end of paragraph (g) to read as follows:

§ 1.1371–1 Definition of small business corporation.

* * * * *

(g) *Classes of stock.* * * * Obligations which purport to represent debt but which actually represent equity capital will generally constitute a second class of stock. However, if such purported debt obligations are owned solely by the owners of the nominal stock of the corporation in substantially the same proportion as they own such nominal stock, such purported debt obligations will be treated as contributions to capital rather than a second class of stock. But, if an issuance, redemption, sale, or other transfer of nominal stock, or of purported debt obligations which actually represent equity capital, results in a change in a shareholder's proportionate share of nominal stock or his proportionate share of such purported debt, a new determination shall be made as to whether the corporation has more than one class of stock as of the time of such change.

[FR Doc. 83–29474 Filed 11–2–83; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Criminal Division Directive No. 116]

Redelegations of Authority of United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and Director, Asset Forfeiture Office, in Criminal Division

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Criminal Division Directive supersedes Criminal Division Directive No. 2, dated October 31, 1978 (43 FR 50677–78), relating to redelegation of the Assistant Attorney General's authority to compromise civil penalties and forfeitures and close civil claims. It also supersedes the Criminal Division Directive to the Staff dated March 21, 1979, and entitled "Forfeiture Function Under the Reorganization of the Criminal Division."

This Directive redelegates to the Director of the Asset Forfeiture Office the authority of the Assistant Attorney General with respect to civil and criminal forfeiture cases, including the authority to accept or deny petitions for remission or mitigation of forfeiture. It also redelegates to the United States Attorneys all the authority of the Assistant Attorney General to close a forfeiture case or to accept or reject offers in compromise made in relation to civil and criminal forfeiture cases. The United States Attorney would be required to consult with the Asset Forfeiture Office before closing a civil or criminal foreiture case involving an original claim of $60,000 or more, and before accepting or rejecting an offer in compromise in which the difference between the amount claimed and the proposed settlement was $60,000 or more. Finally, the Directive clarifies the delegation of authority pursuant to 28 CFR 0.171.

EFFECTIVE DATE: October 26, 1983

FOR FURTHER INFORMATION CONTACT: John Yoder, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, D.C. 20530, 202–272–6423.

SUPPLEMENTARY INFORMATION:

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies), Penalties, Seizures and forfeitures.

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, as amended,

particularly §§ 0.160, 0.162, 0.164, 0.168, and 0.171, it is hereby ordered that Criminal Division Directive No. 2 (43 FR 50677–78, October 31, 1978) and the Criminal Division Directive to the Staff dated March 21, 1979, and entitled "Forfeiture Function Under the Reorganization of the Criminal Division," are removed and the following Directive No. 116 is added to the Appendix to Subpart Y, Part 0, to read as follows:

[Directive No. 116]

(a)(1) Each U.S. Attorney is authorized in cases delegated to the Assistant Attorney General of the Criminal Division—

(A) To accept or reject offers in compromise of—

(i) Claims in behalf of the United States in all cases (other than forfeiture cases) in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $60,000, and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before accepting offers in compromise or plea offers in forfeiture cases in which the difference between the gross amount of the original forfeiture sought and the proposed settlement is $60,000 or more; and

(ii) Claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $60,000; and

(B) To close (other than by compromise or entry of judgment) claims asserted by the United States in all cases (other than forfeiture cases) in which the gross amount of the original claim does not exceed $60,000, and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before closing a forfeiture case in which the gross amount of the original forfeiture sought is $60,000 or more.

(2) This subsection does not apply—

(A) When, for any reason, the compromise or closing of a particular claim (other than a forfeiture case) will, as a practical matter, control or adversely influence the disposition of other claims which, when added to the claim in question, total more than the respective amounts designated above; or

(B) When the U.S. Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the personal attention of the Assistant Attorney General.

(b) Notwithstanding the provisions of this Directive, the Assistant Attorney General of the Criminal Division may delegate to U.S. Attorneys authority to compromise or close other cases, including those involving amounts greater than as set forth in paragraph (a) above, and up to the maximum limit of his authority, where the circumstances warrant such delegation.

(c) All other authority delegated to me by §§ 0.160, 0.162, 0.164, and 0.171 of Title 28 of the Code of Federal Regulations not falling within the limitations of paragraph (a) of this directive is hereby redelegated to Section Chiefs in the Criminal Division, except that—

(1) The authority delegated to me by §§ 0.160, 0.162, 0.164, and 0.171 of that title relating to conducting, handling, or supervising civil and criminal forfeiture litigation (other than bail bond forfeiture), including acceptance or denial of petitions for remission or mitigation of forfeiture, is hereby redelegated to the Director of the Asset Forfeiture Office; and

(2) When a Section Chief or the Director of the Asset Forfeiture Office is of the opinion that because of a question of law or policy presented, or for any other reason, a matter described in paragraph (c) should receive the personal attention of a Deputy Assistant Attorney General or the Assistant Attorney General, he shall refer the matter to the appropriate Deputy Assistant Attorney General or to the Assistant Attorney General.

(d) Notwithstanding any of the above redelegations, when the agency or agencies involved have objected in writing to the proposed closing or dismissal of a case, or to the acceptance or rejection of an offer in compromise, and the matter cannot be resolved below the Assistant Attorney General level, it must be decided by the Assistant Attorney General.

Dated: August 19, 1983.

Stephen S. Trott,

Assistant Attorney General, Criminal Division.

Approved: August 22, 1983.

D. Lowell Jensen,

Associate Attorney General.

[FR Doc. 83-29818 Filed 11-2-83; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Parts 0, 3, 8, 9 and 9a

[Order No. 1034-83]

Assignment of Criminal Forfeiture Function to the Assistant Attorney General, Criminal Division, and Assignment of Criminal and Civil Forfeiture Functions to Director, Asset Forfeiture Office, Criminal Division

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order assigns to the Assistant Attorney General, Criminal Division, the function of remission or mitigation of criminal forfeitures. It amends the regulations applicable to the Criminal Division's handling of petitions for remission or mitigation of forfeitures and offers in compromise to make them applicable to all forfeiture statutes assigned to the Criminal Division, including criminal forfeiture statutes, and to place that function in the Director, Asset Forfeiture Office, Criminal Division. It clarifies the authority of an Assistant Attorney General to designate different individuals or units to carry out responsibilities for collection of judgments, fines, penalties, and forfeitures. Finally, it amends various provisions of the forfeiture regulations to conform to the creation of the Asset Forfeiture Office in the Criminal Division.

EFFECTIVE DATE: This order is effective October 26, 1983, except that the amendments to 28 CFR 9.3 are effective July 26, 1983.

FOR FURTHER INFORMATION CONTACT: John Yoder, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, D.C. 20530. Telephone: (202) 272-6420.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Parts 0, 3, 8, 9, and 9a

Authority delegations (Government agencies), Organization and functions (Government agencies), Penalties, Seizures and forfeitures.

PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Title 28 of the Code of Federal Regulations is hereby amended as follows:

§ 0.55 [Amended]

1. In § 0.55, paragraph (d) is revised to read as follows:

* * * * *

(d) Civil or criminal forfeiture or civil penalty actions (including petitions for remission or mitigation of forfeitures and civil penalties, offers in compromise, and related proceedings) under the Federal Aviation Act of 1958, the Contraband Transportation Act, the Copyrights Act, the customs laws (except those assigned to the Civil Division which involve sections 592, 704(i)(2) or 734(i)(2) of the Tariff Act of 1930), the Export Control Act of 1949, the Federal Alcohol Administration Act, the Federal Seed Act, the Gold Reserve Act of 1934, the Hours of Service Act, the Animal Welfare Act, the Immigration and Nationality Act (except civil penalty actions and petitions and offers related thereto), the neutrality laws, laws relating to cigarettes, liquor, narcotics and dangerous drugs, other controlled substances, gambling, war materials, pre-Colombian artifacts, coinage, and firearms, locomotive inspection (45 U.S.C. 22, 23, 28–34), the Organized

Crime Control Act of 1970, prison-made goods (18 U.S.C. 1761–1762), the Safety Appliance Act, standard barrels (15 U.S.C. 231–242), the Sugar Act of 1948, and the Twenty-Eight Hour Law.

§ 0.168 [Amended]

2. § 0.168, paragraph (b) is amended by adding "or, if the redelegation is made by the Assistant Attorney General of the Criminal Division, the Associate Attorney General".

§ 0.171 [Amended]

3. In § 0.171, the second sentence in paragraph (a) is amended by revising "performance of those functions" to "performance of each of those functions".

PART 3—[AMENDED]

§ 3.6 [Amended]

4. In § 3.6, the last sentence is amended by revising "or the Assistant Attorney General, Criminal Division" to "the Assistant Attorney General, Criminal Division, Deputy Assistant Attorneys General, Criminal Division, or the Director, Asset Forfeiture Office".

PART 8—[AMENDED]

§ 8.2 [Amended]

5. In § 8.2, the last sentence is revised to read "The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 2513 of Title 18, United States Code, on claims for award of compensation to an informer, and the Director, Asset Forfeiture Office, Criminal Division, is designated as the officer authorized to take final action under that section on petitions for remission or mitigation of forfeiture, offers of payment for release of property, offers in compromise, and matters relating to bonds or other security.".

6. The title of Part 9 is revised to read:

PART 9—REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

7. Section 9.1 is revised to read as follows:

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of Title 19, United States Code, and are applicable only to those civil and criminal forfeitures which arise under statutes in relation to which the Attorney General has assigned the remission or mitigation function to the Criminal Division, the Federal Bureau of Investigation, or the Drug Enforcement Administration (§§ 0.55(d), 0.85, and 0.100 of this title).

§ 9.3 [Amended]

8. In § 9.3, paragraph (c) is amended by revising "the appropriate section" to "Asset Forfeiture Office".

9. In § 9.3, paragraph (c) is amended by revising the last sentence to read: "Upon the basis of the report prepared in this office, the Director of the office shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.".

10. In § 9.3, paragraph (d) is amended by revising "Chief of the section" each place it appears to "Director of the office".

11. In § 9.3, paragraph (e) is amended by revising "Chief of the section" to "Director of the office".

12. In § 9.3, paragraph (h) is amended by revising "Chief of the section" to "Director of the office".

13. In § 9.3, paragraph (i) is amended by revising "Chief of the section" to "Director of the office".

14. In §9.3, paragraph (j) is amended by revising "appropriate Section Chief" to "Director, Asset Forfeiture Office".

15. In § 9.3, paragraph (k) is amended by revising "appropriate Section Chief" to "Director, Asset Forfeiture Office".

PART 9a—[AMENDED]

§ 9a.7 [Amended]

16. In § 9a.7, the chart in paragraph (b) is amended by revising "Special Litigation Section" both places it appears to "Asset Forfeiture Office".

17. In § 9a.7, the chart in paragraph (b) is amended by revising "Chief or Deputy Chief" to "Director or Associate Director".

Dated: October 26, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-29853 Filed 11-2-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8-83-06]

Safety Zone; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Safety Zone regulations for the Mississippi River Gulf Outlet (MRGO), the Michoud Canal, and the Inner Harbor Navigation Canal (IHNC) by modifying the reporting points to create a wake free zone by the New Orleans Bulk Terminal, because of heavy lift operations in conjunction with repairs.

EFFECTIVE DATE: This Final Rule becomes effective on November 3, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. Ford, Port Safety Officer, or LTJG S. Evans, Waterways Safety Officer, c/o U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, Louisiana 70117, Telephone (504) 589–7108.

SUPPLEMENTARY INFORMATION: On June 4, 1981, the Coast Guard published interim final rules in the **Federal Register** for the regulations (46 FR 29933).

Interested persons were requested to submit comments and seven comments were received. The publishing of timely responses to these seven comments in Final Rulemaking action was delayed by the subsequent unanticipated closure of the New Orleans Vessel Traffic Service (VTS) in March 1982.

Upon reactivation of New Orleans Vessel Traffic Service (VTS) a Final Rule was published in the **Federal Register** on May 31, 1983. The comments solicited in the **Federal Register** of June 4, 1981 were addressed in that **Federal Register** of May 31, 1983. This rulemaking slightly modifies the Safety Zone.

A Notice of Proposed Rulemaking was not published for this regulation and it is being made effective in less than 30 days after the **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since an immediate modification is needed to facilitate navigation.

Drafting Information

The principal persons involved in drafting this rule are LT T. L. McCarty, USCG, Project Officer, c/o Commander, Eighth Coast Guard District (mps) and CDR R. A. Brunnell, USCG, Project Attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana, 70130, Telephone (504) 589–6188.

Discussion of Regulations

The Safety Zone requires all vessels meeting certain criteria to report to the New Orleans VTS when passing certain locations. Based on user input, these reporting points are being modified to make compliance with the regulation easier and to improve navigational safety.

The new reporting points are all on the same side of the channel and are the

checkpoints that the pilots use for their internal purposes. The old reporting points were Lighted Buoy #1, MRGO Light 33, and MRGO Light 96. The new reporting points are Lighted Bell Buoy #2, MRGO Lighted Bell Buoy 20 and MRGO Light 94. The changes to this regulation are not substantive and do not significantly change the features of the Safety Zone.

In addition, a typographical error is corrected in § 165.801(b) by adding commas. The section currently reads Vessels including tows over * * * The section should read Vessels, including tows, over * * *

Summary of Final Evaluation

These regulations are considered to be insignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5 of 5–22–80). An evaluation under the Regulatory Flexibility Act of 1980 has not been conducted. The changes to this regulation are not substantive. For these reasons, it has been determined that this action will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33 Code for Federal Regulations as follows:

PART 165—[AMENDED]

33 CFR 165.801 is amended by revising (b), (c) and (d) as follows:

§ 165.801 Mississippi River Gulf Outlet.

(a) * * *

(b) Vessels, including tows, over 600 feet in length, or over 80 feet in beam, or with a draft in excess of 30 feet, and intending to transit that portion of the Safety Zone from its seaward entrance at Lighted Bell Buoy 2 (LLNR 2015) to the jetty at MRGO Light 62 (LLNR 2068) must receive permission to enter or move within the Safety Zone. Vessels meeting this criteria will not meet or overtake each other in this seaward portion of the Safety Zone unless the pilots and/or operators of both vessels consider such passage to be safe and agree to it. Such an agreement must be reported beforehand to the VTS.

(c) All inbound vessels meeting the criteria of paragraph (b) of this section shall notify New Orleans Vessel Traffic Service (VTS) two hours prior to intended entry into the Safety Zone (in order to be scheduled), and immediately prior to entry (in order to obtain permission to enter), and upon passing MRGO Lighted Bell Buoy 2, and MRGO Lighted Bell Buoy 20 (LLNR 2031), MRGO Light 62, MRGO Light 94 (LLNR 2082.50) and MRGO Light 114 (LLNR 2092).

Notification shall be made on Channel 12 VHF–FM. Notification prior to intended entry which cannot be accomplished on Channel 12 VHF–FM due to extreme range, shall be made by telephone to the VTS at (504) 589–2772 or 589–2773 by the vessel's agent or via the marine operator.

(d) All outbound vessels meeting the criteria of paragraph (b) of this section shall notify VTS two hours prior to intended movement within the Safety Zone (in order to be scheduled), and immediately prior to movement (in order to obtain permission to move), and immediately after heading fair in the outbound direction, and as the vessel passes the junction of the MRGO and Gulf Intracoastal Waterway (Mile 60.0 MRGO), MRGO Light 114, MRGO Light 94, and MRGO Light 62, and MRGO Lighted Bell Buoy 20 and MRGO Lighted Bell Buoy 2. Notification two hours prior to movement shall be made by telephone to the VTS at (504) 589–2772 or 549–2773. Other notification shall be made on channel 12 VHF–FM. Channel 11 VHF–FM may be used in lieu of Channel 12 by vessels above the Paris Road Bridge (mile 60.9 MRGO).

* * * * *

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: August 18, 1983.

W. G. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 83–29993 Filed 11–2–83; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM82–3; Order No. 529]

Order Amending Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This final rule adopts the amendments to Rule 54 of the Commission's rules of practice, 39 CFR Part 3001 *et seq.*, that were proposed in the Notice of Proposed Rulemaking issued by the Commission on August 1, 1983 [48 FR 35914 (August 8, 1983)], pursuant to 39 U.S.C. 3603, 3622, and 3623. Previously, Rule 54(f)(2) required that requests for recommended rate or classification decisions be supported by projections of estimated accrued costs for a fiscal year beginning "not more than 12 months" subsequent to the filing date of a request for changes in rates or classification. The amended final rule would allow these projections of estimated costs to be for a fiscal year beginning not more than 24 months rather than 12 months subsequent to the filing of rate and classification cases. Additionally, the Commission is amending Rules 54(n) and 102(d) to require prior rate case reconciliations between actual and estimated revenues and costs to be filed within six months following the end of the last fiscal year included in the test year rather than as a part of the next general rate case.

EFFECTIVE DATE: This rule is effective on November 3, 1983.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 2000 L Street, NW., Washington, D.C. 20268 (telephone: [202] 254–3824).

SUPPLEMENTARY INFORMATION: In connection with each of the last three omnibus rate cases, the Postal Service filed a waiver request to relax the requirement of Rule 54(f)(2) that the Postal Service provide projections of estimated accrued costs "for a fiscal year beginning not more than 12 months subsequent to the filing date of the formal request." The Commission granted the last two waiver requests which sought a relaxation of the requirement that the test year be a "fiscal" year.

Taking cognizance of the need of the Postal Service to request waivers of Rule 54(f)(2) in each of the last three omnibus rate cases, the Commission issued on September 28, 1982, an Advance Notice of Proposed Rulemaking presenting three alternatives to the existing rule and inviting comments thereon.

The first proposal was to eliminate the fiscal year requirement in Rule 54(f)(2) and replace it with a requirement of four consecutive accounting quarters. This amendment to Rule 54(f)(2) would have incorporated permanently the essence of waiver requests the Commission granted in Docket Nos. R77–1 and R80–1 wherein the Commission allowed the Postal Service to use a hybrid test year instead of a fiscal year. The second proposal would expand the test period to more than one year thereby permitting the Commission to recommend rates for a two- to three-year period. The third alternative suggested in the Advance Notice of Proposed Rulemaking was to maintain the fiscal year requirement but to allow a more prospective test year perhaps one beginning up to 21 months

from the filing date of a request for rate or classification changes.

Ten parties including the governors of the Postal Service filed comments addressing the merits of the three proposals presented in the Advance Notice. Those favoring a hybrid test year consisting of four consecutive accounting quarters rather than a fiscal test year expressed concern that the other two alternatives would lead to more prospective test years resulting in higher rates which in turn would be based on more speculative estimates than under the present rule. After reviewing these comments, the Commission concluded that these reasons were insufficient to overcome the benefits to the ratemaking process of a fiscal test year. Thus, on August 1, 1983, the Commission issued a Notice of Proposed Rulemaking proposing for adoption essentially the third alternative described above. Specifically, the Commission proposed requiring that the test year be a fiscal year beginning up to 24 months from the date of filing.

In that notice, the Commission concluded that only by retaining the fiscal test year requirement was it possible to achieve the primary objective of having the rates arising from a omnibus rate case be in effect throughout the test year, while at the same time attaining accountability in the ratemaking process. We explained why a fiscal year test year was necessary to check the validity of the test year data as follows:

> A fiscal test year is required to allow the Commission to check its results with audited figures. A review of Docket No. R80–1 indicates the problems of attempting to reconcile hybrid forecasts and audited fiscal year data. In Docket No. R80–1, the Commission approved the Postal Service's motion to use a hybrid test year of the last two quarters of FY 1981 and the first two quarters of FY 1982. At the end of FY 1981, the Postal Service adjusted its workers' compensation model which resulted in an increase of over $500 million in workers' compensation expense. In attempting to trace these costs to the hybrid test year it is not possible to ascertain which portion of that adjustment should be applied to the hybrid test year. Similarly, in FY 1982, the Postal Service's external auditors adjusted workers' compensation to reduce costs by over $370 million. Although the Postal Service did not accept that adjustment and accepted a qualified endorsement of its financial results from the auditors for that reason, it still remains unclear how this adjustment will affect the hybrid test year. In all probability, without audited financial data, the existence of a $370 million reduction in costs would not be known. An audited statement highlights any problems in the financial data and insures some continuity in treatment of specific items of costs

Nine parties filed comments responding to the Commission's August 1, 1983 Notice.[1] Having considered these comments, we adopt the amendment to Rule 54(f)(2) proposed in our initial Notice.

The Department of Defense and the American Newspaper Publishers' Association endorsed the Commission's proposal generally.

Direct Marketing Association (DMA) and Envelope Manufacturers Association of America (EMAA) expressed partial support for the proposed amendment to Rule 54(f)(2). EMAA believes that the maximum period between the filing date and the beginning of the test year should be 18 or 21 months rather than 24 months. We have decided not to adopt EMAA's proposal because it needlessly restricts the Governors' powers pursuant to section 3622, of the Act to determine when to file rate cases. Assuming rates will go into effect approximately 10 to 12 months after a rate case filing,[2] to reduce the period to 18 or 21 months would defeat the primary objective of ensuring that rates be in effect throughout the test period. For example, assuming the Postal Service planned a December 1983 filing, if the test year had to begin within 18 or 21 months, the test year would have to be FY 1985. Based on a 10 to 12 month period to implement rates after the filing date, such a requirement would result in new rates not going into effect until after FY 1985 had to some extent already elapsed. Thus our primary objective of ensuring that the new rates be in effect throughout the test year would be defeated.

Direct Marketing Association supports the Commission's proposal assuming that the Commission states an intention to reevaluate the test year contingency provision to account for the surplus resulting from higher rates due to a more prospective test year. As we explained in Docket Nos. R76–1 and R77–1 the contingency provision is an allowance to insure against unforeseen imbalances between costs and revenues which occur as a result of errors in assumptions underlying projections as well as unforeseen events. In determining the contingency provision, a critical factor "is the relative ability of the Postal Service to absorb unforeseen expense increases and revenue shortfalls." PRC Op. R77–1, p. 25. DMA's comments are essentially embraced within this criteria, and may, of course, be presented in that context in an omnibus rate case.[3]

Five commenters, Third Class Mail Association, MCI Communications Corp., Mail Order Association of America, Reader's Digest Association and the Postal Service, filed comments opposing adoption of the proposed rule. They repeat arguments raised previously that the proposed rule will lead to a more prospective test year with high rates based on more speculative estimates. Again, we have carefully evaluated their concerns and have concluded that they do not outweigh the benefits flowing from having a fiscal year test period. To reiterate, it is only through a fiscal year test year that it is possible "for the Commission and the parties * * * to compare estimates to actual results * * * to check the validity of test year data." Notice of Proposed Rulemaking, August 1, 1983, p. 9.

With regard to the possibility of higher rates under the proposed rule, the Postal Service pursuant to 39 U.S.C. 3622 is to operate on a breakeven basis. To the extent higher rates result in profits during a period, this surplus is offset by losses resulting from relatively lower rates during another period. These losses presumably will arise during the period a subsequent rate filing is delayed because of the profits arising from the arguably higher rates caused by a more prospective test year.

The Postal Service argues that requiring a fiscal test year negates the Board of Governors' discretion regarding the timing of rates cases. Postal Service Comments, September 9, 1983. According to the Service, the Board's discretion would be restricted because under the amended rule the period prior to the beginning of the test year when new recommended rates are in effect is excessive in length. Because the period is excessive, the Service argues that the Governors will exercise caution and not implement new rates presumably until the beginning of the fiscal year. Underlying the Service's concerns is that a more prospective test year would produce higher rates than under a more proximate test year.

We think this concern is overstated. At the outset we note that it will be rare that the hypothetical presented by the Service in its comments will occur. In its

[1] Commissioner Duffy filed comments consistent with his position on this matter.

[2] A 10 to 12-month period from filing to rate implementation is consistent with the section 3624 which requires the Commission to issue its Opinion and Recommended Decision within 10 months of filing. The Governors normally act upon the Commission's Decision a short time thereafter.

[3] The Postal Service filed remarks on September 15, 1983, addressing DMA's comments. We leave to the next omnibus rate case resolution of the issues arising from DMA's and the Postal Service's comments.

comments at p. 6 the Service hypothesizes a situation in which under the proposed rule the test year would begin 22 to 24 months from the filing date. The Service suggests that a test year this prospective could be challenged because it produces recommended rates "based on projections of costs further in the future, and therefore presumbly greater, than the costs being incurred by the Postal Service when the rates went into effect." (Footnote omitted.)

For both rate cases filed since passage of the 1976 amendments to the Postal Reorganization Act [1] the Governors have chosen to utilize a hybrid test period beginning in the middle of a fiscal year. Apparently this choice was, in part, dictated by the Governors' determination that it results in implementing rates in late winter or spring when volume is relatively low. In contrast, the hypothetical assumes implementation of new rates during the peak Christmas season. On balance, it is far more likely that the Service will continue past practice and avoid implementing new rates during the October to December Christmas mailing season assumed in the hypothetical. In any event, the rule does not foreclose the Postal Service from seeking a waiver if it deems it necessary to avoid the problem envisioned in its comments.

Finally, pursuant to Rule 54(n) the Postal Service provides a reconciliation between prior test year estimates and actual results in its next formal request for changes in rates. Providing this data earlier benefits the Commission and parties as it would allow review and analysis with a view toward improving estimating techniques during the period between rate cases rather than solely during the more hectic period when an omnibus rate case is pending before the Commission. We propose that this reconciliation be made no later than six months following the end of the last fiscal year included in the test year of the last rate case.

Only the Postal Service objects to the rule. The Postal Service opposes producing the report at that time because of possible disruption to internal staffing requirements. Inasmuch as this reconciliation is not a particularly difficult report to prepare and any disruption will be minimal, we are adopting the proposed rule. While we recognize that an administrative "crunch" might arise in a particular case, requiring special consideration, we are not prepared to abandon a useful analysis across the board because of that possibility. This is a question which is better dealt with on the basis of some practical experience, so far as a permanent disposition is concerned.

Impact of proposed changes. Pursuant to Executive Order 12291, the Commission finds that the proposed rule changes do not constitute a "major rule." The changes deal with procedural matters and it is not anticipated that they could result in an appreciable change in the costs of participating in these cases. Nor will the changes have any adverse effects on competition, employment or the other factors listed in E.O. 12291.

The above analysis that the proposed rule changes do not constitute a major rule for purposes of E.O. 12291, applies with equal force to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subparts B and G—Administrative Practice and Procedure

We hereby amend Rules 54(f)(2), 54(n) and 102(d) of the rules of practice [39 CFR 3001.54(f)(2), 3001.54(n) and 3001.102(d)] as follows:

1. Amend § 3001.54(f)(2) to remove the number "12" and inserting in its place the number "24" in the second sentence of Rule 54(f)(2) to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(f) * * *

(2) * * * Estimated accrued costs referred to in paragraph (f)(2)(ii) of this section shall be for a fiscal year beginning not more than 24 months subsequent to the filing date of the formal request. * * *

* * * * *

2. Remove § 3001.54(n) and redesignate current paragraphs (o) to (t) as paragraphs (n) through (s) respectively.

3. Amend § 3001.102(d) by adding new paragraph (d)(4) to read as follows:

§ 3001.102 Filing of reports.

* * * * *

(d) * * *

(4) A report containing, to the extent practical, and explanation considering both price and nonprice variables, of the reasons that the costs (by cost segment), revenues and volumes (by class and subclass of mail), projected for the test period used in the most recently concluded rate case, differ from the actual accrued costs, revenues and volumes (six months following the end of the last fiscal year included in the test year of the last rate case).

* * * * *

(39 U.S.C. 3603, 3622, 3623)

By the Commission. Commissioner Duffy abstains.

Charles L. Clapp,

Secretary.

[FR Doc. 83-29003 Filed 11-2-83; 8:45 am]

BILLING CODE 7715-01-M

[1] The 1976 amendment to the Postal Reorganization Act inter alia, established the existing operative framework in which new rates are implemented approximately 10 to 12 months after a rate case filing.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 468

[WH-FRL 2462-5]

Copper Forming Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction of final rule.

SUMMARY: EPA is correcting several errors in the effluent limitations guidelines, pretreatment standards and new source performance standards for the copper forming category which appeared in the **Federal Register** on August 15, 1983 (48 FR 36942). These errors include (1) the omission of a requirement for the drawing spent lubricant stream from 40 CFR 468.01; (2) the number of plants and discharge points included in the discharge monitoring report (DMR) data and (3) typographical errors in both the preamble and 40 CFR Part 468.

DATE: These corrections shall become effective on November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. David Pepson, at (202) 312-7126.

SUPPLEMENTARY INFORMATION: On August 15, 1983 EPA published final effluent limitations guidelines and standards for the copper forming point source category (40 CFR Part 468; 48 FR 36942). Both the preamble and the regulation contained several errors. These errors are discussed briefly below and are corrected by this notice.

A provision was inadvertently omitted from 40 CFR 468.01 "Applicability" that limits the applicability of a discharge allowance for drawing spent lubricant to only those plants that actually discharge the

drawing spent lubricant waste stream at copper forming sites. No discharge allowance is applicable or allowable where these wastewaters are hauled off-site or otherwise not discharged at copper forming sites. Accordingly, 40 CFR 468.01 is corrected to add paragraph (b) explaining this condition for the allowance. EPA's intent to impose this condition for obtaining a drawing spent lubricant allowance is clearly explained in the preamble at 48 FR 36946, along with the reasons for doing so.

Sections IV and IX of the preamble contain discussions of discharge monitoring report data obtained subsequent to proposal which were analyzed and compared to the treatment effectiveness values used in developing limitations and standards. There are several factual errors in these discussions relating to the number of plants and discharge points for which data were available. These errors are corrected by this notice. The conclusions reached from analyses of the discharge monitoring data are discussed in the preamble to the final rule and are unchanged by the corrections made today.

There are several typographical errors in the preamble and in the numerical limitations and standards of 40 CFR Part 468. These errors are also corrected by this notice.

In addition, it should be noted that on September 15, 1983 the Agency published a technical amendment to 40 CFR Part 468 that deleted a footnote under § 468.04 compliance date for PSES (48 FR 41409). The footnote stated that the compliance date for PSES was subject to Court approval of an EPA modification of the Consent Decree in *NRDC* v. *Train*, 12 ERC 1833 (D.D.C. 1979). Subsequent to promulgation the Court approved EPA's modification allowing three years for compliance. Accordingly, the footnote was deleted.

Dated: October 26, 1983.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

PART 468—[CORRECTED]

The following corrections are made to **Federal Register** document OW-FRL-2401-3 published on August 15, 1983 (48 FR 36942).

1. On page 36944, column one, second paragraph, "19 discharges from 15 copper forming plants" is corrected to read "17 discharges from 16 copper forming plants".

2. On page 36944, second column, second paragraph, "the basic for the revised costs" is corrected to read "the basis for the revised costs".

3. On page 36945, second column, fifth paragraph, "(20 plants versus four copper forming plants available)" is corrected to read "(18 plants versus four copper forming plants available)".

4. On page 36946, first column, third paragraph, and again in the second column, first and third paragraphs, "1/kkg" is corrected to replace the number "1" with the letter "l" for liters to read "l/kkg".

5. On page 36947, column two, third paragraph, "1,755 1/kkg" is corrected to read "1755 l/kkg".

6. On page 36952, column one, fourth paragraph, "data points from 20 plants" is corrected to read "data points from 18 plants".

7. On page 36952, second column, first paragraph, the first sentence is corrected and a second sentence added for purpose of clarification. As corrected, this paragraph now reads: "The Agency confirmed that copper forming plants were achieving results that were consistant with the values determined from the CMDB by examining discharge monitoring reports (DMR). Of the 17 discharge points for which data were collected, fifteen discharge points had treatment consistent with the lime and settle technology used as the basis for the copper forming regulation. Although reported in summary form (usually as monthly averages) DMR data can be used to construct annual average effluent concentration values".

8. On page 36952, column two, second paragraph, "42 annual average values for copper from the 19 discharge points" is corrected to read "41 annual average values for copper from the 15 discharge points". In that same paragraph, "These 42 averages" is corrected to read "These 41 copper averages".

9. On page 36952, column two, third paragraph, "Thirty-three of these 42" is corrected to read "Thirty-one of these 41".

10. On page 36952, column two, third paragraph "annual averages for 11 of the discharge points" is corrected to read "annual averages for 8 of the 15 discharge points".

11. On page 36952, column two, third paragraph, "the remaining eight" is corrected to read "the remaining seven".

12. On page 36952, column two, third paragraph, "of the eight discharge points, seven had only one year in which the annual average was greater than the CMDB average and the other discharge point reported two of four annual averages only slightly greater than the CMDB average" is corrected to read "of the seven discharge points, four had only one year in which the annual average was greater than the CMDB average and the other three discharge points reported two annual averages greater than the CMDB average".

13. On page 36952, column two, fourth paragraph, "data on four other" is corrected to read "data on six other".

14. On page 36952, column two, fourth paragraph, "for chromium, nickel, zinc, and TSS" is corrected to read "for nickel, lead, and TSS". Immediately following, a new sentence is added to read "Forty-five percent of the chromium annual averages, forty-seven percent of the iron annual averages, and twenty-two percent of the zinc annual averages were below their respective CMDB long-term average".

15. On page 36953, first column, fourth paragraph, "for the drawing spent lubricant operation" is corrected to read "for drawing spent lubricant".

16. On page 36954, second column, second paragraph, "BPT costs estimates ae higher" is corrected to read "BPT cost estimates are higher".

17. On page 36957, column one, under Appendix C, "The following three (3) pollutants" is corrected to read "The following two (2) pollutants".

§ 468.01 [Corrected]

18. In 40 CFR 468.01 which appears on page 36957, the first paragraph is designated as paragraph (a).

19. In 40 CFR 468.01, a new paragraph (b) is added to read as follows:

* * * * *

(b) The discharge allowances for drawing spent lubricant of 40 CFR 468.11(c), 468.12(c), 468.13(c), 468.14(c) and 468.15(c) are applicable only to those plants that actually discharge the drawing spent lubricant waste stream at copper forming sites. No discharge allowance is applicable or allowable where these wastewaters are hauled off-site for disposal or are otherwise not discharged at copper forming sites.

§ 468.02 [Corrected]

20. 40 CFR 468.02(n) which appears on page 36958, column one, "the mass or copper of copper alloy" is corrected to read "the mass of copper or copper alloy".

§ 468.13 [Corrected]

21. In 40 CFR 468.13(f) which appears on page 36962 the maximum for any 1 day for copper of "10.587" is corrected to read "1.587". In this same paragraph the maximum for any 1 day for zinc of "0.264" is corrected to read "1.264".

22. In 40 CFR 468.13(i) which appears on page 36963, the maximum for any 1 day for chromium of "4.667" is corrected to read "4.677".

23. In 40 CFR 468.13(q) which appears on page 36964, column one, the maximum for monthly average for copper of "1.013" is corrected to read "0.013".

§ 468.15 [Corrected]

24. In 40 CFR 468.15(o) which appears on page 36967, column two, "PSPS" is corrected to read "PSNS".

[FR Doc. 83-29720 Filed 11-2-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6439

[AA-9206]

Alaska; Revocation of Public Land Order No. 5549

Correction

In FR Doc. 83-19996 beginning on page 33713 in the issue of Monday, July 25, 1983, make the following corrections:

1. On page 33713, third column, thirteen lines from the bottom, in the entry for "Sec. 35", "N½N½" should read "N½N½,".

2. On the same page, in the same column, three lines from the bottom, in the entry for "Sec. 4", "S½NE¼" should read "S½NW¼".

3. On page 33714, first column, nine lines from the top, in the entry for "Sec. 21", "N½NW¼" should read "N½NE¼".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik; Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4002-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	§Depth in feet above ground. *Elevation in feet (NGVD). Modified
California	Novato, city of Marin County (FEMA-6409)	Novato Creek	At eastern corporate limits	*6
			Approximately 3400 feet downstream of confluence with Simmons Slough.	*6
			Area bounded by U.S. Highway 101 and Northwestern Pacific Railroad.	*8
			Approximately 100 feet downstream of Northwestern Pacific Railroad Bridge.	*9
			Area bounded by U.S. Highway 101, Redwood Boulevard, and Lamont Avenue.	*12
		Vineyard Creek	Upstream edge of Center Road bridge	*45
			Approximately 725 feet downstream of Wilson Avenue crossing.	*54
			Downstream edge of Trumbull Avenue bridge	*88
			Downstream edge of Mill Road bridge	*102
		Wilson Creek	Approximately 25 feet upstream of McClay Avenue crossing.	*57
			Approximately 125 feet downstream of Hansen Road extended.	*68
			At Hansen Road extended	*70
			Approximately 100 feet downstream of Shields Lane crossing.	*71

State	City/town/county	Source of flooding	Location	§Depth in feet above ground. *Elevation in feet (NGVD). Modified
		Arroyo San Jose	At eastern corporate limits	*8
			Approximately 100 feet downstream of Bel Marin Keys crossing.	*14
			Approximately 100 feet upstream of U.S. Highway 101 crossing.	*27
		Pacheco Creek	At downstream limit of detailed study	*15
			Approximately 25 feet upstream of Northwestern Pacific Railroad crossing.	*27
			At Main Entrance Road crossing	*44
			Approximately 25 feet downstream of second crossing of Bolling Drive.	*62
			Approximately 25 feet upstream of Bolling Drive second crossing.	*71
		San Pablo Bay	At northeastern corporate limits	*6
			At mouth of Novato Creek	*6
			At Hamilton Air Force Base	*6
Maps available for review at the Lobby of the Community Development Department, 901 Sherman Avenue, Novato, California.				
Massachusetts	Westwood, town, Norfolk County (FEMA-6538)	Neponset River	Blue Hill Drive	*47
Maps available for inspection at the Town Hall, 580 High Street, Westwood, Massachusetts.				
Michigan	(C) Detroit, Wayne County (FEMA-6547)	Middle River Rouge	Just upstream of West Warren Road	*598
			About 700 feet upstream of West Warren Road	*599
Maps available for inspection at the Department of Planning, 3400 Cadillac Tower, Detroit, Michigan.				
Minnesota	(C) Stillwater, Washington County (FEMA-6514)	Saint Croix River	At downstream corporate limits	*692
			At upstream corporate limits	*693
		Browns Creek	About 1300 feet upstream of State Highway 96	*705
		Long Lake	Shoreline	*893
Maps available for inspection at City Hall, 216 North Fourth Street, Stillwater, Minnesota.				
Nevada	North Las Vegas, city of Clark County (FEMA-6563)	Las Vegas Wash	25 feet downstream of center of Carey Avenue	*1833
		Unnamed Tributary to Las Vegas Wash.	50 feet upstream of East Cheyenne Avenue	*1868
		Union Pacific Railroad Overflow	Intersection of Frehner Road and Losee Road	*1909
Maps are available for review at 2200 Civic Center Drive, North Las Vegas, Nevada.				
New Jersey	Bernardsville, borough, Somerset County (FEMA-6539).	Passaic River	Downstream corporate limits	*298
			Approximately 1,950 feet downstream of Jockey Hollow Road.	*386
			Just upstream Jockey Hollow Road	*423
			Upstream corporate limits	*428
		Indian Grave Brook	Downstream corporate limits	*298
			Approximately 200 feet downstream of Hardscrabble Road Bridge.	*310
Maps available for inspection at the Borough Hall, Bernardsville, New Jersey.				
Ohio	(V) Whitehouse, Lucas County (FEMA-6508)	Lone Oak Ditch	Downstream corporate limits	*644
			Approximately 900 feet upstream of downstream corporate limits.	*644
		Blue Creek	Downstream corporate limits	*641
		Swan Creek	Downstream corporate limits	*641
			Upstream corporate limits	*642
Maps available for inspection at the Municipal Building, 6655 Providence Street, Whitehouse, Ohio.				
Oklahoma	Webbers Falls, Town, Muskogee County (FEMA-6547).	Arkansas River	Upstream corporate limits	*462
Maps available for inspection at the Town Municipal Building, Webbers Falls, Oklahoma.				
Oregon	Marion County, unincorporated areas (FEMA-6538)	Mill Creek	300 feet upstream of centerline of Interstate Highway 5 northbound.	*226
		Battle Creek	140 feet upstream of centerline of Reese Hill Road	*526
		Claggett Creek	100 feet upstream of centerline of Dearborne Avenue NE.	*126
		East Fork Pringle Creek	At downstream edge of Interstate Highway 5	*221
Maps available for review at the Planning Department, 220 High Street, Salem, Oregon.				
Pennsylvania	East Buffalo, township, Union County (FEMA-6538)	Limestone Run (Bull Run)	Approximately 450 feet upstream of State Route 45 (downstream crossing).	*487
			Approximately 250 feet upstream of CONRAIL (upstream crossing).	*477
Maps available for inspection at the Township Building, 610 Fairground Road, Lewisburg, Pennsylvania.				
Pennsylvania	Solebury, township, Bucks County (FEMA-6522)	Delaware River	Downstream corporate limits	*62
			Downstream corporate limits of Borough of New Hope	*67
			Upstream corporate limits of Borough of New Hope	*73
			Upstream Upper York Road bridge	*83
			Upstream Lumberville bridge	*95
			Upstream corporate limits	*96
		Paunacussing Creek	Upstream River Road bridge	*96
			Upstream Paunacussing Road bridge	*207
			Upstream Fleecy Dale Road bridge	*225
			Upstream Sawmill Road bridge	*267
			Upstream Mechanicsville Road bridge	400

State	City/town/county	Source of flooding	Location	§Depth in feet above ground. *Elevation in feet (NGVD). Modified
		Panunacussing Creek Tributary No. 1.	Upstream Stovers Mill Road bridge	*231
			Approximately 1,500 feet upstream Stovers Mill Road bridge.	*245
Maps available for inspection at the Township Building, Solebury, Pennsylvania.				
Texas	Denton, city, Denton County (FEMA-6547)	Pecan Creek	Upstream of McKinney Street	*611
			Upstream of Crescent and Fulton Streets	*641
		North Pecan Creek	Upstream of Anna Street	*631
			Upstream of University Drive West	*648
Maps available for inspection at the Municipal Building, Denton, Texas.				
Vermont	Moretown, town, Washington County (FEMA-6532)	Winooski River	Downstream corporate limits	*428
			Upstream of U.S. Route 2	*447
			Upstream of State Route 100B	*501
		Crossett Brook	Approximately 2,700 feet upstream of State Route 100	*452
Maps available for inspection at the Town Hall, Route 100B, Moretown, Vermont.				
Virginia	Campbell County (FEMA-6547)	Dreaming Creek	Downstream corporate limits	*831
			Approximately 200 feet upstream State Route 1554	*850
Maps available for inspection at the County Courthouse, Rustburg, Virginia.				
Virginia	Lynchburg, city (FEMA-6547)	Dreaming Creek	Upstream side of State Route 291 bridge	*700
			Upstream side Norfolk and Western Railway bridge	*726
			Upstream side U.S. Route 460 bridge	*760
			Upstream side State Route 1447 bridge	*800
			Upstream corporate limits	*831
Maps available for inspection at the City Hall, Lynchburg, Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Federal Emergency Management Agency)

Issued: October 25, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-29852 Filed 11-2-83; 8:45 am]

BILLING CODE 6718-03-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Mississippi

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This notice identifies the location of a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

EFFECTIVE DATE: November 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Clogston, Coordinator, Voting Rights Program, Office of Personnel Management, Washington, D.C. 20415, 202–632–5691.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Lowndes County, Mississippi, as an additional examination point coming under the provisions of the Voting Rights Act of 1965, as amended. He has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to Section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be Federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to Section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to immediately register voters and Federal observers to observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because its purpose is the addition of one new location to the list of counties in the regulation concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends 45 CFR Part 801, Appendix A, by adding Lowndes County, Mississippi, to read as follows:

Appendix A—[Amended]

Mississippi

County; Place for filing; Beginning date.

* * * * *

Lowndes; Columbus—Ramada Inn, Room 153, Highway 45 North; August 22, 1983.

(5 U.S.C. 1103; Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973c, 1973g))

[FR Doc. 83-29817 Filed 11-2-83; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 22, 23, 74, 78, 81, 87, 90, and 94

[General Docket 82-334; FCC 83-393]

Spectrum Utilization Policy for the Fixed and Mobile Services in the 947 MHz-40 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission provides spectrum and revises its Rules to provide for the recommendation of private operational fixed links currently operational in the 12.2 to 12.7 GHz (12 GHz) band. This is necessary due to the introduction of the Broadcast Satellite Service in the 12 GHz spectrum. The rule changes permit the displaced links access to the following bands: 6525–6875 MHz, 12.7–13.2 GHz and 17.7–19.7 GHz. Additionally, the rule changes provide for future growth of the private operational fixed service and compatible services at 18 GHz on providing channeling plans for 220, 80, 40, 20, 10, and 6 MHz channels and other appropriate standards.

EFFECTIVE DATE: December 5, 1983.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, (202) 653–8177, James T. Vorhies, (202) 653–9097, Office of Science and Technology, Spectrum Management Division.

List of Subjects

47 CFR Part 2

Frequency allocation, radio.

47 CFR Part 21

Point-to-point microwave, radio.

47 CFR Part 22

Mobile radio service radio.

47 CFR Part 23

Radio.

47 CFR Part 74

Radio.

47 CFR Part 78

Communications equipment, radio.

47 CFR Part 81

Communications equipment, radio.

47 CFR Part 87

Communications equipment.

47 CFR Part 90

Mobile services, radio.

47 CFR Part 94

Radio.

First Report and Order

In the matter of establishment of a spectrum utilization policy for the fixed and mobile services use of certain bands between 947 MHz and 40 GHz Gen. Docket 82-334.

Adopted: September 9, 1983.

Released: September 30, 1983.

By the Commission.

Purpose

1. The purpose of this First Report and Order in General Docket 82-334 is to provide frequencies and revised Rules for the reaccommodation of existing 12 GHz fixed microwave users. This is necessary because the 12 GHz band (12.2 to 12.7 GHz) has been allocated to the Direct Broadcast Satellite (DBS) service on a primary basis, and the fixed services and DBS services cannot use the same frequencies in a geographic area due to interference. This First Report and Order will also allocate spectrum in the 18 GHz band to fixed services. A number of issues concerning future utilization of fixed and mobile services microwave spectrum were raised earlier in this proceeding, however, broader changes in the microwave service rules will be treated in other phases of this Docket.

Introduction

2. On January 13, the Commission adopted and released a *Notice of Proposed Rulemaking (NPRM)* [1] in this proceeding proposing spectrum allocations and standards for certain microwave bands. A major purpose of the *NPRM* was to propose changes in the Commission's Rules to accommodate private fixed users who might be displaced from the 12 GHz frequency band by the allocation of this band to Direct Broadcast Satellite. Earlier, the Commission had released a *Notice of Inquiry (NOI)* in this proceeding to examine spectrum allocations and technical standards for certain fixed and mobile services' bands between 17.7 and 40 GHz.[2] The scope of the proceeding was expanded by the *NPRM* to include consideration of certain additional bands between MHz and 17.7 GHz in order to provide a means for developing provisions to accommodate the displaced 12 GHz users.

3. This was in response to the Commission's instruction in the *Report and Order* in Docket 80-603 authorizing Direct Broadcasting Satellite (DBS) service in the 12.2–12.7 GHz band (12 GHz band). In that *Report and Order*, the Commission instructed the staff to prepare a notice of proposed rule making to make spectrum available for private fixed service users who might be displaced from the 12 GHz band by the DBS service.[3] While the Commission recognized that many displaced 12 GHz fixed operations could be supported at frequencies of 18 GHz and higher, it tentatively identified other spectrum that might also support some of them. In particular, it noted that the bands at 6525–6875 MHz and 12.7–13.25 GHz might be used with significantly lower costs than those associated with the 18 GHz band. The Commission stated that it intended to propose a considerable amount of sharing or pooling of microwave spectrum among the broadcast auxiliary, cable television relay (CARS) and private operational fixed services, and to consider the possibility of sharing between these services and common carrier services. By opening up lower bands through interservice sharing, opportunities would be created to reaccommodate displaced 12 GHz users at less cost than would occur if they were restricted to moving only to bands at 18 GHz and higher. Among other issues that the Commission expressed intent to address were: (1) The need for minimum path length criteria for the use of each of the available bands, (2) bandwidth requirements and appropriate channeling plans for the bands, (3) feasibility of continued private fixed use of the 12.2–12.7 GHz band on a secondary basis, (4) coordination and loading practices needed to ensure

[1] *Notice of Proposed Rulemaking* in General Docket 82-334, Adopted and Released January 13, 1983 (FCC 83-2).

[2] *Notice of Inquiry* (FCC 82-286) In General Docket 82-334, Released July 9, 1982.

[3] *Report and Other* (FCC82-285) in General Docket 80-603, Released July 14, 1982.

efficient use of the spectrum, and (5) consolidating non-common carrier microwave licensing within the Commission. Some of these had already been discussed in the *NOI* in this proceeding as they affect the bands between 17.7–40 GHz. The issues are relevant to determining efficiency of use of the spectrum and should be considered during the development of utilization policy.

4. In the *NPRM* in this proceeding, the Commission repeated its firm intention to take action by September, 1983, in a report and order which would allocate additional frequencies for displaced 12 GHz private fixed service licensees, notwithstanding the broader purposes of the proceeding. As a consequence, a very strict schedule for this Docket has been maintained. Several motions for extension of time for filing comments were denied;[4] however, a short extension of time for filing reply comments was granted.[5] In addition, several late filed comments and reply comments have been accepted for filing.

5. Since the *NPRM* addressed substantial changes in the Commission's Rules which were intended to yield more efficient use of microwave spectrum, it was not expected that the initial [September 1983] report and order would resolve all of the issues and proposals contained in the *NPRM*. Consequently, the main objective of this item, a First Report and Order, is to resolve the matter of reaccommodating the 12 GHz fixed service licensees by providing additional frequencies for these users within the proposals given in the *NPRM*. Since the 18 GHz band, which may be expected to satisfy much of this requirement, has been largely undeveloped, the item includes standards for its use by private licensees, as well as common carrier, broadcasting and cable licensees. Remaining broader issues contained in the *NPRM* will be considered in future Commission actions.

12 GHz Band Reaccommodation Proposals

6. There are approximately 2100 private microwave links using frequencies in the 12.2–12.7 GHz band. About 48% of these are authorized in the Business service while the rest are distributed among the other private services, including industrial, transportation and local government services. There are several types of systems operating in this band, including one-way video or data systems; local distribution (short-haul) multi-hop systems used for video, voice or data; single or multi-hop spur systems connected to long-haul backbone systems; and long-haul backbone systems. Approximately 45% of the links are used to support transmission of video signals. Systems composed of multiple links often use frequencies in other bands in addition to 12 GHz band frequencies. Typically, 12 GHz band links have a bandwidth of 20 MHz which is suitable for FM video, frequency division multiplexed voice (FDM/FM) or high speed digital data. Four 10 MHz wide channel pairs have been designated for low power limited coverage systems (0.500 watts power versus 10 watts) and about 140 links are authorized under provisions for these systems.

7. In the *NOI*, the 18 GHz band was identified as the primary future replacement spectrum for the 12 GHz frequency band now used by private radio licensees. With regard to existing 12 GHz operations, the *Report and Order* in Docket 80–603 concerning Direct Broadcast Satellite Services, stated that 50% to 85% of these links could be accommodated in the 18 GHz band, once equipment was available. However, for many systems consisting of longer links requiring high reliability, the cost of moving to 18 GHz would be quite substantial. Because of the reduced propagation distance at the higher band, new towers and sites may be needed for the additional, shorter hops required. The *NPRM* proposed standards for private operational fixed service use of 18 GHz and several other bands.

8. In the *NPRM*, the Commission proposed that 12 GHz licensees be able to choose among several bands, recognizing that spectrum availability in any given band is highly dependent on geographic location. It again noted that the 12.7–13.2 GHz band which is adjacent to the 12 GHz band, and which is used mainly by the Cable Television Relay Service (CARS), would be the most attractive replacement band for existing users from a cost standpoint. However, interference-free frequencies in this band might not be available in all locations. Consequently, the Commission proposed to provide the option for 12 GHz users to relocate to several lower frequency bands at 2 GHz, 6 GHz, and 7 GHz as well. Licensing displaced 12 GHz users in these lower frequency bands would require, in some cases, that the currently authorized bandwidths be modified to accommodate 20 MHz bandwidths and that two-way operation be permitted. Since Business users would no longer have access to the 12 GHz band on a primary basis, and in order to provide Business entities use of longer path lengths than would be practical at 18 GHz and above, the Commission proposed to remove the restriction on their eligibility to use 1850–1990 MHz and 6 GHz.

9. Since the *NPRM* proposed shared use of the lower bands by users not now eligible, the Commission recognized that the number of new applications for frequencies from users under the relaxed eligibility, in addition to those which might normally be applying for frequencies, would jeopardize the timely and cost effective relocation of the 12 GHz users. The Commission recognized the difficulty in fashioning an across-the-board preference scheme but it requested comment on whether some form of priority could be given to the 12 GHz users over other users in the affected bands.

10. In addition to the proposals for reaccommodating 12 GHz users, the *NPRM* made a number of other proposals relating to certain microwave bands and some generally applicable technical standards in order to improve spectrum utilization over the long term. The proposals for the 18 GHz band are very pertinent to the reaccommodation process, since it has been viewed as the primary replacement spectrum for the displaced users.

11. The 18 GHz band is allocated to the fixed service as well as several space services and is used by private and common carrier entities for the transmission of digital signals between fixed points. In the *NPRM* we proposed to provide a 6 MHz channeling plan, a 40/80 MHz channeling plan, and to revise the pairing scheme for existing 220 MHz channel pairs. These changes were in addition to the proposals made for the 18 GHz band in Docket 79–188.[6]

[4] *Denial of Joint Motion for Extension of Time and Modification of Procedures*, Gen. Docket No. 82–334, By the Acting Chief Scientist, Adopted March 3, 1983; Released March 7, 1983. *Denial of Petition of the Los Angeles County Sheriff's Department and Los Angeles Department of Communications to Extend Time for Comments* in General Docket No. 82–334, By the Acting Chief Scientist, Adopted March 15, 1983; Released March 16, 1983. *Denial of Request for Extension of Time for Filing Comments*, In General Docket No. 82–334, By the Acting Chief Scientist, Adopted March 16, 1983; Released March 17, 1983. *Denial of Request For Extension of Time For Filing Comments*, In General Docket No. 82–334, By the Acting Chief Scientist, Adopted March 24, 1983; Released March 25, 1983.

[5] *Order Extending Time For Reply Comment*, In General Docket No. 82–334, By the Deputy Chief Scientist Adopted April 18, 1983, Released April 20, 1983.

[6] *FNPRM* in Docket 79–188, 46 FR 45635 (September 14, 1981).

which concerned Digital Termination Systems (DTS) and associated fixed links in the 18.36–19.04 GHz portion of the band.

Related Commission Actions

12. Since the NPRM in this Docket was released in January 1983, the Commission has acted on a *Petition for Reconsideration* of the DBS Report and Order filed by the County of Los Angeles (LA County).[7] In its petition, LA County alleged that the Commission did not give adequate consideration to the needs of fixed users in the 12.2–12.7 GHz band, that the instant proceeding, Docket 82–334, will not protect adequately the needs of these licensees, and that the Commission did not establish a procedure in the DBS *Report and Order* to adequately compensate fixed service operators who must move from the 12.2–12.7 GHz band. LA County requested that the DBS allocation be suspended pending full Commission consideration of the needs of fixed users after the conclusion of the 1983 Regional Administration Radio Conference, (RARC) [8] and that the public be allowed to comment on the spectrum allocation issue after the RARC is completed.

13. In the *Memorandum Option and Order* denying the LA county Petition,[9] the Commission stated that the accommodation of fixed service users has been a central feature of the DBS rule making and that its procedural rule making processes had been fashioned to ensure that the needs of the public and all interested parties were fully taken into account. The Commission noted that no new facts had been presented to justify the delay of the instant proceeding or to stay the allocation of the 12.2–12.7 GHz band for DBS. The Commission did state, however, that since the LA County use of the 12 GHz band consisted, in part, of public safety and emergency services, that the Commission, given its duty to assure that these services are not impaired, might consider special relief.

14. The Commission went on to state that it might be persuaded to extend the transition period, or to allow interference to be caused to DBS services in certain locations, or to provide some alternative form of relief upon a documented showing of need. The fact that interference to the fixed public safety services will not be caused by DBS operations was especially relevant to the conclusion not to delay the DBS proceeding to protect public safety and emergency services. Since it is anticipated that the reaccommodation procedure adopted in this Report and Order will adequately meet the needs of the existing fixed 12 GHz users, no specific special relief measures are being considered for public safety services at this time; but such measures remain available if required.

15. The Commission also considered the issue of compensation of the fixed users by DBS operators in the *MO&O* denying the LA County Petition. The Commission concluded that cost reduction provisions adopted in the DBS rule making mitigate the cost of the reaccommodation to the extent that nonvoluntary compensation by DBS operators is not required. However, provisions for voluntary arrangements between fixed service users and DBS operators are desirable and are expected to occur.[10] Consequently, the issue of adequate compensation by DBS operators will not be considered further in the instant proceeding.[11]

RARC–83 Results

16. The Final Acts of the RARC [12] confirm the domestic allocation developed in Docket 80–603 for the 12.2–12.7 GHz band. The U.S. was allocated the entire 500 MHz band for satellite use. Both Canada and Mexico have also been allocated this spectrum for satellite use. Consequently, the allocation for DBS in the entire 12.2–12.7 band made in Docket 80–603 will remain in effect domestically, as planned. The fixed service is secondary to the DBS service except that existing terrestrial uses will not become secondary to Broadcasting Satellite use until five years after the date this Rulemaking item is adopted. Criteria for shared use of the 17.7 to 17.8 GHz band (a portion of the 18 GHz band being addressed in this Item) by DBS uplinks and terrestrial stations, was on the agenda for consideration by the RARC. However, specific criteria were not adopted. Consequently, criteria for this segment of the 18 GHz band will be developed in future Commission actions.

Comments Received in Response to NPRM

17. A large number of comments and reply comments were received in response to the *NPRM*. A complete list of commenters is shown in Appendix A. The summary which follows discusses the comments pertaining to the reaccommodation proposals, including proposals for the 18 GHz band. The comments pertaining to more general issues will be treated in future actions.

18. On the key issue of the adequacy of our 12 GHz reaccommodation proposals, all commenters, with one exception, stated that they believe them to be inadequate because they do not guarantee successful reaccommodation. Satellite Television Corporation (STC), a potential DBS operator, however, provided a detailed analysis showing how a large number of existing 12 GHz links, even in major metropolitan areas, could be accommodated in alternative bands. In the New York area for example, STC showed that, by using a combination of frequencies in the 6, 13 and 18 GHz bands and by making technical adjustments, including use of high-performance antennas, existing 12 GHz links could be accommodated. In its Reply Comments, STC showed how all links operated by Los Angeles County and the City of Los Angeles in the 12 GHz band could be accommodated in the 13 GHz band. The Los Angeles analysis, however, included transferring some assignments currently operating with 20 MHz-wide channels to channels of 12.5 MHz bandwidth where existing channel loading was low enough to allow it. [13] The validity of STC's analysis was questioned by several commenters. The principal alternative to the proposed reaccommodation procedure suggested by the 12 GHz users and some others was to permit use of the 11.7 to 12.2 GHz band and the continued use of the 12.2 to 12.7 band, on a primary basis, until such time as interference to DBS systems actually occurs.

[7] *Petition For Reconsideration*, in Docket 80–603, filed by the County of Los Angeles, August 3, 1982.

[8] The Region 2 Administrative Radio Conference was convened in June 1983 and alloted Direct Broadcast Satellite frequencies and orbital positions, internationally in the western hemisphere. It also developed technical standards for the DBS service.

[9] *MO&O*, General Docket 80–603, Adopted May 7, 1983; Released May 19, 1983.

[10] For example, where an organization may not be able to get requisite funding in the timeframe desired by the DBS operator before September 1988 to make the necessary frequency change, the DBS operator may wish to pay for the change in order to speed up the delivery of his services in that area.

[11] Several comments urging a compensation requirement be placed or the DBS operators were received in response to the *NPRM*. As these comments raise no new facts, they will not be considered further.

[12] The Region 2 Administrative Radio Conference was concluded July 18, 1983. The Final Acts of the Conference were signed by the U.S. (FCC Public Notice, Mimeo No. 5605, July 28, 1983).

[13] STC Reply Comments included the statement "It should also be noted that the channel loading is quite low. This enabled MSI (Microwave Services International, the engineers conducting the study) to transfer some paths from 20 MHz to 12.5 MHz channels. The latter was the narrowest channel used, even though in some cases, channel loading was so low that the paths could have been accommodated using channels as narrow as 1 MHz. This under utilization at least warrants the conclusion that the city and county (of Los Angeles) systems have ample room for growth."

19. Los Angeles County submitted as Reply Comments a filing (previously submitted but not accepted for filing in Docket 80-603) describing the need for high reliability in their public-safety microwave system and future requirements for additional frequencies. The use of the 18 GHz band was rejected as unacceptable because of the lessened path length/reliability problem. The principal new requirement identified was for microwave links to interconnect County-owned telephone PBX's being acquired to reduce use of the public telephone network. A second set of Reply Comments which addressed specific future requirements was received from the State of South Carolina. South Carolina addressed a requirement for a statewide microwave system to distribute educational television programming, closed circuit television and State Agency telephone traffic and requested that use of 20 MHz wide channels for video transmissions be allowed in the 6 GHz band.

20. The existing Private Operational Fixed (POFS) users at 12 GHz made a strong showing of need for access to the 13 GHz band for reaccommodation to be accomplished in a timely and low cost manner. The commenters generally stated that the proposals made for the 18 GHz band would be of limited use because of the lack of actual experience using this band, perceived propagation limitations (short achievable path lengths) and lack of available equipment for the next two to three years.

21. Some 12 GHz users strongly supported the need for frequencies in the 2, 6 and 7 GHz bands. The County of Los Angeles indicated that they are now eligible in the 1850–1990 MHz and 6 GHz bands but have not been able to make use of them due to congestion. There were also comments that stated the technical standards proposed for the 2, 6, 7, and 13 GHz bands should not apply to displaced 12 GHz users if reaccommodation is to proceed in a timely and minimum cost manner. In particular, minimum path lengths and loading standards should not apply.

22. A majority of the comments addressed proposals for sharing the 2 and 7 GHz broadcast auxiliary bands used for fixed links, mobile pick-up and electronic news gathering (ENG) systems with non-broadcast entities. Comments were also received from broadcasters who use the 13 GHz band for mobile operations on a shared basis with cable entities. Sharing of the 2 and 7 GHz bands with additional fixed users was opposed because of what is perceived to be already heavy loading and difficulties in coordinating with mobile broadcast operations. It was stated that any sharing in these bands would limit future use to support Low Power Television and other needs.

23. Cable television operators expressed concern about shared use of the 13 GHz band because it would limit growth in cable television services. They stated that there is insufficient spectrum available at 13 GHz for the 12 GHz users, and that there are not sufficient frequencies available in the 13 GHz band for new cable systems now being franchised.

24. Another area of concern to cable operators was the proposal in the 18 GHz band for 6 MHz wide channels suitable for cable distribution systems. The number of channels proposed was criticized as being insufficient to meet the need of large urban cable systems (60 or more channels) where two-way services are to be installed. Cable operators indicated that the two sub-bands proposed should instead be contiguous frequencies to reduce equipment costs and that additional spectrum is needed at 18 GHz.

25. On the question of allowing the Business service to access to the 1850–1990 and 6525–6875 MHz band, Business users supported the proposal to remove the existing restriction. Utilities and other private users authorized now in these bands opposed this change based on the fear of increased interference and projected future needs of presently authorized uses. Some non-Business private users now operating in the 12 GHz band stated that the number of applications which would be received from new Business service applicants could completely exhaust the remaining available frequencies in these bands before the existing 12 GHz systems were reaccommodated.

Discussion and Conclusions

26. The objective of this general proceeding is two-fold: first, to provide for the reaccommodation of the 12 GHz private users and, second, to propose a common spectrum utilization policy for the terrestrial microwave services. While the *NPRM* took the approach that the reaccommodation would be accomplished within the actions taken to improve spectrum utilization in all microwave bands, the need to decide the reaccommodation issue quickly does not allow for all of the broader issues to be resolved at this time. We also recognize that it would not be appropriate to impose new technical standards on the existing 12 GHz licensees who would be relocated because these users should be considered as being "grandfathered" in the new frequency bands. The reaccommodation of the 12 GHz private users must be accomplished in a very timely fashion while the scope and complexity of the policy issues, as demonstrated in the responses to the *NPRM*, call for more lengthy consideration of the other issues raised in the *NOI* and *NPRM*. Therefore, the broader issues in the utilization of some of the microwave bands and technical standards discussed in the *NPRM* will be pursued further in this Docket. However, we believe there is sufficient record to complete the allocation of the 18 GHz band at this time as this is a necessary adjunct to the reaccommodation. This discussion will be divided into two parts. Under the heading *Reaccommodation Provisions*, we will address the general reaccommodation issues and rule changes to allow access to the 6 and 13 GHz bands for existing 12 GHz users. A second section will deal with the allocations adopted for the 18 GHz band.

Reaccommodation Provisions

27. Our intent in this First Report and Order is to set forth a procedure for the reaccommodation of existing terrestrial 12 GHz users. We anticipate that the assignment of new frequencies for these users can begin immediately and that users can be accommodated by September 1988.[14] We are making available sufficient spectrum in the 13 GHz band and 6 GHz band, as well as in the 18 GHz band so that reaccommodation can be successfully completed in a timely, cost-efficient manner. The Commission will assist the licensees in this process in any way possible. However, the selection of replacement frequencies and other aspects of their microwave operations will remain the responsibility of the microwave licensees. In addition, as indicated above, terrestrial use of the 12 GHz band will be permitted to continue after September 1988 provided no interference is caused to operating Direct Broadcast Satellite systems.

28. We have carefully analyzed the comments regarding the procedure needed to reaccommodate 12 GHz users. The Commission determined in the DBS

[14] OFS stations authorized in the 12.2–12.7 GHz band prior to the issuance of this Report and Order are not required to protect domestic broadcasting satellite systems from interference for a period of five years from the date of the Report and Order. Hence, with the issuance of this document, OFS users already licensed in the 12.2–12.7 GHz band will have primary status in the band until September 1988. *See* Section 94.65(h) of the Rules. Such licensees will be permitted to make necessary modifications to their systems during the period 1983–1988 without losing the primary status.

rulemaking, Docket 80–603, that those users licensed in the 12.2–12.7 GHz band as of the date the instant Report and Order is adopted would be reaccommodated. We have prepared a list of all licensed 12 GHz band users as of September 9, 1983, the date of adoption of this Report and Order. This list will be issued in a Public Notice after this Report and Order is released. While we share the concerns of existing 12 GHz users that significant expense will be incurred, even given use of 13 GHz frequencies where available, few alternatives exist. Several commenters stated that continued use of the 12 GHz band will be necessary for some users and that this may be possible if DBS does not develop as planned. Since the full 12 GHz band has been allocated to DBS by the 1983 RARC and the Commission anticipates that several DBS systems will be in operation by 1988, continued use of the 12 GHz band for terrestrial operations will only be possible on a secondary basis after September 9, 1988. Licensees who choose to stay in the 12 GHz band on that basis do so at their own risk after that date.

29. In analyzing possible frequency bands which could be used for reaccommodation, the Commission examined bands which offered technical compatibility, suitable bandwidths, some available capacity and suitable path lengths. The Commission, in the DBS rulemaking, determined that bands at 18 GHz and higher would be suitable for many private fixed uses of the type now supported at 12 GHz. The Commission noted that it was taking action to promote development of low-cost, low-power microwave equipment in the 22 GHz band (Docket 79–337) and to restructure the 18 GHz band (Docket 79–188) to accommodate some of the existing and future operations displaced from 12 GHz.[15] However, these bands do not offer all existing 12 GHz users adequate reaccommodation options in terms of cost, path length or achievable reliability. The 13 GHz band is the most obviously appropriate band due to its proximity to the 12 GHz band, possibly allowing existing microwave towers and equipment to be reused in many cases. However, a lower frequency band is also required for longer path lengths and where 13 GHz frequencies are not available. Our review indicates that the 6 GHz private band can accommodate additional users and should also be made available for reaccommodation.

30. Other options proposed by the commenters included shared use of the 11.7 to 12.2 GHz band by terrestrial uses. However, this band is now allocated to the Fixed Satellite Services for use by small, uncoordinated, receive-only earth stations. Since these operations are continuing to expand in all geographical areas due to the introduction of video and other services,[16] it would not be possible for terrestrial operations to protect these receivers from interference. Commenters also suggested that portions of several bands (e.g. 2, 5, 14 GHz) allocated to the Government be examined for possible non-Government fixed use. We have considered this possibility; but it does not appear that any of these Government bands could be made available at this time because of high-priority and national security-related use, or because of incompatible operations, such as radiolocation, in these bands. In the *NPRM* the 2 and 7 GHz broadcast auxiliary bands were also proposed, but these have been found to be too heavily used by mobile facilities to be of use for reaccommodation.

31. Several commenters stated that systems which could only be accommodated using more than one frequency band, for example some links using 13 GHz, others using 18 or 6 GHz, would not be acceptable because of operational difficulties and costs in maintaining equipment in more than one band. We note, however, that large microwave systems today often use a combination of frequency bands. Consequently, where necessary we believe that a "mixed band" system will provide a satisfactory reaccommodation option.

32. To avoid future frequency band changes, we will allow existing 12 GHz users to relocate to the alternate bands permanently. However, a question is raised about use of these bands by 12 GHz users who wish to expand or substantially modify their operations in the future. Since the reaccommodation only applies to existing 12 GHz licensees, growth of these systems, particularly for new links, should be considered new requirements which are not eligible for frequencies in the bands available only under the reaccommodation procedure. Consequently, we will not allow frequencies in these additional bands to be used to meet system requirements not licensed on the date of adoption of this First Report and Order, pending a more complete investigation of the use of these bands by the Commission in future phases of this proceeding. However, through appropriate waivers of this provision, we will permit modifications to the systems necessary to adjust operations for the alternative bands.

33. The comments of the existing 12 GHz users have expressed the need for a long lead time to plan the replacement of their systems to insure that operations continue uninterrupted. Since the bands being addressed by the reaccommodation, except the 18 GHz band, are heavily used in many cases, there must be some assurance that frequencies will be available in specific frequency bands during the planning and funding period. Public agencies have indicated that it may be several years between the time a systems design is complete and equipment is operating. Consequently one form of priority that would be appropriate for the systems to be reaccommodated is to extend the time in which a microwave station must be placed in operation after a license is granted. Currently this is one year from the time the license is granted. For the displaced users this will be extended to three years, a period long enough to allow for planning and equipment acquisition.

34. Many existing 12 GHz users expressed concern in their comments that, due to the high level of frequency use in the bands contemplated for reaccommodation, the displaced users would need some form of preference over other applicants in these bands if the reaccommodation is to be completed in a timely and cost efficient manner. The Commission's approach to licensing in shared bands has usually assumed that all applicants have legitimate, pressing needs for spectrum and thus equal priority. In most cases the coordination process applied in these point-to-point services will resolve conflicts between applications from licensees in the 12 GHz band seeking reaccommodation and other eligible applicants for these bands. Therefore, as a matter of practice, we expect applications will be granted on a first-come, first-served basis. We expect applicants to cooperate fully in resolving problems or conflicts about obtaining adequate spectrum space to meet their needs, including consideration of alternative frequencies in the same band or in other bands where they can reasonably be accommodated. If necessary, we will work with the applicants and the frequency coordinators to resolve the problems. However, should this effort fail, we will meet our commitment to assist the displaced licensees in relocating to other bands with a minimum disruption of

[15] *Report and Order* in Docket 80–603, paragraph 63.

[16] *First Report and Order* in Docket 80–739, adopted June 20, 1983; released June 10, 1983.

service and at minimum expense by awarding the license to the displaced licensee rather than the other applicants. Only in extraordinary cases would requests to waive that practice be entertained.

35. The Commission anticipates that the reaccommodation provisions will allow for existing 12 GHz systems to change frequencies by September 1988. We assume that, if a licensee has not applied to change frequencies by this date, a secondary status for the station, with respect to Direct Broadcasting Satellite receivers, is acceptable. Therefore, the special procedure for reaccommodation will not be available after September 9, 1988.

36. One remaining issue is the handling of those applicants who would have been authorized at 12 GHz in the future. The current Rules do not permit the use of band widths greater than 10 MHz on frequencies below 12.2 GHz; furthermore, they prohibit Business service access to the bands at 1850–1990 MHz and 6525–6875 MHz. During the next few years, while equipment is not readily available at 18 GHz, these users will have no spectrum which is available on a primary basis. The consideration of the removal of either, or both, of these restrictions will be considered among the more general sharing issues of this proceeding. In the meantime, until the equipment becomes more available in the higher bands, these requirements may be satisfied by appropriate waiver of the Rules on a case-by-case basis.

Spectrum Available for Reaccommodation

13 GHz Band

37. Portions of this band are used by broadcast and cable entities for the transmission of television signals between studio and transmitter sites, between cable head ends (fixed or fixed point to multi-point), and between remote locations and broadcast and cable studios (mobile operations). This band is channelized into 6.0, 12.5 and 25.0 MHz channels, including off-set channels. According to the Commission's data base, approximately 83,000 links are licensed—about 98% are for fixed operations. The principal use of the band is to support the distribution of 6 MHz bandwidth video signals by cable system operators.

38. To minimize the cost of moving from the 12 GHz band, existing 12 GHz private users supported access to the 13 GHz Cable Television Relay band which is adjacent to the 12 GHz band and has similar technical characteristics. Most commenters believe that only a small number of new links could be accommodated in this band due to the cable television distribution systems now in operation. STC's analysis, on the other hand, demonstrates that many links can be accommodated without great difficulty. However, such analyses are sensitive to individual circumstances and are very dependent on the specific locations of the transmitter and receiver. Therefore, no across-the-board assessment about the number of links that can be accommodated at 13 GHz is possible without actually engineering the replacement systems. Again, we believe it most appropriate for the individual licensee to determine his own best course for his systems. Access to the 13 GHz band does not, therefore, guarantee the use of a 13 GHz frequency for each displaced 12 GHz link.

39. Broadcast auxiliary, developmental private fixed users and common carriers currently can use the band segment 13.20–13.25 GHz for fixed and mobile operations. In the *NPRM* we proposed that this segment be shared by private applicants and cable television relay licensees as well. Several commenters indicated that these frequencies should be reallocated for mobile use only. The use of this small segment will be examined in further actions and is not being made available for reaccommodation.

40. While 25 MHz point-to-point channels are provided in the existing channeling for the 13 GHz band, licensees may wish to employ bandwidths less than those currently used at 12 GHz (typically 20 MHz), and the Commission encourages reduction in bandwidths so that more links can be accommodated in the 13 GHz band. Bandwidths of 6, 12.5 and 25 MHz are currently authorized in the 13 GHz band; and reaccommodated private users will be authorized to use any of these bandwidths. We have also provided a plan for paired operation of these channels.

41. We believe that new coordination procedures for the 13 GHz band will be necessary now that this band will also be shared by private entities. With appropriate care to avoid interference, we do not believe that the existing 13 GHz users will be adversely affected by the accommodation of 12 GHz users in this band. Future growth of cable and broadcast auxiliary use of this band is not precluded by this action. Once private users are operating in the 13 GHz band, future cable television, broadcast and common carrier users must recognize and protect from interference these licensed private users. In order to provide a common coordination approach for the 13 GHz band, we are adopting the coordination procedure contained in Part 94.63 for all services authorized to use the 13 GHz band. Some technical parameters for determining interference between systems employing different emissions and bandwidths in the 13 GHz band have not been finally determined. We anticipate that the Electronic Industries Association (EIA) and Operational Fixed Microwave Council will update the EIA Bulletin on interference criteria to include the 13 GHz band.[17]

42. To minimize disruption of existing operation of systems in the 12 GHz band, it is appropriate for private users to follow existing 12 GHz technical rules where they differ from Rules currently in effect for the 13 GHz band, provided existing 13 GHz users are not adversely affected.

43. On of the factors which will affect the number of links which can be accommodated in the 13 GHz band is the use of higher performance antennas to reduce side-lobe interference. Again, to minimize the impact of the reaccommodation, we will allow continued use of Type B antennas in noncongested areas where they are now employed by 12 GHz private users and where the use of a higher performance antenna would not resolve interference problems. This is in accordance with current Private Rules and Cable Television Relay Rules (§§ 94.75 and 78.105).

6 GHz band

44. This band is used by private entities for the transmission of voice and digital signals between fixed points. This 350 megahertz is divided into seventeen 10 MHz wide channel pairs and fifteen 5 MHz wide channel pairs. Users in the Business service are not eligible in this band under current Rules. The primary purpose of this band is for long-haul voice and data transmission for utilities, railroads and others, some of which may be characterized as "slow growth systems". About 11,000 links are licensed in this band. Usage is more or less evenly distributed across the nation with concentrations in major metropolitan areas. About 61% of the links are licensed to industrial entities, 22% to railroads, and 17% to local government entities.

45. Our review of the loading in the 6 GHz private microwave band indicates that, while this band is used extensively, additional assignments could be made

[17] The EIA Bulletin 10D contains the methodology and criteria for computing carrier signal to interference signal ratios (C/I ratios) for voice, video and digital systems

without degrading existing uses. Under present rules, users have access to the 6 GHz band only for bandwidths of 10 MHz or less, and we will apply the same rules to the users being reaccommodated in this band. However, since 12 GHz users typically operate with 20 MHz bandwidths, we will consider waivers for up to 20-MHz wide channels in appropriate cases. The *NPRM* also proposed that video transmissions would not be allowed in the 6 GHz band. Since we are addressing only a limited number of new users in this band, a restriction on video use is not required as it might be under a wider sharing policy. Allowing video in addition to other transmission types would increase the reaccommodated licensees' flexibility in choosing an alternative band. Therefore, any transmission type will be allowed provided that its use can be coordinated. However, the usage in this band, as well as in the 1850–1990 MHz band, is such that open eligibility to the Business service, beyond existing 12 GHz users, could jeopardize the primary use. We will study the use of these bands further for the feasibility of allowing less restrictive eligibility.

2 GHz and 7 GHz Bands

46. These bands are used by TV broadcast entities for auxiliary broadcast services for the transmission of frequency modulated video signals between studios and transmitters (STLs), between facilities in different cities (intercity relay) and between remote locations and broadcast studios (TV pick-up, ENG). About 3,900 links are licensed in the 2 GHz band, approximately 75% are for mobile operations and 25% for fixed operations. The 2 GHz band is the primary band for ENG across the country. There are about 4,100 links in the 7 GHz band—3,100 fixed links and 1,000 mobile links.

47. We have reviewed the usage in these bands and the large number of comments received concerning the fixed and mobile use in the bands. It was pointed out that in most urban areas all channel assignments in the 2 GHz band have been for mobile remote pick-up use. Outside these urban areas there is heavy use made of this band for state-wide video distribution networks, particularly by educational broadcasters. Commenters urged that no changes be made in this band because of the level of mobile use and future needs for additional mobile and fixed assignments of the same nature. Several commenters suggested that the 7 GHz band would be suitable for additional fixed use notwithstanding the more difficult coordination required by the presence of mobile operations in this band.

48. While these bands would be attractive for some 12 GHz displaced users, it is unlikely that any substantial number could be accommodated in them. Further, we think it appropriate to maintain spectrum space for future assignments for mobile use in urban areas, while retaining the option to use it for fixed relay purposes where assignments can be made. This will be necessary to provide for growth in ENG and to support future Low Power TV operations. We believe, based on the current activities of the local broadcast frequency coordinating committees, that the objective of maximizing the use of the 2 GHz and 7 GHz bands can be achieved with the current rules for these bands. Hence, no changes for these bands are being adopted at this time and these bands are not being made available for reaccommodation of 12 GHz users.

18 GHz Band Allocations

49. This Report and Order, in conjunction with the *Second Report and Order* in Docket 79–188 makes available a number of channels in the 18 GHz band for private users. We anticipate that at least 30% of the existing 12 GHz links could be accommodated on frequencies in the 18 GHz band without changing transmitter/receiver location.

50. There is minimum use being made of this band at present. Less than a dozen 220 MHz common carrier assignments and something less than a hundred 20 MHz private assignments are currently authorized. In the *NPRM* we proposed to provide 6 MHz channeling in two portions of the band, a 40/80 MHz channeling plan, and to revise the pairing scheme for the 220 MHz channel pairs. These changes were in addition to the proposals made for the 18 GHz band in Docket 79–188.[18] Comments in Docket 79–188 and in this Docket indicated that channel bandwidths wider than 20 MHz may be required at 18 GHz to achieve the same capacity as a 20 MHz channel at 12 GHz due to the state of equipment development. As a consequence, we anticipate that at least a few of the existing 12 GHz users will require 40 MHz bandwidths in the 18 GHz band; and eleven pairs of 40 MHz channels will be available for this. We anticipate that a full range of radio sets will be available for use on 18 GHz frequencies in the near future. The allocations and standards for the 18 GHz are discussed in detail below.

[18] *FNPRM* in Docket 79–188, 46 FR 45635 (September 14, 1981).

51. In the *Second Report and Order* in Docket 79–188, the Commission has adopted Rules to (1) establish a channeling plan including wide channels for the band segment 18.46–18.94 GHz, for private, common carrier, and broadcast entities (for Aural STL's) on a co-equal basis (2) restrict use of this band segment to point-to-point applications, and (3) prescribe minimum antenna standards.[19] Operation of digital point-to-multipoint systems (DTS) by common carrier and private entities is provided in the band segments 18.36–18.46 and 18.94–19.04 GHz. Comments in this proceeding indicated that wider bandwidths should also be available at 18 GHz for digital voice and data systems. The consideration of these requirements was to be addressed in the instant proceeding.

52. The proposals in the *NPRM* took into consideration the future availability of 5, 10 and 20 MHz paired channels in the 18.46–18.94 segment of the 18 GHz band; consequently we proposed to add wider bandwidth channels in other segments of the band. The 18 GHz band currently has provisions for very wideband (220 MHz channels) for high capacity trunked use. Because of the shorter propagation distances of 18 GHz equipment, it is possible to have multiple channeling plans without increasing interference problems. The *NPRM* proposed to overlay 40 and 80 MHz channels in the band, while continuing provision for the 220 MHz channels.

53. For the most part, the comments received support for the proposals in the *NPRM* for 18 GHz band allocations. Cable television interests, however, state that contiguous channeling is preferred for cable television signal distribution systems. We have examined the cable needs as expressed in these comments but find that we cannot provide the extremely large block of contiguous spectrum desired for 100 or more channel systems. The 18 GHz band presently contains several allocations which constrain the use of the band. The 18.6 to 18.8 GHz segment is shared with Earth Exploration Satellite passive sensor operations and it is prudent to avoid use of this segment by services like DTS and cable television distribution which produce high signal densities.[20] The lower portion of the

[19] The channeling plan includes 5, 10, and 20 MHz wide channels. These are available for intermodal communications in DTS as well as other point-to-links. The 20 MHz wide channels, in particular, will be useful to accommodate some displaced 12 GHz operations.

[20] In Docket 80–739, Implementation of the WARC–79 Results, the Commission has proposed a

Continued

band from 17.7 to 17.8 GHz is shared by DBS satellite uplinks which also must be protected from interference. These allocations along with the possible future need for point-to-point use of the 220 MHz-wide common carrier channels in this band have limited the possibilities available to channelizing the band. Further, since the band is not presently developed, we want to maintain flexibility to adjust channel plans according to future events. The proposed channeling was based on these considerations.

54. We had proposed two 30 channel blocks of 6 MHz-wide channels to accommodate cable television signal distribution requirements. We are persuaded that an additional 6 channels in each block would more closely match typical cable system channel capacities.[21] One or both blocks could then be used for one-way operation (permitting use by two cable systems or one cable system of up to 72 channels) or both blocks could be used for paired, two-way use. While these blocks are suitable for cable television signal distribution, they are not limited to this use. We anticipate that these 6 MHz-wide channels may be appropriate for other types of point-to-point video as well. While the allocation of 72.6 MHz channels would not immediately accommodate the very large cable systems currently planned, we are aware that developing technology may soon allow two TV signals to be carried on a 6 MHz channel.[22] This could provide adequate capacity at 18 GHz for the larger systems mentioned.

55. The *NPRM* proposed 40 and 80 MHz channels for the segments 17.7–18.18 GHz and 19.04–19.70 GHz along with a re-paring of the three 220 MHz channels. The addition of the twelve 6 MHz-wide channels for cable television reduces these segments to 17.7–18.14 and 19.08–19.70, thus reducing the number of available 40 MHz wide channel pairs by one pair and the number of available 80 MHz channel pairs by one pair. In reviewing the possible uses to which this band could be put, narrower bandwidth channels also seem appropriate for 17.7–18.14 and 19.08–19.70 band segments. The option of being able to use 10 or 20 MHz-wide channels will provide additional frequency alternatives for the existing 12 GHz users and, in particular, for those future private users who would have made use of the 12 GHz band. Optional channeling plans have proven to be effective in bands where use is compatible. The various bandwidths to be authorized in these segments of the 18 GHz band will all be used for point-to-point operation even though the individual bandwidths and modulations employed may vary. This situation can be handled by the coordination process.

56. Several commenters suggested that a 6 MHz-wide channeling scheme for cable television signal distribution could be overlayed in the entire 17.7–18.18 and 19.04–19.70 GHz segments as another optional channeling plan. This would provide many additional channels for cable use to meet their desires for 100 or more contiguous channels. However, since cable distribution systems are predominately point-to-multipoint operations, we are concerned that they are not compatible, from a frequency management standpoint, with the point-to-point systems which will be operating on these frequencies. The use of this spectrum by cable television distribution systems would be much more intense than a typical arrangement of point-to-point systems, and thus would present difficulties in coordinating these diverse operations. Further, given the shorter available path lengths at 18 GHz, it may be necessary to use multiple cable distribution systems to cover a particular area. Therefore, we believe that overlaying a channeling plan for optional cable television use would be inconsistent with good spectrum management practices, at least at this time. In addition, we believe that the two blocks of thirty-six channels should adequately provide for cable television service.

57. Under present Rules, common carriers, broadcast and private services are authorized to use frequencies in the 18 GHz band. This has been possible because of the similarity of the radio facilities employed and their electromagnetic compatibility. Cable television, however, is not presently authorized in this band. The *NPRM* proposed that all compatible services be permitted access to the non-DTS portion of the 18 GHz band, including cable. (The *Second Report and Order* in Docket 79–188 restricts use of the 18.46–19.04 GHz portion of the band to private, common carrier and aural broadcast STL services). We are adopting Rules which allow the point-to-point channels in the 18 GHz band outside of 18.46–19.04 GHz to be used by all services. However, we do not believe that non-common carriers would have requirements for capacity sufficient to occupy a 220 MHz-wide channel, so this channeling will only be available for common carriers. Further, we do not expect many non-common carriers to require access to 80 MHz wide channels, although this option is given. Although cable operations will have access to channels other than 6 MHz bandwidth, we do not anticipate licensing multiple channel 6 MHz amplitude modulated video systems in these wider channels at this time.

58. The *NPRM* proposed to adopt a single coordination procedure for all bands, including the 18 MHz band. Many comments were received opposing the more complex and formal combined common carrier and private frequency coordination procedure proposed. Since the 18 GHz band is currently shared by several services, the common carrier procedure (Section 21.100 of the Commission's Rules) has been used by all applicants. The common carrier approach is more appropriate than the private coordination procedure when usage of a particular band is relatively light. We conclude that the current common carrier procedure, which includes the notification/response requirement, is more appropriate for the 18 GHz band at this time than either the private procedure or the proposed combination procedure. However, we expect to examine the question of a uniform procedure for all microwave bands in a future Commission action.

59. Few comments were received in response to the *NPRM* on technical standards which would apply to the 18 GHz band. Essentially, however, many of these issues were addressed in Docket 79–188, and we have drawn on those comments as well. The parameters proposed in the *NPRM* for emission attenuation, frequency stability, antenna standards and power output were the same as those that have now been adopted for other portions of the 18 GHz band in Docket 79–188. Because we are authorizing additional types of emissions and channel bandwidths at 18 GHz, the following technical rule changes are necessary:

(a) For broadcast, cable and private licensees, the maximum bandwidth authorized for 18 GHz frequencies will be 80 MHz.

(b) Standards for emission attenuation and power output are added for Cable Television Relay Systems (Part 78) and for Broadcast Auxiliary Services (Part 74). These will be the same as those now

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new allocation table footnote, US 254, which states "In the band 18.6–18.8 GHz the fixed and mobile services shall be limited to a maximum equivalent isotropically radiated power of +35 dBW and power delivered to the antenna shall not exceed −3 dBW."

[21] Approximately 68% of current cable television relay microwave systems are licensed for 36 or fewer 6 MHz-wide channels.

[22] Such systems typically involve interleaving two standard video signals for transmission over a single link; the two signals are reconstructed using digital processing. In other cases two video signals are multiplexed in a 6 MHz-wide channels.

in effect for the 18 GHz band for Private and Common Carrier Services. (§§ 21.703 and 94.71, 94.73.) A new standard for frequency tolerance for the 18 GHz band is added for all authorized services.

(c) For the emission attenuation standard, a new section is needed for amplitude modulated systems which may be authorized at 18 GHz. The standard that now applies to amplitude modulated Cable Television Systems will be used. (§ 78.103.) This change is specified for Private, Common Carrier and Broadcast Services, since each of these may be authorized for this type of modulation at 18 GHz.

(d) The antenna standard now in effect for Domestic Public Fixed stations operating above 5000 MHz (§ 21.108(c) are adopted for the Private Operational Fixed, Broadcast Auxiliary and Cable Television Relay Services in the 18 GHz band.

60. The *NPRM* proposed that only digital forms of modulation be authorized on the 40 and 80 MHz wide channels in the 18 GHz band. While we believe that the predominant use of these frequencies will be for digital data and digital voice channels, it is not necessary to restrict use of the frequencies to only digital modulation. Consequently any form of modulation will be allowed on these frequencies.

61. The *NPRM* proposed that a minimum path length be imposed at 18 GHz. Several commenters stated that the propagation characteristics for this band would limit path lengths such that a standard would not be appropriate. We agree and are not adopting minimum path length standards at this time. However, we plan to study this issue in the future. The *NPRM* also proposed that loading standards might be applied to all types of microwave systems. However, specific standards were not proposed. A digital efficiency standard, which is one form of a loading standard, similar to that now required for common carrier systems was addressed in Docket 79–188 with the result that a standard has been imposed on digital systems in the 18.36–19.04 GHz portion of the 18 GHz band. We believe that the application of such a standard for systems in other portions of the 18 GHz band, as well as in other microwave bands, can promote more efficient use of the spectrum and we will consider it in future Commission actions.

Summary of Rule Changes In This Report and Order

62. The Rule changes being made are shown in Appendix B. The provisions for the reaccommodation are contained in a new section, § 94.93. New provisions for other services appear in Parts 2, 21, 74, 78 and 94.

63. This Report and Order adopts rules to implement the following:

—A reaccommodation procedure for existing 12 GHz users. This procedure includes access to the 13 GHz band and the 6 GHz band. Appropriate channeling and technical standards are adopted for the reaccommodated users in these bands. A frequency coordination procedure is adopted for broadcast auxiliary, cable and private users for these shared bands.

—An allocation for shared use of the 18 GHz band for broadcast auxiliary (fixed-only) operations; cable studio-transmitter links, intercity relays and signal distribution; private operational fixed use; and common carrier fixed use is adopted. Technical rules and frequency coordination procedures for the 18 GHz band are also adopted.

Summary

64. By the actions taken today a reaccommodation procedure has been established for existing 12 GHz users which provides reasonable, least cost alternatives for those who must change frequencies in accordance with our decision in Docket 80–603 authorizing Direct Broadcast Service on the 12 GHz frequencies. Rule changes are adopted in this First Report and Order which implement the 18 GHz band for fixed point-to-point use for all microwave services. We are not limiting the reaccommodation of existing 12 GHz users to this band, however, and we are providing access for these users to two additional bands, the 13 GHz band and the 6 GHz band. In addition, if adequate replacement frequencies cannot be found in these bands, we will entertain waiver requests for other spectrum. While the engineering of replacement microwave systems and selection of frequencies to avoid interferring with existing users in these bands will be the responsibility of the individual licensees, we are reasonably certain that adequate alternatives for each 12 GHz user have been provided by the procedures adopted in this Order. It is anticipated that future Notices and Reports and Orders will address the broader issues of microwave utilization policy raised in the earlier phases of this proceeding.

Regulatory Flexibility Act Final Analysis

I. Reason for Action

65. When broadcasting satellites are operational at 12.2–12.7 GHz, it will be necessary to remove private fixed service operations that cause interference to the satellite service receivers. In order to reaccommodate them, access to spectrum in other frequency bands must be provided.

II. The Objective

66. The Commission is adopting changes to its Rules pertaining to the fixed and mobile services' use of certain bands in order to provide additional frequencies for private fixed service licensees affected by the broadcasting satellite allocation. Furthermore, the Commission intends to accomplish this objective at the lowest practical cost.

III. Legal Basis

67. Legal action is in furtherance of Sections 1, 4(i), 303(c) and (r), and 403 of the Communications Act of 1934, as amended.

IV. Description, Number and Potential Impact of Small Entities Affected

68. It has been determined that most private fixed service users who may be displaced from the 12 GHz band will be affected substantially by these new rules and there may be some future costs, due to coordination of requirements with displaced 12 GHz users, for users of the affected bands. However, costs for the displaced 12 GHz users will be minimized by maintaining existing operational rules and standards in the new bands and by providing a lengthy transition period. Some licensees may continue to operate in the 12 GHz band as long as they do not cause interference to DBS receivers. The number of 12 GHz private microwave licensees who are small businesses is not able to be determined although we believe most 12 GHz licensees are not small entities. There are approximately 2100 links authorized in the band. Those licensees who change frequencies will incur substantial costs, from $5,000 to $100,000 per link, depending on the specific link involved and frequency selected.

V. Reporting, Recordkeeping and Other Compliance Requirements

69. According to our rules, fixed service applicants will have to coordinate their proposed use of the spectrum with existing users and will have to submit application to the Commission for operating authority. These provisions already apply and we believe they are consistent with the requirements of the service.

VI. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

70. To our knowledge, there are no other Federal rules that overlap, duplicate or conflict with those contained in the Report and Order.

VII. Specific Alternatives Consistent With the Objective Which Would Minimize Impact on Small Entities

71. We do not believe that there is any alternative to our proposals which would have less effect on small entities.

Administrative

72. Pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) and 303, it is ordered, that: Parts 2, 21, 74, 78 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as set forth in Appendix B, effective December 5, 1983 except where otherwise indicated.

73. The point of contact on this matter is Donald Draper Campbell (202) 653–8177, or James Vorhies (202) 653–9097.

Federal Communications Commission.

William J. Tricarico,

Secretary.

(Secs. 4, 303, 48 Stat. as amended 1066, 1082; 47 U.S.C. 154, 303)

Appendix A—Comments Filed in Response to the NPRM in Docket 82–334

Entity	Comments	Reply comments
American Blackhawk Broadcasting Company (KTIV).	x [1]	
American Broadcasting Company		x
American Family Broadcast Group (KFVS-TV, et al).	x [1]	
American Newspaper Publishers Association.	x	
American Petroleum Institute (Central Committee on Telecommunications).	x	x
American Telephone and Telegraph Company	x	x
American Television and Communications Corporation.	x	
Anaconda-Ericsson	x	x
Apple Valley Broadcasters, Inc (KAPP-TV).	x	
Apple Valley Broadcasters, Inc (KVEV-TV).	x [1]	
Austin-Satellite Television, Inc and Cablecon Corporation.	x	
Avantek, Inc. (Telecommunications Division).	x	
Arkansas Television Company (KTHV).	x	
Arizona Department of Public Safety.	x	
Arizona Television Company (KTVK-TV).	x	
Associated Public Safety Communications Officers, Inc.		x
Association of American Railroads	x	x
Association for Higher Education of North Texas.	x	x
Balo Broadcasting Corporation		x
Buffalo Broadcasting Company, Inc. (WIVB-TV).	x	
Bell Laboratories	x	
Balo Broadcasting Corporation (WFAA et al).	x	x
Bonneville International		x
Cablevision Industries, Inc, Cox Cable Communications, Inc, and Sammons Communications, Inc.	x	x
Cablesvision Systems Development Company.		x
California, State of (Communications Division).	x	x
California Oregon Radio Company		x
California Peace Officer's Association.		x
California Public-Safety Radio Association, Inc.	x	
Cannan Communications, Inc (KAMR-TV).	x [1]	
Capitol Broadcasting Company, Inc (WRAL-TV).		
Capital Cities Communications Inc		x
Carson Broadcasting Corporation (KVVU-TV).		
CBS, Inc	x	x
Cedar Rapids Television Company		x
Central California Educational Television (KVIE), Connecticut Educational Telecommunications Corporation, Duluth-Superior Area Educational Television Corporation, Nebraska Educational Television Commission, State of Wisconsin—Educational Communications Board, The Ohio State University, The University of Nebraska, and WHP, Inc.	x	
Central Texas College System		x
Channel Two Television Company, et al.	x	
Channel 6, Inc		x
Circle L, Inc (KCRL)		
Clay Broadcasting Corporation		x
Colly-Bates Bowdoin Educational Telecasting Corp. (WCBB).		x
Community Antenna Television Association.	x	
Connecticut Educational Telecommunications Corporation.	x	x
Cornhusker Television Corporation (KOLN-TV, KGIN-TV).	x [1]	
Cowles Broadcasting Inc		x
Cox Communications, Inc	x	x
Crane, Dr. Robert K	x	
Daniels & Associates, Inc., Rogers US Cablesystems, Inc, and United Cable Television Corporation.	x	x
Duluth-Superior Area Educational Television Corporation (WDSE-TV).		x
Educational Broadcasting Corporation.	x	
Electronic Industries Association (Fixed Point-to-point Section of the Telecommunications Group).	x	x
Eugene Television, Inc. (KVAL-TV)	x [1]	
Evening News Association, The (WDVM-TV).	x	
Fetzer Television Corporation (WKZO-TV, et al).	x [1]	
First Charleston Corp. (WCIV)	x [1]	
Fisher Broadcasting, Inc (KOMO-TV, etc).	x	
Fort Myers Broadcasting Co		x
Forward Communications Corporation:		
Forward of Iowa KCAU-TV)	x [1]	
Forward of Texas, Inc (KOSA-TV).	x [1]	
Forward—West Virginia (KTRF-TV).	x [1]	
Forward—Wisconsin (WMTV-TV).	x [1]	
Forward Telecasting, Inc	x [1]	
Freedom Communications (KTVL)		x
Gainesville Television, Inc	x [1]	
Gannett Co., Inc. (KARL-TV, et al)	x	
Garryowen Corporation (KTVQ, et al).	x [1]	
Gateway Communications Inc		x
Gaylord Broadcasting Company	x	
General Electric Broadcasting Company, Inc (WNGE).	x	
Gill Industries, and Western Communications, Inc.	x	x
Global Television, Inc (KSCI)	x [1]	
Great Lakes Communications, Inc (WICU-TV).	x	
Griffin Television, Inc (KWTV)	X-[1]	
GTE Service Corporation	x	
Harris Corporation (Broadcast Microwave Operations and Farinon Division).	x	x
Harris Corporation (Broadcast Division)		
Harte-Hanks Communications, Inc. (KENS).	x [1]	
Hearst Corporation (WBAL-TV, etc).	x	x
Heritage Communications	x	
Home Entertainment Network, Inc (WBTI-TV).	x [1]	
Houston Post Company, The	x [1]	
Hubbard Broadcasting Co		x
Hughes Aircraft Company (Microwave Communicatons Products).	x	x
Illinois Institute of Technology	x	
Independent Broadcasting Co		x
Iowa State University of Science and Technology (WOI-TV).	x [1]	
Jackson Cable Systems	x	
Jefferson-Pilot Broadcasting Company of Virginia (WWBT).	x [1]	
KAAL	x	
Kelly Broadcasting Company (KCRA-TV).	x [1]	
Kentucky, Commonwealth of—Division of Telecommunications.	x [1]	
KAYU-TV	x [1]	
KETV Television, Inc	x	
KID Broadcasting Corporation (KID).	x [1]	
KIEM-TV	x [1]	
KING Broadcasting Company (KING-TV, etc).	x	
KLAS-TV	x [1]	
KMBC-TV	x [1]	
KMSP-Television	x	
Knight-Ridder Broadcasting Inc		x
KSAT-TV	x	
KSTU	x [1]	
KTAL-TV, Inc	x	
KTHI-TV	x [1]	
KTNV-TV	x [1]	
KTSP-TV	x [1]	
KTUL-TV		x
KTXL	x [1]	
KUTV, Inc and Kansas State Network, Inc.	x	
KVOS Television Corporation	x [1]	
KXJB-TV	x [1]	
KXLY-TV	x [1]	
KYTV	x [1]	
Leake TV, Inc (KATV, et al)	x	
Lee Enterprises (KGMB-TV, etc)	x	
Loral TerraCom	x	
Los Angeles, County of [California] (Dept. of Communications).	x	x
Los Angeles, County of [California] (Office of the Sheriff).	x [1]	
Los Angeles Times, The (a div of The Times Mirror Company).	x	
Los Angeles Unified School District (KLCS-TV).	x	
M/A-COM, Inc	x	x
Manufactures Radio Frequency Advisory Committee and Flight Test Radio Coordinating Council.	x	x
Marsh Media Inc. (KVIA-TV)	x [1]	x
Marston, W. Bernard	x	
Maximum Service Telecasters	x	x
May Broadcasting Company (KMTV).	x [1]	
May Broadcasting Company (KGUN-TV).	x [1]	
May Department Stores Company, The.	x	
McGraw-Hill Broadcasting Company, Inc. (KGTV).		
MCI Telecommunications Corporation.	x	x
W. L. McIver		x
Meredith Corporation	x	
Metromedia, Inc (KTTV, etc)	x	
Metropolitan Indianapolis Television Association, Inc (WFYI).	x	
Michiana Telecasting Corp		x
Micro Communications, Inc		

Entity	Comments	Reply comments
Midcontinent Broadcasting Company (KELO-TV, et al).	x [1]	
Mid-Pacific Television Associates (KIKU-TV).	x	
Midwest Television, Inc. (KFMB-TV).	x [1]	
Minnesota-Iowa Television	x	
Motorola, Inc	x	
Multimedia, Inc (KZTV, etc)	x	x
Multimedia (WXII)	x [1]	
National Academy of Science	x	
National Aeronautics and Space Administration.	x	x
National Association of Business and Educational Radio, Inc.	x	
National Association of Broadcasters.	x	x
National Association of Public Television Stations and Public Broadcasting Service.	x	
National Broadcasting Company, Inc.	x	x
National Cable Television Association, Inc.	x	x
National Communications, Inc.	x	
Nebraska Educational Television Commission.	x [1]	
New Jersey Public Broadcasting Authority.	x	x
New Mexico, Commission on Public Broadcasting.		x
New York, City of		x
New Vision, Inc (WNUV-TV)	x	
New York Times Company, The	x	
NTV Television, Inc (KSNB-TV, et al.	x [1]	
Nurad, Inc	x	
Ohio Educational Broadcasting Network Commission.	x	
Oklahoma State Regents for Higher Education.	x	
Outlet Company (WCPX-TV)	x	
Outlet Company (KOVR-TV)	x [1]	
Orange, County of [California] (Communications Division).	x	
PEC Communications, Inc (WPEC)	x	
Pennsylvania State University, The	x	
Pennsylvania Public Television Network Commission.	x [1]	
Perez, Rose Helen and James A. Reach.	x [1]	
Pikes Peak Broadcasting Company, The (KRDO).		
Pikes Peak Broadcasting Company, The (KJCT-TV).	x [1]	
Portal Communications, Inc (KOBC-TV).	x [1]	
Post Corporation (KDKR(TV), et al).	x [1]	
Post-Newsweek Stations Inc.		x
Public Service Satellite Consortium.	x	
Ralph C. Wilson Industries, Inc.		x
Rock Island Broadcasting Co. (WHBF).	x [1]	
Rockwell International Corporation	x	x
Radio-Television News Director Association.	x	
Sarkes Tarzain Inc.		x
Satellite Television Corporation	x	x
Schwartz, Woods & Miller (law firm).	x	
Scripps-Howard Broadcasting Company.	x	
Smith and Powstenko	x	
Society of Broadcast and Communications Engineers.	x	x
South Carolina, State of (Office of the Governor).	x [1]	x
Southern Illinois University at Carbondale.	x [1]	
Spectrum Planning, Inc.	x	
State Telecasting Company, Inc (KCBD-TV).	x [1]	
Storer Communications, Inc.	x	
Suburban Cablevision	x	
Sutro Tower Inc.		x
Taft Broadcasting Company		x
Television Station Licensees		x
Television Wisconsin (WISC-TV)	x [1]	
Thirty-Three, Inc (WKJG-TV)	x [1]	
Tichnor Media System		x
Tribune Company	x	
Turner Broadcasting System, Inc.	x	
Twin Cities Public Television, Inc. (KTCA, et al).	x	
United States Department of Commerce (National Telecommunications and Information Administration).	x	x
United Television, Inc. (KMSP-TV)	x [1]	
University of California, Statewide Administration.		x
University of California at San Diego.	x [1]	
University of Missouri		x
Utilities Telecommunications Council.	x	x
Viacom Broadcasting, Inc (WVIT)	x [1]	
Viacom International, Inc.	x	x
Videoindiana Inc.		x
Warner-Amex Cable Communications Inc.		x
Washington Executive Broadcast Engineers.	x	
WCBD-TV	x [1]	
WCMH-TV	x	
WCSC, Inc		x
WCYB-TV	x [1]	
WDBJ Television, Inc. (WDBJ-TV)	x [1]	
WEHCO Equipment Corporation	x	
Westinghouse Broadcasting and Cable, Inc.	x	x
Western Washington Coordinating Committee.		x
WFLD-TV	x [1]	
WFMY	x [1]	
WGBH Educational Foundation	x	
WHAG-TV	x [1]	
WHWC-TV	x [1]	
WHEC-TV		
Wilkens Engineering	x	
Wisconsin TV Network (WAOW-TV.	x [1]	
WJAR-TV	x [1]	
WJAC Incorporated		x
WJLA, Inc	x	
WLFI-TV	x	
WLOX-TV	x [1]	
WNNE-TV	x	
Wometco Enterprises (WTVJ)	x [1]	
Wometco West Michigan TV, Inc (WZZM).	x	
Wometco Skyway Broadcasting Company (WLOS-TV).	x [1]	
WPBN-TV	x [1]	
WPSD-TV	x [1]	
WVIA-TV	x	
WRC-TV4	x	
WREX-TV	x [1]	
WSBT, Inc. (WSBT-TV)	x [1]	
WSET-TV	x [1]	
WSMV-TV	x	
WTVC(TV)	x [1]	
WYFF-TV	x [1]	
Wyneco Communications, Inc (KYCU-TV).	x	
WWHK Corporation (WSNL-TV)	x [1]	

[1] Late filed.

Appendix B

Chapter I, Parts 2, 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

§ 2.106 [Amended]

A. In § 2.106, the Table of Frequency Allocations is amended in columns 7, 8, 9, 10, and 11 for the frequency bands 17.7–19.7 GHz as follows:

FEDERAL COMMUNICATIONS COMMISSION

(7)	(8)	(9)	(10)	(11)
*	*	*	*	*
17.7–18.36 (NG140) (NG144)	Fixed	Fixed		Domestic fixed public.
	Fixed-satellite	Space		Operational fixed. Broadcast auxiliary.
	Mobile	Mobile		Cable television relay. Fixed-satellite.
18.36–18.46 (NG106) (NG144)	Fixed	Fixed		Domestic fixed public.
	Fixed-satellite	Space		Operational fixed.
	Mobile	Mobile		Digital termination nodal stations Fixed-satellite.
18.46–18.94 (NG106) (NG144)	Fixed	Fixed		Domestic fixed public.
	Fixed-satellite	Space		Operational fixed.
	Mobile	Mobile		Broadcast auxiliary. Fixed-satellite.
18.94–19.04 (NG106) (NG144)	Fixed	Fixed		Domestic fixed public.
	Fixed-satellite	Space		Operational fixed.
	Mobile	Mobile		Digital termination subscriber stations. Fixed-satellite.
19.04–19.70 (NG144)	Fixed	Fixed		Domestic fixed public.
	Fixed-satellite	Space		Operational fixed.
	Mobile	Mobile		Cable television relay. Broadcast Auxiliary. Fixed-satellite.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES (OTHER THAN MARITIME MOBILE)

B.1. Section 21.101 is amended by revising the Table in paragraph (a) to read as follows:

§ 21.101 Frequency tolerance.

(a) * * *

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [1]
25 to 50	0.002	0.002	0.005
50 to 450	0.0005	0.0005	0.005
450 to 512	0.00025	0.0005	0.0005
512 to 1,900 [2]	0.0005	0.0005	0.005
2,110 to 2,200	0.001		
2,200 to 12,200 [3, 4]	0.005	0.005	0.005
12,200 to 17,700	0.03	0.03	0.03
17,700 to 18,360	0.003		
18,360 to 18,460	0.001		
18,460 to 19,700 [4]	0.003		

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [9]
19,700 to 40,000	0.03	0.03	0.03

* * * * *

2. Section 21.701 is amended by revising paragraph (a) and by adding footnote 16 to the table to read as follows and adding new paragraph (m).

§ 21.701 Frequencies.

* * * * *

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service:

2,110–2,130 MHz [1 2 7]	19,040–19,700 MHz [9 10 16]
2,160–2,180 MHz [1 2 5]	
3,700–4,200 MHz [5 6]	21,200–22,000 MHz [4 11 12]
5,925–6,425 MHz [5 6 8]	
10,550–10,565 MHz [14]	22,000–23,600 MHz [4 11 13]
10,615–10,630 MHz [14]	27,500–29,500 MHz [5]
10,700–11,700 MHz [5 8]	31,000–31,200 MHz [4]
13,200–13,250 MHz [4]	38,600–40,000 MHz [4]
17,700–18,360 MHz [5 15 16]	
18,460–18,940 MHz [5 10 14 15]	

* * * * *

[16] The band segments 17,700–18,360 MHz and 19,040–19,700 MHz are shared with operational-fixed stations, broadcast auxiliary stations and cable television relay stations.

* * * * *

(m) The 17,700–18,360 and 19,040–19,700 MHz bands are also available for assignment on the basis of the following frequency plans consisting of 5 two-way channels, each 80 MHz wide; 11 two-way channels, each 40 MHz; 22 two-way channels, each 20 MHz; 44 two-way channels, each 10 MHz; and 36 two-way channels, each 6 MHz wide:

PAIRED FREQUENCIES

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
80 MHz channels:	
17,740	19,060
17,820	19,160
17,900	19,240
17,980	19,320
18,060	19,400
40 MHz channels:	
17,720	19,060
17,760	19,100
17,800	19,140
17,840	19,180
17,880	19,220
17,920	19,260
17,960	19,300
18,000	19,340
18,040	19,380
18,080	19,460
18,120	19,460
20 MHz channels:	
17,710	19,050
17,730	19,070
17,750	19,090
17,770	19,110
17,790	19,130
17,810	19,150

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
17,830	19,170
17,850	19,190
17,870	19,210
17,890	19,230
17,910	19,250
17,930	19,270
17,950	19,290
17,970	19,310
17,990	19,330
18,010	19,350
18,030	19,370
18,050	19,390
18,070	19,410
18,090	19,430
18,110	19,450
18,130	19,470
10 MHz channels:	
17,705	19,045
17,715	19,055
17,725	19,065
17,735	19,075
17,745	19,085
17,755	19,095
17,765	19,105
17,775	19,115
17,785	19,125
17,795	19,135
17,805	19,145
17,815	19,155
17,825	19,165
17,835	19,175
17,845	19,185
17,855	19,195
17,865	19,205
17,875	19,215
17,885	19,225
17,895	19,235
17,905	19,245
17,915	19,255
17,925	19,265
17,935	19,275
17,945	19,285
17,955	19,295
17,965	19,305
17,975	19,315
17,985	19,325
17,995	19,335
18,005	19,345
18,015	19,355
18,025	19,365
18,035	19,375
18,045	19,385
18,055	19,395
18,065	19,405
18,075	19,415
18,085	19,425
18,095	19,435
18,105	19,445
18,115	19,455
18,125	19,465
18,135	19,475
6 MHz channels:	
18,147	19,487
18,153	19,493
18,159	19,499
18,165	19,505
18,171	19,511
18,177	19,517
18,183	19,523
18,189	19,529
18,195	19,535
18,201	19,541
18,207	19,547
18,213	19,553
18,219	19,559
18,225	19,565
18,231	19,571
18,237	19,577
18,243	19,583
18,249	19,589
18,255	19,595
18,261	19,601
18,267	19,607
18,273	19,613
18,279	19,619
18,285	19,625
18,291	19,631
18,297	19,637
18,303	19,643

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
18,309	19,649
18,315	19,655
18,321	19,661
18,327	19,667
18,333	19,673
18,339	19,679
18,345	19,685
18,351	19,691
18,357	19,697

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

C. 1. Section 74.602 is amended by revising the introductory text of paragraph (a), amending paragraph (f) to add a new sentence at the end of the introductory paragraph and adding paragraph (i) as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to TV pickup, TV STL, TV relay and TV translator relay stations. The bands 17,700–18,360 MHz and 19,040–19,700 MHz are available for broadcast auxiliary stations as shown below. Additionally, the band 38.6–40 GHz is available for assignment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations.

* * * * *

(f) * * *

Band D channels are also shared with certain Private Operational Fixed Stations, see § 74.638.

* * * * *

(i) The following frequencies are also available for assignment to television STL, and television relay stations. These frequencies are shared with Domestic Public Fixed, Operational Fixed and Cable Television Relay services. Applicants may use either a two-way link or one frequency of a frequency pair for a one way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d).

PAIRED FREQUENCIES

(Center frequency of channel shown)

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
80 MHz channels:	
17,740	19,060
17,820	19,160
17,900	19,240
17,980	19,320
18,060	19,400
40 MHz channels:	
17,720	19,060
17,760	19,100

PAIRED FREQUENCIES—Continued

(Center frequency of channel shown)

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
17,800	19,140
17,840	19,180
17,880	19,220
17,920	19,260
17,960	19,300
18,000	19,340
18,040	19,380
18,080	19,460
18,120	19,460
20 MHz channels:	
17,710	19,050
17,730	19,070
17,750	19,090
17,770	19,110
17,790	19,130
17,810	19,150
17,830	19,170
17,850	19,190
17,870	19,210
17,890	19,230
17,910	19,250
17,930	19,270
17,950	19,290
17,970	19,310
17,990	19,330
18,010	19,350
18,030	19,370
18,050	19,390
18,070	19,410
18,090	19,430
18,110	19,450
18,130	19,470
10 MHz channels:	
17,705	19,045
17,715	19,055
17,725	19,065
17,735	19,075
17,745	19,085
17,755	19,095
17,765	19,105
17,775	19,115
17,785	19,125
17,795	19,135
17,805	19,145
17,815	19,155
17,825	19,165
17,835	19,175
17,845	19,185
17,855	19,195
17,865	19,205
17,875	19,215
17,885	19,225
17,895	19,235
17,905	19,245
17,915	19,255
17,925	19,265
17,935	19,275
17,945	19,285
17,955	19,295
17,965	19,305
17,975	19,315
17,985	19,325
17,995	19,335
18,005	19,345
18,015	19,355
18,025	19,365
18,035	19,375
18,045	19,385
18,055	19,395
18,065	19,405
18,075	19,415
18,085	19,425
18,095	19,435
18,105	19,445
18,115	19,455
18,125	19,465
18,135	19,475
6 MHz channels:	
18,147	19,487
18,153	19,493
18,159	19,499
18,165	19,505
18,171	19,511
18,177	19,517
18,183	19,523
18,189	19,529
18,195	19,535
18,201	19,541
18,207	19,547

PAIRED FREQUENCIES—Continued

(Center frequency of channel shown)

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
18,213	19,553
18,219	19,559
18,225	19,565
18,231	19,571
18,237	19,577
18,243	19,583
18,249	19,589
18,255	19,595
18,261	19,601
18,267	19,607
18,273	19,613
18,279	19,619
18,285	19,625
18,291	19,631
18,297	19,637
18,303	19,643
18,309	19,649
18,315	19,655
18,321	19,661
18,327	19,667
18,333	19,673
18,339	19,679
18,345	19,685
18,351	19,691
18,357	19,697

2. In § 74.636 the existing paragraph is designated as (a) and a new paragraph (b) is added as follows:

§ 74.636 Power Limitations.

(a) * * *

(b) For operation in the 17,700–19,700 MHz band, the transmitter of a broadcast auxiliary station will be licensed with a peak power output not in excess of that necessary to render service and shall in no event be licensed with a peak power output exceeding 10 watts; its Effective Isotropic Radiated Power (EIRP) shall be limited to 50 dBW.

3. In § 74.637, the introductory text of paragraph (b) is revised; paragraph (c) is renumbered paragraph (d) and a new paragraph (c) is added.

§ 74.637 Emissions and emission limitations.

(a) * * *

(b) The channels assigned to television auxiliary stations are designated by upper and lower frequency limits except in the 17,700–19,700 MHz band. Emissions outside of these frequencies shall be attenuated as follows:

* * * * *

(c) For operation in the 17,700–19,700 MHz band:

Broadcast STL and relay stations may be authorized to employ analog or digital modulation in this band. The mean power of any emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB;

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least 43+10 log 10 (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(2) When using digital modulation:

(i) In any 1 NHz band, the center frequency of which is removed from the assigned frequency by more than 50% up to and including 250% of the authorized bandwidth: As specified by the following equation but in no event less than 11 dB.

$$A = 11 + 0.4\,(P - 50) + 10 \log_{10} B$$

where:

A = Attenuation (in dB) below the mean output power level

P = Percent removed from the carrier frequency

B = Authorized bandwidth in MHz

(ii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250% of the authorized bandwidth: At least $43 = 10 \log_{10}$ (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(3) Amplitude Modulation.

For vestigial sideband AM video: On any frequency removed from the center frequency of the authorized band by more than 50%: at least 50 dB below peak power of the emission.

* * * * *

4. A new section, § 74.638 is added as follows:

§ 74.638 Frequency coordination above 12.7 GHz.

(a) Channels in Band D are shared with certain Private Operational Fixed Stations authorized under Part 94, § 94.93 after September 9, 1983. After this date all Broadcast Auxiliary use of these bands is subject to coordination using the following procedure:

(1) Before filing an applicataion for new or modified facilities under this part the applicant must perform a frequency engineering analysis to ensure that the proposed facilities will not cause interference to existing or previously applied for stations in this band of a magnitude greater than that specified below.

(2) The general criteria for determining allowable adjacent or co-channel interference protection to be afforded, regardless of system length or

type of modulation, multiplexing or frequency band, shall be such that the interfering signal shall not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. Degradation is determined by calculating the ratio in dB between the desired carrier signal and undesired interfering signal (C/I ratio) appearing at the input to the receiver under investigation (the victim receiver). The development of the C/I ratios from the criteria for maximum allowable interference level per exposure and the methods used to perform path calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the FCC.

(3) Where the development of the carrier to interference ratio (C/I) is not covered by generally acceptable procedures or where the applicant does not wish to develop the carrier to interference ratio, the applicant shall employ the following C/I protection ratios.

(i) Co-channel interference: For both sideband and carrier-beat, (applicable to all bands), the previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB.

(ii) Adjacent channel interference: The existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB.

(b) Coordination of assignments in the 18 GHz band will be performed in accordance with the procedure established in § 21.100

5. Section 74.641 is amended by revising the introduction text of paragraph (a) and the Table in paragraph (a)(1) to read as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating in 12,700–13,200 and 17,700–19,700 MHz bands, the following rules apply:

* * * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum Antenna Gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12,700 to 13,200	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 18,360	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36
19,040 to 19,700	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36

* * * * *

6. In § 74.661 a new paragraph (e) is added as follows:

§ 74.661 Frequency tolerance.

* * * * *

(e) For operation in the 17,700–19,700 MHz band, the operating frequency of the transmitter shall be maintained within ±0.003% of the assigned frequency.

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.18 (a) is amended by adding paragraph (a)(4) as follows:

§ 78.18 Frequency assignments

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the bands from 17,700 to 18,360 MHz and 19,040 to 19,700 MHz. These bands are shared with Domestic Public Fixed, Private-Operational Fixed and Broadcast Auxiliary Services. Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d). These bands may be used for analog or digital modulation.

PAIRED FREQUENCIES

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
80 MHz channels:	
17,740	19,080
17,820	19,160
17,900	19,240
17,980	19,320
18,060	19,400
40 MHz channels:	
17,720	19,060
17,760	19,100
17,800	19,140
17,840	19,180
17,880	19,220
17,920	19,260
17,960	19,300
18,000	19,340
18,040	19,380
18,080	19,460
18,120	19,460
20 MHz channels:	
17,710	19,050
17,730	19,070
17,750	19,090
17,770	19,110
17,790	19,130
17,810	19,150
17,830	19,170
17,850	19,190
17,870	19,210
17,890	19,230
17,910	19,250
17,930	19,270
17,950	19,290
17,970	19,310
17,990	19,330
18,010	19,350
18,030	19,370
18,050	19,390
18,070	19,410
18,090	19,430

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
18,110	19,450
18,130	19,470
10 MHz channels:	
17,705	19,045
17,715	19,055
17,725	19,065
17,735	19,075
17,745	19,085
17,755	19,095
17,765	19,105
17,775	19,115
17,785	19,125
17,795	19,135
17,805	19,145
17,815	19,155
17,825	19,165
17,835	19,175
17,845	19,185
17,855	19,195
17,865	19,205
17,875	19,215
17,885	19,225
17,895	19,235
17,905	19,245
17,915	19,255
17,925	19,265
17,935	19,275
17,945	19,285
17,955	19,295
17,965	19,305
17,975	19,315
17,985	19,325
17,995	19,335
18,005	19,345
18,015	19,355
18,025	19,365
18,035	19,375
18,045	19,385
18,055	19,395

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
18,065	19,405
18,075	19,415
18,085	19,425
18,095	19,435
18,105	19,445
18,115	19,455
18,125	19,465
18,135	19,475
6 MHz channels:	
18,147	19,487
18,153	19,493
18,159	19,499
18,165	19,505
18,171	19,511
18,177	19,517
18,183	19,523
18,189	19,529
18,195	19,535
18,201	19,541
18,207	19,547
18,213	19,553
18,219	19,559
18,225	19,565
18,231	19,571
18,237	19,577
18,243	19,583
18,249	19,589
18,255	19,595
18,261	19,601
18,267	19,607
18,273	19,613
18,279	19,619
18,285	19,625
18,291	19,631
18,297	19,637
18,303	19,643
18,309	19,649
18,315	19,655
18,321	19,661
18,327	19,667
18,333	19,673
18,339	19,679
18,345	19,685
18,351	19,691
18,357	19,697

* * * * *

2. A new section, § 78.36, is added as follows:

§ 78.36 Frequency coordination.

(a) Channels in the 12.7–13.25 GHz band are shared with certain Private Operational-Fixed stations authorized under Part 94, § 94.93 after September 9, 1983. After this date all CARS use of this band is subject to coordination using the following procedure.

(1) Before filing an application for new or modified facilities under this part the applicant must perform a frequency engineering analysis to ensure that the proposed facilities will not cause interference to existing or previously applied for stations in this band of a magnitude greater than that specified below.

(2) The general criteria for determining allowable adjacent or co-channel interference protection to be afforded, regardless of system length or type of modulation, multiplexing or frequency band shall be such that the interfering signal shall not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. The degradation is determined by calculating the ratio in dB between the desired carrier signal and undesired interfering signal (C/I ratio) appearing at the input to the receiver under investigation (the victim receiver). The development of the C/I ratios from the criteria for maximum allowable interference level per exposure and the methods used to perform path calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

(3) Where the development of the carrier to interference ratio (C/I) is not covered by generally acceptable procedures or where the applicant does not wish to develop the carrier to interference ratio, the applicant shall employ the following C/I protection ratios:

(i) Co-channel interference: For both sideband and carrier-beat, (applicable to all bands) the previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB.

(ii) Adjacent channel interference: The existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB.

(b) Coordination of assignments in the 18 GHz band will be performed in accordance with the procedure established in § 21.100.

3. In § 78.101, a new paragraph (d) is added as follows:

§ 78.101 Power limitations.

* * * * *

(d) For CARS stations operating in the 17.7 to 19.7 GHz band transmitter output power shall not be greater than necessary to accomplish the function of the system and in any case shall not be greater than 100 watts (peak); the maximum EIRP shall be limited to 50 dBW.

4. In § 78.103, paragraph (c) is renumbered paragraph (d) and a new paragraph (c) is added as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

(c) For operation in the 17.7-19.7 GHz band:

The mean power of any emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using frequency modulation:

(i) On any frequency removed from the assigned (center) frequency by more than 50% up to and including 100% of the authorized bandwidth: At least 25 dB;

(ii) On any frequency removed from the assigned (center) frequency by more than 100% up to and including 250% of the authorized bandwidth: At least 35 dB;

(iii) On any frequency removed from the assigned (center) frequency by more than 250% of the authorized bandwidth: At least 43 + 10 log 10 (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(2) When using digital modulation:

(i) In any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50% up to and including 250% of the authorized bandwidth: As specified by the following equation but in no event less than 11 dB.

$$A = 11 + 0.4\,(P-50) + 10 \log_{10} B$$

where:

A = Attenuation (in dB) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz.

(ii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250% of the authorized bandwidth: At least $43 = 10 \log_{10}$ (mean output power in watts) dB, or 80 dB, whichever is the lesser attenuation.

(3) Amplitude Modulation:

For vestigial sideband AM video: On any frequency removed from the center frequency of the authorized band by more than 50%: at least 50 dB below peak power of the emission.

* * * * *

5. Section 78.105 is amended by revising the Table in pargraph (a) to read as follows:

§ 78.105 Antenna systems.

(a) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam-width to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12,700 to 13,200	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 18,360	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36
19,040 to 19,700	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36

* * * * *

6. In § 78.111, a new paragraph (d) is added as follows:

§ 78.111 Frequency tolerance.

* * * * *

(d) Cable Television Relay stations authorized in the 17.7 to 19.7 GHz band shall maintain a frequency tolerance of 003%.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

E. 1. Section 94.15 is amended by adding a new paragraph (j) as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(j) Applications filed pursuant to § 94.93 will not be subject to the provisions of paragraphs (a) through (h) of this section.

2. Section 94.51 is amended by adding a sentence at the end as follows:

§ 94.51 Time in which station must be placed in operation.

* * * Stations authorized under § 94.93 will have a period of 36 months from the date of grant to place the station in operation.

3. The table in paragraph (b) of § 94.61 is amended by revising the bands between 6525 and 12,700, adding a new band for 12,700–13,200, revising the band for 13,200–13,250, adding a new band for 17,700–18,360, revising the band for 18,360–19,040, adding a new band for 19,040–19,700, and adding new Notes (25)-(28) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Microwave Service.

FREQUENCY BAND (MHz)

* * * * *	
6525 to 6575	(15) (28)
6575 to 6625	(5) (15) (28)
6625 to 6875	(5) (6) (15) (28)
10,550 to 10,680	(24)
12,200 to 12,500	(3) (21) (25)
12,500 to 12,700	(5) (6) (21) (25)
12,700 to 13,200	(28)
13,200 to 13,250	(6) (14) (15) (21)
17,700 to 18,360	(10) (21) (27)
18,360 to 18,460	(24)
18,460 to 18,940	(5) (10) (17) (21)
18,940 to 19,040	(24)
19,040 to 19,700	(15) (21) (27)
* * * * *	

(24) Frequencies in this band have been allocated to the Direct Broadcast Service and are authorized for Operational Fixed use only pursuant to § 94.93.

(25) Frequencies in this band are only available for applications filed pursuant to § 94.93.

(27) Frequencies in this band are shared with Broadcast Auxiliary, and Cable Television Relay services.

(28) This band is also available for applications filed pursuant to § 94.93.

4. Section 94.65 is amended by revising paragraph (h) and by adding a new paragraph (1) as follows:

§ 94.65 Frequencies.

(h) *12,200–12,700 MHz:* The Commission has allocated the 12.2–12.7 GHz band for use by the broadcasting-satellite service. Operational-fixed stations authorized after September 9, 1983 shall be licensed on a noninterference basis and shall be required to make any and all adjustments necessary to prevent interference to operating domestic broadcasting-satellite systems. (Section 94.93 contains special provisions for stations authorized in the band on or before September 9, 1983). Notwithstanding any other provisions, no operational-fixed stations shall be permitted to cause interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the broadcasting-satellite service established at the 1983 RARC.

* * * * *

(l) *17,700 MHz–18,360 MHz and 19,040 MHz–19,700 MHz:* These frequencies are shared with the Domestic Public Fixed, Broadcast Auxiliary, and Cable Relay Services. Applicants may use either a frequency pair for a two-way link or one frequency of a frequency pair for a one way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d). Any form of emission may be used, except damped waves, subject to the provisions in § 94.71.

PAIRED FREQUENCIES

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
80 MHz channels:	
17,740	19,060
17,820	19,160
17,900	19,240
17,980	19,320
18,060	19,400
40 MHz channels:	
17,720	19,060
17,760	19,100
17,800	19,140
17,840	19,180
17,880	19,220
17,920	19,260
17,960	19,300
18,000	19,340
18,040	19,380
18,080	19,460
18,120	19,460
20 MHz channels:	
17,710	19,050
17,730	19,070
17,750	19,090
17,770	19,110
17,790	19,130
17,810	19,150
17,830	19,170
17,850	19,190
17,870	19,210
17,890	19,230
17,910	19,250
17,930	19,270
17,950	19,290
17,970	19,310
17,990	19,330
18,010	19,350
18,030	19,370
18,050	19,390
18,070	19,410
18,090	19,430
18,110	19,450
18,130	19,470
10 MHz channels:	
17,705	19,045
17,715	19,055
17,725	19,065
17,735	19,075
17,745	19,085
17,755	19,095
17,765	19,105
17,775	19,115
17,785	19,125
17,795	19,135
17,805	19,145
17,815	19,155
17,825	19,165
17,835	19,175
17,845	19,185
17,855	19,195
17,865	19,205
17,875	19,215

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
17,885	19,225
17,895	19,235
17,905	19,245
17,915	19,255
17,925	19,265
17,935	19,275
17,945	19,285
17,955	19,295
17,965	19,305
17,975	19,315
17,985	19,325
17,995	19,335
18,005	19,345
18,015	19,355
18,025	19,365
18,035	19,375
18,045	19,385
18,055	19,396
18,065	19,405
18,075	19,415
18,085	19,425
18,095	19,435
18,105	19,445
18,115	19,455
18,125	19,465
18,135	19,475
6 MHz channels:	
18,147	19,487
18,153	19,493
18,159	19,499
18,165	19,505
18,171	19,511
18,177	19,517
18,183	19,523
18,189	19,529
18,195	19,535
18,201	19,541
18,207	19,547
18,213	19,553
18,219	19,559
18,225	19,565
18,231	19,571
18,237	19,577
18,243	19,583
18,249	19,589
18,255	19,595
18,261	19,601

PAIRED FREQUENCIES—Continued

[Center frequency of channel shown]

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
18,267	19,607
18,273	19,613
18,279	19,619
18,285	19,625
18,291	19,631
18,297	19,637
18,303	19,643
18,309	19,649
18,315	19,655
18,321	19,661
18,327	19,667
18,333	19,673
18,339	19,679
18,345	19,685
18,351	19,691
18,357	19,697

5. Section 94.67 is amended by revising the Table and adding Note 6 in paragraph (a) to read as follows:

§ 94.67 Frequency tolerance.

(a) * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
928 to 929	0.0005
952 to 960 [1]	([5])
1,850 to 1,990	0.002
2,130 to 2,150	0.001
2,150 to 2,160	0.001
2,160 to 2,220	0.001
2,450 to 2,500	0.001
2,500 to 2,690	([3])
6,525 to 6,875	0.005
10,550 to 10,680	([4])
12,200 to 13,150	[2] 0.005
13,200 to 13,250	0.03
17,700 to 18,360	[1] 0.003
18,360 to 18,460	0.001
18,460 to 19,700	[1] 0.003
19,700 to 40,000	[2] 0.03
Above 40,000	([4])

* * * * *

[2] For exceptions see § 94.91.

* * * * *

6. Section 94.71 is amended by replacing the band 18,360–19,040 MHz with the following additional bands in the Table in paragraph (b) as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) * * *

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
* * * * *	
17,700–18,360	80
18,360–18,460	10
18,460–18,940	20
18,940–19,040	10
19,040–19,700	80
* * * * *	

7. Section 94.75 paragraph (b) is amended by revising the Table and revising Note 3 and adding Note 6.

§ 94.75 Antenna limitations.

* * * * *

(b) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum Antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
952 to 960 (1) [6]	A	14.0	n/a		6	11	14	17	20	24
	B	20.0	n/a			6	10	13	15	20
1,850 to 2,690 [3]	A	5.0	n/a	12	18	22	25	29	33	39
	B	8.0	n/a	5	18	20	20	25	28	36
6,525 to 6,875	A	1.5	n/a	26	29	32	34	38	41	49
	B	2.0	n/a	21	25	29	32	35	39	45
10,550 to 10,680 [3]	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	38	38
12,200 to 13,250 [4]	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 19,700 [3]	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36
Above 19,700 [3] [6]										

* * * * * * * *

[1] Except as provided in § 94.199 for Digital Termination System antennas.

* * * * * * * *

[4] Except as provided in § 94.90 or, for the band 13,200–13,250 MHz, as provided in the developmental authorization.

[6] To be specified in authorization except that bands shared with domestic public radio service stations (Part 21) shall conform to standards contained in § 21.108(c).

8. A new § 94.93, is added as follows:

§ 94.93 Provisions for Private Operational Fixed use of the 12,200–12,700 MHz Band.

(a) Operational Fixed stations which were authorized in the 12,200–12,700 MHz band on or before September 9, 1983, shall not be required to protect operating domestic broadcasting satellite systems from interference until September 9, 1988. After this date, these Operational Fixed stations may continue operation on a non-interference basis to Direct Broadcast Satellite service reception and shall be required to make any and all adjustments necessary to prevent interference to

operating broadcasting-satellite systems.

(b) Operational-fixed stations authorized in the 12,200–12,700 MHz band after September 9, 1983, shall be required to protect operating domestic broadcasting satellite systems from interference.

(c) Any Operational-fixed stations authorized in the 12,200–12,700 MHz band must not cause interference to broadcasting-satellite systems of other administrations operating in accordance with the plan developed by the 1983 Regional Administrative Radio Conference.

(d) Stations authorized on frequencies in the 12,200 to 12,700 MHz band as of September 9, 1983, except for those authorized under § 94.90, are allowed use of certain other bands listed below in accordance with the provisions of this paragraph. Authority to use the frequencies or special provisions of this paragraph, will not apply to additional system links (transmitter-receiver pair) not licensed as of September 9, 1983. Licensees intending to take advantage of the special reaccommodation provisions provided in this paragraph must submit applications by September 9, 1988.

(1) *Available Frequencies.*

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6,525–6,875 MHz Band	
10 MHz channels:[1]	
6,545	6,715
6,555	6,725
6,565	6,735
6,585	6,745
6,595	6,755
6,605	6,765
6,615	6,775
6,625	6,785
6,635	6,795
6,645	6,805
6,655	6,815
6,665	6,825
6,675	6,835
6,685	6,845
6,695	6,855
6,705	6,865
12,700–13,200 GHz Band	
25 MHz channels:[1]	
12,712.5	12,937.5
12,725.0	12,950.0
12,737.5	12,962.5
12,750.0	12,975.0
12,762.5	12,987.5
12,775.0	13,000.0
12,787.5	13,012.5
12,800.0	13,025.0
12,812.5	13,037.5
12,825.0	13,050.0
12,837.5	13,062.5
12,850.0	13,075.0
12,862.5	13,087.5
12,875.0	13,100.0
12,887.5	13,112.5
12,900.0	13,125.0
12,912.5	13,137.5
12,700–13,200 GHz Band	
12.5 MHz channels:[1]	
12,706.25	12,931.25
12,718.75	12,943.75
12,731.25	12,956.25
12,743.75	12,968.75
12,756.25	12,981.25
12,768.75	12,993.75
12,781.25	13,006.25
12,793.75	13,018.75
12,806.25	13,030.25
12,818.75	13,042.75
12,831.25	13,055.25
12,843.25	13,067.75
12,856.25	13,080.25
12,868.75	13,092.75
12,881.25	13,105.25
12,893.75	13,117.75
12,906.25	13,130.25
12,918.75	13,142.75

[1] Center frequency of channel shown.

In addition to the above center frequencies, alternative channeling may be used (20 MHz or 8 MHz-wide channels). Frequency pairs may be used for two-way links or one frequency of a pair may be used for a one-way link. Use is subject to the coordination procedure in (d)(2) of this section.

(2) *Coordination Procedure.* (i) Before filing an application for new or modified facilities under this Subsection the applicant must perform a frequency engineering analysis to ensure that the proposed facilities will not cause interference to existing or previously applied for stations in this band of a magnitude greater than that specified below.

(ii) The general criteria for determining allowable adjacent or co-channel interference protection to be afforded, regardless of system length or type of modulation, multiplexing or frequency band shall be such that the interfering signal shall not produce more than 1.0 dB degradation of the practical threshold of the protected receiver, applied by calculating the ratio in dB between the desired carrier signal and undesired interfering signal (C/I ratio) appearing at the input to the receiver under investigation (the victim receiver). The development of the C/I ratios from the criteria for maximum allowable interference level per exposure and the methods used to perform patch calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

(iii) Where the development of the carrier to interference ratio (C/I) is not covered by generally acceptable procedures or where the applicant does not wish to develop the carrier to interference ratio the applicant shall employ the following C/I protection ratios:

(A) Co-channel interference: Both sideband and carrier-beat, applicable to all bands, the previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB.

(B) Adjacent channel interference: the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of least 56 dB.

(iv) For the band 6525–6875 MHz: The existing coordination requirement of § 94.63 as it relates to this band shall be followed.

(3) Applications Mutually Exclusive with other Applications. In the event that applications filed by OFS licensees in the 12.2–12.7 GHz band pursuant to the reaccommodation provisions of this paragraph (d) are mutually exclusive with other applications, the applications of the 12 GHz OFS licensees shall be granted over other applications.

(4) *Technical Standards.*—(i) *Power Limits.* All stations authorized under this paragraph shall be limited to the following:

Power: All bands, 10 watts maximum transmitter output power
EIRP: All bands, 80 dBm

(ii) *Antenna Standards.* Antennas meeting Standard B of § 94.75 can be used by all systems authorized under this paragraph, except that a higher performance antenna meeting Standard A will be used where interference problems can be resolved by the use of such antennas.

(iii) *Types of Emission.* Any modulation type available for use by stations authorized in the Private Operational Fixed Microwave Services are allowed on the frequencies provided in this paragraph.

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47 CFR Part 83

[PR Docket No. 83-429; FCC 83-475]

Amendment of the Commission's Rules To Implement the First Set of Amendments to the Safety of Life at Sea Convention of 1974 and Conform Commission Rules in Other Treaty Matters

AGENCY: Federal Communication Commissions.

ACTION: Final rule.

SUMMARY: This document amends Part 83 to complete implementation of the first set of amendments to the 1974

Safety of Life at Sea Convention to provide a VHF radio watch on vessels outside harbor and port areas. These rule amendments will assure that U.S. ships will be compatible with international requirements.

EFFECTIVE DATE: December 6, 1983.

FOR FURTHER INFORMATION CONTACT: Robert C. McIntyre, Private Radio Bureau, (202) 632-7175.

List of Subjects in 47 CFR Part 83

Communication equipment, Marine safety, Vessels.

Report and Order; Proceeding Terminated

In the matter of amendment of Part 83 of the Commission's rules to implement the first set of amendments to the Safety of Life at Sea Convention of 1974 and conform Commission rules in other treaty matters; PR Docket No. 83-429.

Adopted: October 19, 1983.
Released: October 28, 1983.

By the Commission: Commissioner Quello absent.

1. The Commission released a Notice of Proposed Rule Making in this proceeding on May 6, 1983 (FCC 83-204, May 13, 1983, 48 FR 21599). Comments and reply comments were required to be filed by June 13 and June 28, 1983, respectively. Based on the record before us, we are adopting the rules substantially as proposed.

Background

2. The International Maritime Organization (IMO) is a specialized agency of the United Nations concerned solely with maritime affairs. In 1974, IMO convened an international Conference for the purpose of concluding a new International Convention for the Safety of Life at Sea (SOLAS Convention or Safety Convention"[1]). Annexed to the SOLAS Convention and an integral part of it are regulations which govern all aspects of safety practices for ships engaged on international voyages.

3. Although the SOLAS Convention was adopted in 1974, it did not come into force until May 25, 1980. During the hiatus, amendments to the regulations were adopted. The first such set of amendments dealt with some matters which were so important that IMO, in Resolution A. 335, urged administrations to implement the changes even before the Convention itself came into force. We followed this recommendation and on March 15, 1979, we adopted a Report and Order in Docket 21089 which established a communications link between radiotelephone and radiotelegraph vessels. We initiated this proceeding to complete implementation of the first set of amendments to the 194 SOLAS Convention and to align our rules concerning testing of the ship reserve telegraph transmitter with IMO's regulations. The first set of amendments to the 1974 SOLAS are scheduled to come into force on September 1, 1984.

Notice of Proposed Rule Making

4. The Notice of Proposed Rule Making in this proceeding proposed (1) to require vessels navigating outside ports and harbors to maintain a VHF radio watch on Channel 16 (156.8 MHz); (2) to require vessels to maintain a radio log concerning this watch; and (3) to amend our rules concerning the ship reserve transmitter to conform to less stringent SOLAS requirements. We proposed to apply these rules to vessels subject to the Communications Act of 1934, as amended (vessels on national voyages) as well as to vessels subject to the SOLAS Convention (vessels on international voyages). This was consistent with previous Commission actions concerning IMO regulations to assure that vessels operating in the same waters are comparably equipped from a safety standpoint.

5. Comments were filed by the United States Coast Guard (USCG) concerning the Channel 16 watch and the VHF log requirements. The Radio Officers Union, District 3 of the National Marine Engineers' Beneficial Association, AFL-CIO (ROU) commented on the testing of the ships radiotelegraph reserve transmitter.

Channel 16 Watch Requirement

6. The proposed rules would require a radio watch on VHF Marine Channel 16 outside ports and harbors except when the vessel is keeping the required watch on the bridge-to-bridge radiotelephone frequency or when the vessel is participating in a Vessel Traffic Service (VTS) system as required by the U.S. Coast Guard and maintaining an efficient watch on the VTS frequency. We consider that the proposed radio watch on Channel 16, which provides communications between vessels operating outside port areas, will significantly improve the safety of life at sea for all ships operating in these sea areas. Consequently we proposed to extend these SOLAS requirements to vessels which are subject only to the Communications Act—those on national voyages. The USCG urged that these rules be applied to both vessels on national and international voyages.

7. However, the USCG states in its comments that the proposed changes which would permit vessels to discontinue the Channel 16 watch outside harbors and ports when the appropriate VTS frequency *or* bridge-to-bridge frequency is monitored may be in conflict with Section 83.224 of our rules which only permits the watch to be discontinued for vessels subject to the Bridge-to-Bridge Radiotelephone Act *and* participating in a VTS system when an efficient watch is maintained on both the bridge-to-bridge frequency *and* a separate assigned VTS frequency. To avoid this potential conflict and generally improve the safety of vessels, the USCG recommends that the Commission permit the Channel 16 watch in areas outside harbors and ports to be discontinued only if an efficient watch is maintained on the bridge-to-bridge frequency and the appropriate VTS frequency. We agree that the conditions for discontinuance of the watch recommended by the U.S. Coast Guard are appropriate and we have modified the final rules accordingly.

Radio Log Requirements

8. The radio log requirements for ship VHF radiotelephone stations subject to the Communications Act of 1934 and the SOLAS Convention will minimize the burden on operators and provide the necessary information for safety purposes. We received no comments opposing the log requirement which provides for:

—Entry of safety related communications;
—the times when the watch is begun, interrupted, and ended;
—a daily statement concerning the operating condition of the VHF radiotelephone equipment;
—details of service or maintenance work.

The rules concerning radio logs are adopted as proposed.

Testing of Reserve Radiotelegraph Transmitters

9. The rules presently in force require the reserve radiotelegraph transmitter to be tested prior to a vessel's departure from port and on each day the vessel is outside a port or harbor. We proposed in the Notice to accept the test procedure specified in the 1974 SOLAS Convention which was more flexible than the procedure set out in our rules. The SOLAS Convention requires testing if the transmitter is not used daily for communications and permits use of a suitable artificial antenna when testing of the reserve transmitter is required. The convention requires the transmitter to be tested at least once during each

[1] See Section 3(bb) of the Communications Act of 1934, as amended.

voyage with the reserve antenna if it is installed. The ROU feels that the transmitter and antenna should be tested daily and states that the failure rate of the antenna exceeds that of the transmitter which it argues militates against use of an artificial antenna for test purposes. However, after a careful review of this matter, we continue to believe that the testing procedure specified in the SOLAS Convention is adequate to assure system operability during a voyage and, further, will provide more flexibility than currently available under the rules. Accordingly, the present rules governing testing of the reserve transmitter will modified to align them with the less stringent requirements of the SOLAS Convention.

Conclusion

10. We are implementing these requirements on the effective date of the rules adopted in the Appendix and in advance of the September 1, 1984, date for the coming into force of the first set of amendments to the 1974 SOLAS Convention. We believe that the early introduction of these requirements will further improve the safety of life at sea.

11. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), we certify that the proposed rules will not have a significant economic on a substantial number of small entities. Most vessels subject to these rules are operated by large concerns rather than small businesses. Additionally, because the large majority of vessels currently possess adequate equipment to comply with these rules, no additional cost should be incurred.

12. Regarding questions on matters in this document contact Robert C. McIntyre, 202/632-7175.

13. Accordingly, it is ordered, that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the attached Appendix, effective December 6, 1983.

14. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Council for Advocacy of the Small Business Administration.

15 It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.202 footnotes 1 and 2 are deleted; paragraphs (a), (b) and (c) are revised to read as follows:

§ 83.202 Watch required on vessels subject to the Communications Act.

(a) Each ship of the United States which is equipped with a *radiotelegraph station* for compliance with Part II of Title III of the Communications Act shall:

(1) Keep a continuous and efficient watch on *500 kHz* by means of radio officers while being navigated in the open sea outside a harbor or port. In lieu thereof, on a cargo ship equipped with a radiotelegraph auto alarm in proper operating condition, an efficient watch on 500 kHz shall be maintained by means of a radio officer for at least 8 hours per day in the aggregate, i.e., for at least one-third of each day or portion of each day that the vessel is navigated in the open sea outside of a harbor or port;

(2) Keep a continuous and efficient watch on the radiotelephone distress frequency *2182 kHz* from the principal radio operating position *on* the room from which the vessel is normally steered while being navigated in the open sea outside a harbor or port. A radiotelephone distress frequency watch receiver having a loudspeaker and a radiotelephone auto-alarm facility shall be used to keep the continuous watch on 2182 kHz if such watch is kept from the room from which the vessel is normally steered. A radiotelephone auto-alarm facility may only be used after a determination by the master that conditions are such that maintenance of the listening watch would interfere with the safe navigation of the ship;

(3) Keep a continuous and efficient watch on the VHF distress frequency *156.8 MHz* from the room from which the vessel is normally steered while in the open sea outside a harbor or port. The watch shall be maintained by a designated member of the crew who may perform other duties, relating to the operating or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. Use of a properly adjusted squelch or brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the continuity or efficiency of the required watch on the VHF distress frequency. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

(b) Each cargo ship of the United States which is equipped with a *radiotelephone station* for compliance with Part II of Title III of the Communications Act shall while being navigated outside of a harbor or port:

(1) Keep a continuous and efficient watch on *2182 kHz* in the room from which the vessel is normally steered while at sea, whenever such station is not being used for authorized traffic. Such watch shall be maintained by at least one officer or member of the crew of the vessel who has been designated by the master to do so. The person designated by the master may simultaneously perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. A radiotelephone watch receiver having a loudspeaker and a radiotelephone auto alarm facility shall be used to keep the continuous watch on 2182 kHz. A radiotelephone auto alarm facility may only be used after a determination by the master that conditions are such that maintenance of the listening watch would interfere with the safe navigation of the ship;

(2) Keep a continuous and efficient watch on the VHF distress frequency *156.8 MHz* from the room from which the vessel is normally steered. The watch shall be maintained by a designated member of the crew who may peform other duties, relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. Use of properly adjusted squelch or brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the continuity or effectiveness of the required watch on the VHF distress frequency. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

(c) Each vessel of the United States transporting more than six passengers for hire, which is equipped with a *radiotelephone installation* for compliance with Part III of Title III of the Communications Act shall, while being navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to

the open sea, keep a continuous and efficient watch on *2182 kHz* while the vessel is beyond VHF communication range of the nearest VHF coast station, whenever such installation is not being used for authorized traffic. A VHF watch shall be kept on *156.8 MHz* whenever such installation is not being used for authorized traffic. The VHF watch shall be maintained at the vessel's steering station actually in use by the qualified operator as defined by § 83.155(e) of this part, or by a designated member of the crew who has been instructed in radio operation and voice procedure by the radio operator. The crew member so designated may simultaneously perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. The use of a properly adjusted squelch is not considered to adversely affect the continuity or the effectiveness of the required watch on the VHF distress frequency. The VHF watch need not be maintained by vessels subject to the Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

2. In § 83.203 the heading is revised and a new paragraph (d) is added to read as follows:

§ 83.203 Watch required on vessels subject to the Safety Convention.

* * * * *

(d) Each ship of the United States subject to the Safety Convention shall maintain a continuous and efficient watch while in the open sea outside a harbor or port on the VHF distress frequency 156.8 MHz. The watch shall be maintained by a designated member of the crew who may perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. Use of properly adjusted squelch or brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the continuity or effectiveness of the required watch on the VHF distress frequency. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

3. In § 83.368 paragraph (e) is revised to read as follows:

§ 83.368 Radiotelephone station log.

* * * * *

(e) The log of the bridge-to-bridge station required by the vessel Bridge-to-Bridge Radiotelephone Act and the log of ship VHF radiotelephone stations subject to Part II of Title III, of the Communications Act of 1934 or to the provisions of the Safety Convention shall include the following entries:

* * * * *

4. In § 83.449 paragraph (a)(4) is revised to read as follows:

§ 83.449 Tests of reserve installation and automatic radiotelegraph alarm signal keyer.

(a) * * *

(4) On days when not used for communication the reserve transmitter energized by the reserve power supply shall be tested by actual operation when connected to the main antenna, an artificial antenna or a reserve antenna (if installed, the reserve antenna must be used at least once each voyage), noting antenna currents;

* * * * *

5. In Subpart BB the title is revised to read as follows:

Subpart BB—VHF Radiotelephone Stations Provided for Compliance With Part II of Title III of the Communications Act or the Provisions of the Safety Convention

6. In § 83.851 paragraphs (a) and (d) are revised to read as follows:

§ 83.851 VHF radiotelephone station.

(a) The provisions of this subpart are applicable to the VHF radiotelephone station required to be provided on all passenger ships irrespective of size and all cargo ships of 300 gross tons and upwards subject to Part II, Title III of the Communications Act or to the Safety Convention. Vessels subject only to the Communications Act may use a VHF radiotelephone installation complying with the technical standards of the Bridge-to-Bridge Radiotelephone Act in Subpart X of this Chapter to satisfy the watch requirements of § 83.202 (a)(3) and (b)(2) provided that the equipment can transmit and receive on 156.8 MHz.

* * * * *

(d) The radiotelephone stations on vessels subject to Part II, Title III, of the Communications Act shall be capable of operating on the frequency 156.8 MHz and in other respects shall meet the requirements of § 83.106(b). The radiotelephone station on vessels subject to the Safety Convention shall be capable of operating in the simplex mode on the ship station transmitting frequencies specified in the frequency band 156.025 MHz to 157.425 MHz and in the semiduplex mode on the two frequency channels specified in the following table:

* * * * *

[FR Doc. 83-29703 Filed 11-2-83; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 48, No. 214
Thursday, November 3, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Claim and Report Submission

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Summer Food Service Program (SFSP) regulation, Part 225, to mandate that claims be submitted to the State agency within 60 days of the claiming month and that the State agency submit its Program reports to the Department within 90 days of the month covered by the report. This rule also proposes that exceptions to these limits may be granted at the discretion of the Secretary. Furthermore, this proposal specifies appeal rights in the case of request for exceptions. This rule is intended to ensure that timely and accurate data is reported on Program participation.

DATES: All interested parties are invited to comment on this proposal. Comments must be received on or before December 5, 1983, to be assured of consideration in the final rule.

ADDRESS: Written comments should be sent to Mr. Stanley C. Garnett, Acting Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley C. Garnett at the above address or by telephone at (703) 756-3620. Copies of all written comments will be available for review during normal business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on the substantial number of small entities.

Although this rule does establiish certain reporting deadlines, the actual reporting or recordkeeping requirements associated with the rule have not been changed. The requirements for the SFSP Claim for Reimbursement Form (FNS-143) have been approved by the Office of Management and Budget (OMB) for use through September 30, 1984 (0584-0041). The monthly report (FNS-44) and the form used to adjust this report (FNS-44A) were approved by OMB for use through December 31, 1985 (0584-0057).

Background

The SFSP is authorized by section 13 of the National School Lunch Act. The last comprehensive regulations for the SFSP were published on February 16, 1982, (47 FR 6790). However, on May 10, 1983, (48 FR 20896) an amendment to the final rule was published to implement a provision mandated by Pub. L. 97-370 that required sponsors to submit claims to the State agency within 60 days of the claiming month and required that the State agency submit the Program report to the Department within 90 days of the month covered by the report. The law further provided that exceptions to these time limits may be made at the decretion of the Secretary. That rule amended both the SFSP and the Child Care Food Program.

This provison was included in the law because in the past, the Department has experienced serious delays in receiving complete and accurate data on participation in the SFSP. Timely and accurate submission of data is essential to retain control of the financial and administrative aspects of the Program. This reporting system helps ensure that sponsors are receiving disbursements of monies expeditiously and enables the Department to closely monitor Program activities and make projections for the following year. The May 10, 1983, rule was effective only for Fiscal Year 1983. However, the Department considers that the circumstances which occasioned the claim and report submission provision in Pub. L. 97-370 must not be allowed to reoccur. Therefore, the Department is now proposing the following permanent amendments to the SFSP regulations, to be effective during Fiscal Year 1984 and thereafter.

1. Deadlines for Submission of Final Claims and Reports

The Department is proposing to require sponsors to submit their final claims for reimbursement to the State agency within 60 days of the month covered by the claim. The 60 day requirement is the maximum amount of time to be allowed to the sponsors for submission of claims; however, State agencies will have the discretion to establish earlier time limits, if they so choose. The food service management companies will be required to submit all Program costs incurred by the sponsor in sufficient time to allow the sponsor to prepare and submit its claim for reimbursement to meet the 60 day submission deadline.

In addition to the requirement that sponsors submit complete and accurate claims in a timely manner, the State agencies will be required to submit their final monthly reports (FNS-44) on SFSP participation within 90 days following the end of the month covered by the report. These time limits are the same as those established in the final regulation on May 10, 1983 (48 FR 20896) which was only effective for Fiscal Year 1983, and are intended to enable both the State agencies and sponsors to deal with delays that may occur from time to time, while still ensuring that the Department receives the necessary data in a timely manner.

The Department emphasizes that sponsors shall not be paid unless the claim is submitted within the 60 day timeframe, and that States shall not be authorized to receive Program funds unless the report is submitted within 90 days after the end of the month covered by the report unless FNS grants an

exception. The deadline dates for submission of the Claim for Reimbursement (FNS–143) or the Program Operations Report (FNS–44) are based on the "postmarked and/or submitted" time to the State agencies or FNS, as appropriate. The language "postmarked and/or submitted" would allow either the sponsor or the State agency to mail or deliver these documents.

This proposed rule also revises the deadline for submission of the final Financial Status Reports (SF–269s) by State agencies. It is proposed that these reports be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year instead of the current 150 days. The revised deadline would allow State agencies 60 days, after claims for reimbursement for the last month of the fiscal year are due, in which to finalize payments to sponsors and close program accounts for the fiscal year. When the current 150 day deadline was established, claims for reimbursement were due 90 days after the end of the fiscal year. This allowed State agencies 60 days in which to finalize their program activities. The proposed 120 day deadline for the final SF–269 would maintain this 60 day time period for State agencies and provide a more timely program closeout.

2. Adjustments

The Department expects that all claims and reports submitted by the 60th and 90th days respectively will be final and will contain the most accurate data available at the time of submission. Nevertheless, the Department recognizes that on occasion, adjustments to claims and reports will be required. Such adjustments may be due to the discovery of errors after the 60 or 90 day submission or may be required as a result of audit or review findings. Downward adjustments shall always be made to reflect the fact that all or part of a final claim was not properly payable, regardless of when the overpayment is discovered. The current regulations require recovery of payments to sponsors not properly payable, unless an audit or a management evaluation is being conducted. When overpayments are collected, it is imperative that the report filed by the State agency be adjusted. Also, the final reports which overstate number of meals served shall be adjusted downward, regardless of when the overstatement is discovered.

Upward adjustments may be made on the following basis. If a claim has been submitted within the 60 day timeframe, the State agency has the option to make an upward adjustment only if the adjustment is completed in time to be reflected in the final FNS–44 report for the month claimed, due within 90 days of the claim month. However, only FNS can grant an exception to adjust either the claim or the report upward if such adjustments are requested after the 90 day time limit for submission of the final FNS–44 report.

3. Exceptions

To ensure uniform implementation of the deadline for submitting both claims and reports and for making upward adjustments, except as specified above, may be granted only by FNS on a case-by-case basis. As mentioned above, the State agency may elect to make upward adjustments to claims after the 60th day has passed, provided that the claim was properly submitted by the 60th day and that the adjustment can be made in time to be reflected in the State's final FNS–44 report. Moreover, the same principle would apply if the State agency discovers that a sponsor inadvertently has been underpaid. Furthermore, the State agency is *not* required to act upon requests for upward adjustments submitted after the 60 day claiming deadline, but prior to the 90 day reporting deadline. Moreover, if a request for an upward adjustment is not submitted in time to be included in the State's final FNS–44, *only* FNS can grant an exception since it would also be necessary to grant the State an exception to the 90 day reporting deadline. Finally, if a claim is submitted after the 60 day deadline, the claim can be paid *only* if FNS grants an exception.

The Department believes that the timeframes established for submission of claims and reports allows each responsible party sufficient time to prepare and submit final documents based on actual data. Therefore, in order to receive an exception, it will be necessary for the sponsor or the State agency, as appropriate, to demonstrate that an exception is justified.

4. Appeals

Because of the nature of the exceptions process, disapprovals by FNS of requests for exceptions will not be subject to review by State hearing officials or, in the case of Regional Office administered programs (ROAPs), by the FNS Administrative Review Staff. Section 13(n) of the National School Lunch Act establishes fair hearings for sponsors aggrieved by State action. Section 16(b) of the Child Nutrition Act authorizes the Secretary of Agriculture to settle, adjust, compromise or deny any claim arising under that Act or the National School Lunch Act. This authority has been delegated to the Administrator or FNS and FNS Regional Administrators and is not subject to delegation to States. Because the final decision concerning the exception request will not be "State action," no appeal is required by Section 13. Institutions may appeal the decision by the State agency not to forward an exception request for a final decision, since in these instances the appeals would involve administrative decisions which are "State action".

5. Sanctions

The Department also proposes in § 225.4(e) that corrective action may be required if State agencies consistently submit inaccurate data which later requires adjustments. As noted above, the Department will approve upward adjustments to reports after the submission deadline only if the State can demonstrate that an exception to the 90 day limit is justified. In the case of downward adjustments, modifications must always be made. However, if the downward adjustment is needed because of an error on the State's part of because the State agency submitted estimated data on its final report, appropriate corrective action would be required to ensure that this situation does not continue. In this regard, the Department also proposes that failure to submit accurate final reports within 90 days may also result in sanctions against the State's administrative funds. Under this proposal, such failure could result in the loss of up to one hundred percent of the administrative funds to which a State agency is entitled during a fiscal year.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs-health, Infants and children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, the Department is proposing to amend 7 CFR 225 as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. In § 225.4 paragraph (c) is revised and a new sentence is added to the end of paragraph (e) to read as follows:

§ 225.4 Payment to State agencies and use of Program funds.

* * * * *

(c) *Remaining funds.* FNS shall make available any remaining Program funds due within 45 days of the receipt of valid Claims for Reimbursement from

sponsors by the State agency. However no payment shall be made for claims submitted later than 60 days after the claiming month.

* * * * *

(e) * * * If a State agency fails to submit timely and accurate reports under § 225.10(c) of this Part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FNS may recover, withhold or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

* * * * *

2. Section 225.10 paragraph (c) and the first sentence of paragraph (d) are revised to read as follows:

§ 225.10 Records and reports.

* * * * *

(c) Each State agency shall submit to FNS a final report on the Summer Food Service Program Operations (FNS–44) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless an exception is granted by FNS. Downward adjustments shall always be made regardless of when it is determined that such adjustments need to be made. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Corrective action may be taken against the State agencies, as stated in section 225.4(e) for failure to submit acurate and timely reports. Consistent failure to submit these documents may result in loss of up to one hundred percent of the State administrative funds available under 225.4(e)

(d) The State agency must submit to FNS the final Program Operational and Financial States Report no later than 120 days after the end of the fiscal year, on a form (SF–269) provided by FNS.* * *

* * * * *

3. Section 225.11 paragraph (c)(2), (c)(5), and (c)(6) are removed, and paragraphs (c)(3), (4), (7), (8), (9), (10), (11), (12) and (13) are redesignated as paragraph (c)(2), (3), (4), (5), (6), (7), (8), (9) and (10). In addition, newly redesignated paragraphs (c)(4) and (c)(5) are revised to read as follows:

§ 225.11 Program payments.

* * * * *

(c)* * *

(4) Claims for reimbursement shall report information in accordance with the financial managemnt system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of the Summer Food Program Service Operations required uner § 225.10(c). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support the claim. The cost of meals served to adults performing necessary food service labor and the costs of meals disallowed by the State agency may be included in the claim. The State agency may choose to allow sponsors to include the cost of meals disallowed as meals served to the children, in accordance with § 225.13(e) (1) and (2) in its report of operating costs on its claim for reimbursement. In no case shall the cost of meals in excess of the site's approved level of meal service established under § 225.7(j) be considered allowable.

(5) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within 60 days shall not be paid unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in amounts claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Program Operations and Financial Status Report (FNS–44) for the claim month. Downward adjustments in amounts claimed shall always be made regardless of when it is determined that such adjustments are necessary. Upward adjustments in amounts claimed which are not relfected in the final FNS–44 for the claim month cannot be made unless an exception is granted by FNS.

* * * * *

4. Section 225.15(a) is revised to read as follows:

§ 225.15 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement, a denial by the State agency to forward an appeal exception request by the sponsor for an upward adjustment on the claim for reimbursement, a claim against a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, a denial of a food service management company's application for registration, or revocation of that registration. Appeals shall not be allowed on decisions made by FNS on request for exceptions to the claim submission deadlines as stated in § 225.11(c)(5).

* * * * *

5. Section 225.16, a new paragraph (e)(13) is added to read as follows:

§225.16 Procedures for food service management companies.

* * * * *

(e) * * *

(13) The food service management companies shall submit all costs incurred pertaining to the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60 day submission deadline.

* * * * *

6. Section 225.19(e) is revised to read as follows:

§ 225.19 Operational responsibilities of sponsors.

* * * * *

(e) Sponsors shall submit claims for reimbursement only for meals served to children in accordance with this part. All final claims must be submitted to the State agency within 60 days following the month covered by the claim.

* * * * *

(Sec. 2, Pub. L. 95–627, 92 Stat. 3603, 42 U.S.C. 1766 and Pub. L. 97–370)

Dated: October 28, 1983.

Robert E. Leard,

Administrator Food and Nutrition Service.

[FR Doc. 83–30000 Filed 11–2–83; 8:45 am]

BILLING CODE 3410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Reopening of Comment Period on Limited Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: In response to public comments, the Commission has decided to reopen the comment period on its fourth finding in its Waste Confidence decision and on an associated proposed amendment to 10 CFR Parts 50 and 51. The fourth finding states:

"The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely and without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations."

This finding was based in part on the Commission's determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating power reactor licenses. Radiological consequences were addressed more specifically in other findings.

Comments are to be limited to 20 pages and are to address only the significance of environmental impacts of extended spent fuel storage, since safety matters in the Commission's decision have already been commented on by participants in this proceeding.

DATES: Comments should be filed with the Commission's Secretary not later than December 6, 1983. Comment received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send comments to:

Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch

Hand-deliver comment to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received at: the NRC Public Document Room 1717 H Street NW., Washington, DC

FOR FURTHER INFORMATION CONTACT:

Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (202) 634–3295

Sheldon L. Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, (202) 634–3224

SUPPLEMENTARY INFORMATION: Since October 1979 the Nuclear Regulatory Commission ("NRC" or "Commission") has been conducting a generic rulemaking proceeding known as the "Waste Confidence" proceeding (44 FR 61372, October 25, 1979). On May 16, 1983 the Commission issued a proposed decision in that proceeding. The Commission made five findings on the feasibility of disposal of high-level radioactive waste and spent fuel, the timeliness of availability of disposal capacity and the safety and environmental impacts of the storage of spent fuel for up to thirty years after the expiration of reactor operating licenses. The Commission's request for comments by participants was limited to two issues: (1) Implications of the Nuclear Waste Policy Act of 1982 for the Commission's decision, and (2) the Commission's discussion of the safety of dry storage of spent nuclear fuel.

In a companion action, on May 20, 1983, 48 FR 22730, the Commission proposed an amendment to its NEPA rules in the 10 CFR Part 51 rule regarding the consideration of environmental impacts of the extended storage of spent fuel beyond the licensed operating period of a nuclear power reactor or independent spent fuel storage installation. The Commission found that extended storage for up to thirty years after the expiration of operating licenses at nuclear power plants or at independent spent fuel storage installations will result in no significant safety or environmental impacts. This finding was based on the record of the Waste Confidence proceeding and the NRC's experience with more than eighty individual safety and environmental evaluations conducted in storage licensing proceedings.

In particular, the Commission found that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of spent fuel cladding to corrosive mechanisms, the benign character of the storage system, the ease of maintenance and the absence of conditions that would provide a driving force for disposal of radioactive material. The Commission also found that the non-radiological environmental impacts from spent fuel storage are insignificant. With the possible exception of impacts associated with the site preparation and storage facility construction there are no other significant non-radiological consequences which could adversely affect the environment as a result of storage past the expiration of operating licenses at reactors or at independent spent fuel storage installations.

Some participants in the Waste Confidence proceeding commented that there had been no notice of the Commission's intent to make this environmental finding. Because that finding supports the proposed amendment to Part 51 of the Commission's rules, some of those who commented on the proposed rule contended that they had an inadequate opportunity to comment on the basis of the proposed rule.

The Commission has decided to provide the public an opportunity to comment on: (1) The environmental aspects of its fourth finding—that it has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operaitng licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the detemrination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51.

Comments on the Commission's finding and supporting determination should include a detailed discussion of any environmental impacts associated with the extended storage of spent fuel and should explain how, in the commenter's view, consideration of those impacts should modify the Commission's decision.

Dated at Washington, DC, this 31st day of October 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-29909 Filed 11-2-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Publication of semiannual agenda of regulations.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is publishing its agenda of regulations for October 1983. The agenda includes descriptions of final rules adopted during the past six months, proposed amendments to FDIC regulations, and regulations under development.

FOR FURTHER INFORMATION CONTACT: John R. Keiper, Jr., Paperwork and Regulation Control Coordinator, Office of the Executive Secretary, telephone (202) 389–4351, or other persons identified under regulations listed in the agenda. The address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agendas is in accordance with both the Regulatory Flexibility Act (Sec. 3, Pub. No. 96–354; 94 Stat. 1166 (5 U.S.C. 602)) and the FDIC statement of policy entitled "Development and Review of FDIC Rules and Regulations" (44 FR 31007, May 30, 1979; 44 FR 32353, June 6, 1979; 44 FR 76858, December 28, 1979).

Based on an assessment by the staff, none of the regulations listed in this agenda is expected to have a significant economic impact on a substantial number of small entities, except as otherwise noted. FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

Interested persons may petition the FDIC for the issuance, amendment or repeal of any regulation by submitting a written petition to the Executive Secretary. Petitioners should include complete and concise statements of their interests in the subject matters and reasons why the petitions should be granted.

Section A—PROPOSALS OUTSTANDING

Proposed amendments to regulations listed under this heading have been published for comment and have not yet been issued in final form.

1. Credit Card Agreements and Check Guarantees

(12 CFR Parts 332 and 337)

The FDIC published proposed amendments to its regulations that would allow banks: (1) To sponsor their customers in credit card programs offered by other banks, and (2) to issue check guarantee cards (46 FR 31018, June 12, 1981). The proposal would provide a narrow exemption from prohibitions in the regulations against banks guaranteeing the obligations of third parties.

Comments were due by August 11, 1981.

FDIC postponed final action on these amendments pending the completion of an analysis of the underlying regulations Part 332 and Part 337. Amendments to Part 332 were being evaluated which may have made the proposed exemptions unnecessary.

The FDIC staff currently is preparing the memoranda and documents necessary to withdraw the proposal published in June 1981 because of its stale date and to issue a similar proposal as a proposed regulation. The revised proposed regulation would permit basically the same activities as those originally proposed and would incorporate suggestions received during the initial comment period.

It is anticipated that the withdrawal and publication of revised proposed regulations will be completed during 1983. Because of the time required for the comment period and any subsequent reanalysis arising therefrom, final regulations, if adopted, may not be in place prior to the end of 1983.

For further information, contact Janis R. Blake, Attorney, Legal Division, telephone (202) 389–4446.

2. Special Reporting Basis for Insured Savings Banks

(12 CFR Part 350)

On May 24, 1982, the FDIC proposed a new regulation that would require current value reporting of all debt and equity securities acquired by a savings bank on or after January 1, 1983, for purposes of the reports of condition and income filed with the FDIC by savings banks, and that would permit savings banks to defer and amortize gains and losses on dispositions of financial assets acquired prior to January 1, 1983 (47 FR 23743, June 1, 1982). The regulation would provide savings banks with an opportunity to restructure their asset portfolios and place a market discipline over decisions to acquire or hold investment securities.

Comments were due by August 2, 1982.

Subsequent to the issuance of the proposed regulation, the FDIC staff and staff of the other Federal financial institutions regulatory agencies have been studying current value accounting applications for all financial institutions. This issue remains under continuing study and, therefore, final action on the proposed Part 350 has been postponed.

For further information contact Paul L. Sachtleben, Projects and Planning Specialist, Division of Bank Supervision, telephone (202) 389–4141.

3. Maximum Balance Restriction on Savings Deposits

(12 CFR Part 329)

On August 2, 1982, the FDIC published a proposed amendment to its regulations that would remove the $150,000 maximum balance limitation that applies to savings deposits accepted by commercial banks from corporations, partnerships, associations or certain other organizations (47 FR 33276, August 2, 1982). The amendment was proposed to allow commercial banks to compete for funds more effectively.

Comments were due by October 1, 1982.

The FDIC Board of Directors has decided to defer action on this amendment until the Depository Institutions Deregulation Committee (DIDC) addresses the issue of eligibility for "Super NOW" accounts. The DIDC's position on this issue may impact on FDIC's action.

For further information, contact Peter Kravitz, Senior Attorney, Legal Division, telephone (202) 389–4171.

4. Securities of Insured Nonmember Banks

(12 CFR Part 335)

The FDIC proposed an amendment to its securities disclosure regulation in accordance with the Securities Exchange Act of 1934, which requires that the FDIC issue regulations substantially similar to regulations of the Securities and Exchange Commission ("SEC"), or publish reasons for not doing so (47 FR 53893, November 30, 1982). The proposed amendment conforms to recent changes to SEC regulations.

Comments were due by December 30, 1982.

For further information, contact Gerald J. Gervino, Senior Attorney, telephone (202) 389–4171, or Mulford H. Smith, Senior Financial Analyst, telephone (202) 389–4651.

5. Unsafe and Unsound Banking Practices

(12 CFR Part 337)

In its policy statement concerning the applicability of the Glass Steagall Act to securities activities of subsidiaries of insured nonmember banks (47 FR 38984, September 3, 1982), the FDIC Board of Directors expressed its opinion that the Act does not prohibit an insured nonmember bank from establishing an affiliate relationship with, or organizing or acquiring, a subsidiary corporation that engages in securities activities. In this connection, the FDIC proposed for public comment an amendment to its regulations that would: (1) Define "bona fied" subsidiary, (2) limit a bank's permissible investment in a securities subsidiary, (3) require notice of intent to invest in such a subsidiary, (4) limit the permissible securities activities of nonmember bank subsidiaries, and (5) place certain other restrictions on loans, extensions of credit, and other transactions between nonmember banks and their subsidiaries or affiliates that engage in securities activities (48 FR 22155, May 17, 1983).

The staff anticipates that this proposal will have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis has been prepared.

On June 17, 1983 the FDIC held a public hearing on the proposal at the FDIC Building, 550 17th Street, N.W., Washington, D.C. The comment period on the proposal close on July 18, 1983. Comments are currently being reviewed.

For further information, contact Pamela E. F. LeCren, Senior Attorney, Legal Division, telephone (202) 389–4171.

6. Deposit Insurance Coverage

(12 CFR Part 330)

On July 15, 1983, the FDIC published a proposed rule which would include in the definition of "insured deposit" for insured commercial and savings banks the amount of accrued earnings (either interest or dividends) (48 FR 32356–57, July 15, 1983). This proposal would facilitate the FDIC's insurance activities in paying off deposits at an FDIC-insured depository institution.

Comments were due on or before September 13, 1983.

For further information, contact Roger A. Hood, Assistant General Counsel, or Fredric H. Karr, Attorney, Legal Division, telephone (202) 389–4171.

7. Deposit-Placement Activities

(12 CFR Parts 330 and 337)

The FDIC has developed an advance notice of proposed rulemaking to solicit comments on certain deposit-brokering and brokering-type activities in the banking industry. The F.D.I.C. is concerned that such activities result in a flow of funds, within the insured limits, into banks which are financially unstable and/or poorly managed. The advance notice also solicits views on whether the multiple insurance coverage afforded in connection with pension fund and other custodial accounts fails to encourage market and bank analyses in the placement of such deposits with insured banks.

Comments are due by November 28, 1983.

For further information, contact Joseph A. DiNuzzo, Senior Attorney, Legal Division, telephone (202) 389–4171.

8. Disclosure of Insider Indebtedness

(12 CFR Parts 304 and 349)

The Federal Deposit Insurance Corporation "FDIC") has proposed to amend Parts 304 and 349 of its regulations which require annual reports of ownership of insured State nonmember banks and insider indebtedness to insured State nonmember banks and their correspondent banks (48 FR 49517, October 26, 1983). The proposal implements the amendments to section 7(k) of the Federal Deposit Insurance Act ("FDI Act") and section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments") contained in sections 428 and 429 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"). It reduces the existing reporting burden for banks and provides more meaningful information to the public. The proposal requires an insured State nonmember bank to disclose, upon request, the n ames of its executive officers and principal shareholders who (along with their related interests) have substantial borrowings from the bank or its correspondent banks. The reporting and disclosure requirements of the proposal will apply to institutions, such as mutual savings banks, not previously subject to the reporting and disclosure provisions of section 7(k) of the FDI Act and section 106(b)(2) of the BHCA Amendments as they existed prior to amendment by the Garn-St Germain Act in 1982. The proposed amendments also restate the existing statutory requirement which requires insiders to report to the board of directors of their bank any indebtedness to the correspondent banks of that bank.

Comments are due by November 25, 1983.

For further information, contact Robert E. Feldman, Attorney, Legal Division, telephone (202) 389–4171.

Section B–POTENTIAL ACTIONS

Entries under this heading describe regulations that are either being developed or are anticipated to be developed for consideration by FDIC's Board of Directors. Entries are the result of evaluations of present circumstances; consequently, subsequent action may be taken on matters not included or may not be taken on matters included.

1. Investments in Bank Service Corporations

(12 CFR Parts 303 and 304)

The Garn-St Germain Depository Institutions Act of 1982 empowers banks insured by the FDIC to invest in corporations that engage in "banking" activities. Banks that wish to take advantage of the authority conferred by the Garn-St Germain Depository Institutions Act of 1982 must first obtain the approval of their primary regulator.

The FDIC staff is developing a form for use by nonmember insured banks applying for the FDIC's permission to make investments of this kind.

For further information, contact Jules Bernard, Senior Attorney, Legal Division, telephone (202) 389–4171.

2. Rules of Practice and Procedures

(12 CFR Parts 308)

The Legal Division, in conjunction with the Office of the Executive Secretary, is developing a proposed amendment to Part 308 of the FDIC's Rules and Regulations. Part 308 governs the rules and procedures applicable to hearings held concerning administrative enforcement proceedings initiated by the FDIC. The development of this proposal is being undertaken in order to clarify procedural issues raised in connection with Part 308.

For further information, contact Christine C. A. Tullio, Attorney, Legal Division, telephone (202) 389–4171.

3. Interest on Deposits

(12 CFR Parts 329)

In light of action taken at the June DIDC meeting substantially deregulating time deposits effective October 1, 1983, the Legal Division is preparing a substantial revision of Part 329 to conform to the DIDC's action.

For further information, contact F. Douglas Birdzell, Counsel, or Jules

Bernard, Senior Attorney, both on (202) 389-4171.

4. Activities of Insured Banks; Real Estate, Insurance Brokerage and Underwriting, Data Processing for Third Parties, and Travel Agency Activities; Advance Notice of Proposed Rulemaking

(12 CFR Parts 332, 333, and 337)

On August 30, 1983 the Board of Directors adopted an Advance Notice of Proposed Rulemaking soliciting comment on the need for rulemaking to govern the direct or indirect involvement of insured banks in the following activities: Real estate or insurance brokerage and underwriting; data processing for third parties; travel agency activities; and other financially-related activities. Specifically FDIC is soliciting comment on whether or not such activities on the part of insured banks pose any safety and soundness problems, present any conflicts of interest, or are consistent with the purposes of Federal Deposit Insurance. Comment is also being solicited as to whether or not limitations should be imposed on the ability of a firm engaged in any of the subject activities to own an insured bank (48 FR 40900, September 12, 1983).

Comments are due by November 14, 1983.

For further information, contact Pamela E. F. LeCren, Senior Attorney, or Barbara R. Messé, Attorney, Legal Division, telephone (202) 389-4171; John F. Bovenzi, Division of Research and Strategic Planning, telephone (202) 389-4321; or Ken A. Quincy, Planning and Program Development Specialist, Division of Bank Supervision, telephone (202) 389-4141.

5. Employee Responsibilities and Conduct

(12 CFR Part 336)

The FDIC will shortly propose a revision of Part 336 of its rules and regulations, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include increasing the categories of employees subject to credit restrictions; permitting assumptions of home mortgage loans from prohibited creditors; easing existing restrictions on credit from affiliates of prohibited creditors; easing existing restrictions on ownership of bank securities; reporting of family member employment by insured banks; and increasing the categories of employees reporting indebtedness. In addition, the regulation has been redrafted in simple English and reorganized along functional lines.

Comments will be due within sixty days following **Federal Register** publication.

For further information contact Hoyle L. Robinson, Executive Secretary and Ethics Counselor, at (202) 389-4425, or Emily F. Samaha, Deputy Ethics Counselor, at (202) 389-4446.

6. Securities Recordkeeping and Confirmations

(12 CFR Part 344)

Part 344 of the FDIC's regulations covers brokerage-type securities transactions by banks. It requires that certain minimum records be maintained and that confirmations be sent to customers and contains other provisions. It was issued through the Federal Financial Institutions Examination Council on an interagency basis in 1979. All three Federal bank regulatory agencies have almost identical regulations. After several years of experience with these regulations, some changes may be desirable. These changes include, possibly, reformatting the regulations to improve their organization and clarity and reducing some of the recordkeeping and reporting burden. The three banking agencies, as a joint effort under the Examination Council, will review these regulations to determine the specific changes to be proposed.

For further information, contact John F. Harvey, Review Unit Chief, Division of Bank Supervision, telephone (202) 389-4295.

Section C—FINAL RULES ISSUED FROM MAY 10, 1983 THROUGH SEPTEMBER 30, 1983

1. Termination of Insured Status

(12 CFR Part 307)

Effective May 31, 1983 the FDIC amended its regulation governing the notice procedures to be followed by a bank whose insured status has been terminated other than by an action of the FDIC Board of Directors (48 FR 24030, May 31, 1983). The amendment removed the requirement that an assuming or resulting bank or institution which has assumed the liabilities of an insured bank give notice of the assumption to the depositors of the bank whose liabilities have been assumed. The changes were made to conform the FDIC's regulation to the Garn-St Germain Depository Institutions Act of 1982. The Garn-St Germain Depository Institutions Act of 1982 deleted from the Federal Deposit Insurance Act the primary authority for the provisions of Part 307 which were eliminated.

For further information, contact MaryBeth Triano, Attorney, Legal Division, telephone (202) 389-4151.

2. Disclosure of Information

(12 CFR 309)

The FDIC amended its regulations, effective May 31, 1983, to remove restrictions placed on the disclosure of financial records and information to Federal financial institutions supervisory agencies (48 FR 24031, May 31, 1983). The Garn-St Germain Depository Institutions Act of 1982 amended the Right to Financial Privacy Act of 1978 to clarify that the exchange of records and information regarding financial institutions is permitted between the Federal financial institutions supervisory agencies. Restrictions, previously believed to be required by the Right to Financial Privacy Act, were removed from the FDIC's regulations on disclosure of information.

For further information, contact MaryBeth Triano, Attorney, Legal Division, telephone (202) 389-4151.

3. Delegation of Authority to Act on Merger Applications

(12 CFR Part 303)

The FDIC has delegated authority to approve, but not deny, merger applications of a routine nature (48 FR 27027, June 13, 1983). The delegation is to the Director of the Division of Bank Supervision and to the regional directors. The rule specifies the characteristics that a merger must exhibit in order to be regarded as a routine merger.

For further information, contact Donald Pfeiffer, Supervising Review Examiner, Division of Bank Supervision, telephone (202) 389-4341, or Jules Bernard, Senior Attorney, Legal Division, telephone (202) 389-4171.

4. Streamlining of Application Procedures

(12 CFR Part 303, 304 and 347)

The FDIC has adopted changes to its information and/or notification requirements for applications for branches (including remote service facilities), relocations, and deposit insurance (48 FR 28073, June 20, 1983). Changes in criteria for delegation of authority were also adopted.

For further information, contact Carmen J. Sullivan, Assistant Director, Corporate Applications & Special Activities, Division of Bank Supervision, telephone (202) 389-4545.

5. Deposit Information Made Publicly Available

(12 CFR Parts 304 and 309)

The FDIC discontinued confidential treatment of information on the size and number of banks' deposit accounts reported as of June 30, 1982 and thereafter (48 FR 28079, June 20, 1983). The FDIC has previously withheld public access to the information due to the harm reporting banks could possibly suffer from the disclosure of detailed deposit information to a competing institution. As a result of changed reporting requirements introduced in June 1982, confidential treatment is no longer needed, because the general and highly summarized data which are now reported to not contain the degree of detail that a competitor can act on.

For further information, contact William P. Carley, Planning and Program Development Specialist, Division of Bank Supervision, telephone (202) 389–4141.

6. Classification of Money Market Deposit Accounts as "Savings Deposits"

(12 CFR Part 329)

The FDIC has classified Money Market Deposit Accounts as "savings deposits" for purposes of Part 329 of the FDIC's rules and regulations (48 FR 33477, July 22, 1983).

The new rule is merely a conforming amendment. It brings the FDIC's Part 329 into line with the action previously taken by the Depository Institutions Deregulation Committee in creating Money Market Deposit Accounts.

For further information, contact Jules Bernard, Senior Attorney, Legal Division, telephone (202) 389–4171.

7. Redefinition of "Mutual Savings Bank" and Waiver of Premature Withdrawal Penalty

(12 CFR Part 329)

Effective August 1, 1983, the FDIC amended its interest-rate control regulations to: (1) Include all FDIC-insured, State-chartered stock savings banks within the definition of "mutual savings bank," and (2) permit an FDIC-insured, State-chartered savings bank to waive the otherwise mandatory premature-withdrawal penalty when depositors withdraw time deposits to purchase stock upon the bank's conversion to a stock savings bank (48 FR 35627, August 5, 1983).

Both amendments were designed to accommodate the current trend of State statutory enactments which permit mutual savings banks to convert to capital stock ownership. The first FDIC amendment expanded the definition of "mutual savings bank" to include all State-chartered stock savings banks, in order that those entities may be allowed to pay the "differential" interest rate on deposits to which the differential still applies. Prior to this amendment only stock savings banks in certain States were defined as mutual savings banks for purposes of the interest-rate differential. The second amendment created a new exception to the federally-mandated penalty for the early withdrawal of time deposits. The exception applies when a depositor withdraws his or her time deposit before maturity to purchase stock upon the bank's conversion from a mutual savings bank to a stock savings bank.

For further information, contact Joseph A. DiNuzzo, Senior Attorney, Legal Division, telephone (202) 389–4171.

8. Payment of Interest on Deposits Situated Outside of the Continental United States

(12 CFR Part 329)

The FDIC issued a final rule, effective September 15, 1983, to clarify FDIC's interpretation of existing regulations by subjecting any deposit to interest rate ceilings if the deposit is accessible from, automatically linked to, or an integrated part of, an account maintained and payable at any United States branch or office of the same financial institution (48 FR 35629, August 5, 1983). Such integrated accounts are not exempt from the interest rate regulations despite the fact that the bank and its customer might agree that the deposit is payable solely at a bank's office which is located outside of the United States and the District of Columbia.

In addition, certain technical amendments were made to conform Part 329 to the International Banking Act of 1978.

For further information contact, F. Douglas Birdzell, Counsel, or Barbara Messé, Attorney, Legal Division, telephone (202) 389–4171.

9. Delegation of Authority To Issue Consent Cease-and-Desist Orders When Respondent Waives Any Right to a Notice of Charges

(12 CFR 303)

The amendment delegates authority to the Director of the Division of Bank Supervision or, where confirmed in writing by the Director, to an Associate Director of the Division of Bank Supervision to execute and issue orders to cease and desist under section 8(b) of the FDI Act when the bank or other respondent consents to the issuance of such order prior to the service of a notice of charges and formally waives any right to such a notice of charges, a hearing, defenses, and findings of fact, conclusions of law and a recommended decision of an administrative law judge (48 FR 36565, August 12, 1983).

For further information, contact James L. Meador, Senior Attorney, Legal Division, telephone (202) 389–4171.

10. Prior Approval Requirement on Insider Loans

(12 CFR Part 337)

On September 12, 1983 the Board of Directors approved an amendment eliminating the current requirement for prior approval by a bank's board of directors of all extensions of credit exceeding, in the aggregate, $25,000 made to its insiders (directors, executive officers, principal shareholders, or any related interests of such persons) and substituted in its place a new prior approval formula. Under the new formula, prior approval would be required for: (1) Extensions of credit that exceed, in the aggregate, the greater of $25,000 or five percent of the bank's capital and unimpaired surplus, and (2) all extensions of credit exceeding $500,000 in the aggregate, regardless of a bank's capital and unimpaired surplus (48 FR 42969, September 21, 1983).

For further information, contact Pamela E. F. LeCren, Senior Attorney, Legal Division, telephone (202) 389–4171.

11. Management Official Interlocks

(12 CFR Part 348)

The FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration and the Federal Home Loan Bank Board proposed amendments to their respective regulations implementing the Depository Institution Management Interlocks Act (47 FR 47406, October 21, 1982). On September 12, 1983 the Board of Directors of the FDIC adopted the regulations as proposed with only minor clarifying changes. The amendments relax certain interlock restrictions, simplify the procedure for requesting exceptions, and broaden the circumstances in which certain exceptions are available.

For further information, contact Pamela E. F. LeCren, Senior Attorney, Legal Division, telephone (202) 389–4171.

By order of the Board of Directors, October 24, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-29855 Filed 11-2-83; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-154-82]

Taxation of Foreign Investments in United States Real Property Interests; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on the proposed rulemaking to add regulations under section 897 of the Internal Revenue Code relating to the taxation of foreign investment in United States real property interests.

DATES: The public hearing will be held on Tuesday, December 13, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, November 29, 1983.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-154-82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the proposed rulemaking to add regulations under section 897 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register** (See FR 83-29860), and supersede the notice of proposed rulemaking relating to section 897 published in the **Federal Register** on September 21, 1982 (47 FR 41581).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who will submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, November 29, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-29858 Filed 11-2-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 6a

Foreign Investment in U.S. Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed Income Tax Regulations relating to the taxation of foreign investment in United States real property interests. The regulations are necessary to provide the public with guidance with respect to the requirements of section 897 of the Internal Revenue Code of 1954, as added by the Foreign Investment in Real Property Tax Act of 1980. These regulations define relevant terms, provide procedures for establishing that a corporation is not a U.S. real property holding corporation, and provide rules concerning the election by a foreign corporation to be treated as a domestic corporation. This notice supersedes a portion of the notice of proposed rulemaking published on September 21, 1982 (47 FR 41581). Temporary regulations published that same date (47 FR 41532) remain in effect. A notice of a public hearing concerning these proposed regulations appears elsewhere in this issue of the **Federal Register**.

DATES: Written comments must be delivered or mailed by December 19, 1983. These regulations are proposed to be effective with respect to dispositions after June 18, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-154-82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert E. Culbertson, Jr. 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, 202-566-3289.

SUPPLEMENTARY INFORMATION:

Background

Sections 897 and 6039C were added to the Internal Revenue Code of 1954 by sections 1122 and 1123 of the Foreign Investment in Real Property Tax Act of 1980 (94 Stat. 2682) and amended by section 831 of the Economic Recovery Tax Act of 1981 (95 Stat. 172).

On September 21, 1982 proposed additions to the Income Tax Regulations (26 CFR Part 1) under sections 897 and 6039C were published in the **Federal Register** (47 FR 41581), by cross-reference to Temporary Income Tax Regulations (26 CFR Part 6a) published the same day (47 FR 41532). A public hearing concerning the proposed regulations was held on February 3, 1983. After consideration of all comments regarding the proposed regulations under section 897, those proposed regulations are superceded by the proposed regulations published in this document. The temporary regulations, as amended by Treasury decision 7890 (48 FR 19163), remain in effect.

The Internal Revenue Service expects to issue further regulations under section 6039C after it has completed its consideration of comments regarding the proposed regulations.

Discussion

Statutory Provisions

The Foreign Investment in Real Property Tax Act of 1980 (FIRTA) added sections 897 and 6039PC to the Internal Revenue Code. Under section 897(a), a foreign person's gain or loss from the disposition of a U.S. real property interest is treated as if such person were engaged in a trade or business within the United States and as if such gain or loss were effectively connected with such trade or business. United States real property interest as defined in section 897(c)(1) generally include any interest in real property located in the

United States or the Virgin Islands and any interest other than solely as a creditor in a domestic corporation which is (or was within 5 years) a United States real property holding corporation. The term does not include an interest in a domestically controlled real estate investment trust ("REIT") under section 897(h), nor does it generally include an interest in a class of stock in a corporation which is publicly traded, unless the person disposing of such stock holds or held more than 5 percent of such class of stock as provided in section 897(c)(3).

As provided in section 897(c)(1)(B), the term United States real property interest also does not include an interest in a United States real property holding corporation which has disposed of its United States real property interests in transactions in which the full amount of gain, if any, was recognized.

Section 897(c)(2) provides that a U.S. real property holding corporation is a corporation which holds U.S. real property interests with a fair market value of at least 50 percent of the sum of the fair market values of its U.S. real property interests, its interests in real property located outside the United States, and its other assets which are used or held for use in a trade or business. Although a foreign corporation may be a U.S. real property holding corporation, an interest in a foreign corporation is considered a U.S. real property interest under section 897(c)(1) only for purposes of determining whether another corporation is a U.S. real property holding corporation. (See section 897(c)(4)(A)). As a consequence, any gain or loss from the disposition of an interest in a foreign corporation by a foreign person is not treated as effectively connected with a U.S. trade or business by reason of section 897(a).

A foreign corporation is required, however, to recognize gain on the distribution of a U.S. real property interest to its shareholders under section 897(d) to the extent the fair market value of the U.S. real property interest distributed exceeds the corporation's adjusted basis in the interest. Such recognition generally would not occur if a similar distribution were made by a domestic corporation.

The disparate treatment accorded foreign and domestic corporations under section 897 makes it possible that a foreign corporation holding a U.S. real property interest could claim entitlement to nondiscrimination under a treaty to which the United States is a party. Section 897(i) provides that such foreign corporations can elect to be treated as domestic corporations for purposes of sections 897 and 6039C provided that certain conditions are met. Section 897(i)(4) provides that this election is the exclusive remedy for any person claiming discriminatory treatment with respect to sections 897 and 6039C.

Section 897(k) was added to the Code by the Economic Recovery Tax Act of 1981. It provides that a foreign corporation which has adopted or adopts a plan of liquidation described in section 334(b)(2)(A) (as it existed prior to enactment of TEFRA) and which was acquired by purchase within a 12 month period beginning after December 31, 1979, and before November 26, 1980, may elect to be treated as a domestic corporation for FIRPTA purposes. Section 897(k) provides that, notwithstanding the election, any selling shareholder is treated as having sold stock in a foreign corporation.

Section 6039C requires certain corporations, other entities, and nonresident alien individuals to disclose the identity of foreign investors in U.S. real property interests and the extent of their investments. Other than defining certain relevant terms, these proposed regulations do not address the provisions of section 6039C.

Changes to Proposed Regulations Published September 21, 1982.

Definitions

Proposed § 1.897–1 provides definitions to be used in applying the regulations under sections 897, 6039C and 6652(g). The definitions provided in the prior proposed regulations have been modified in the following manner, in response to public comment.

The definition of "real property" in proposed § 1.897–1(b) has been expanded to address several requests for more detailed guidance. Paragraph (b)(1) provides that in general real property includes land and unsevered natural products of the land, improvements to land, and personal property associated with the use of real property. Those categories of property are defined in paragraphs (b) (2), (3), and (4), respectively.

As suggested by one commentator, paragraph (b)(2) now specifies that natural products of the land such as crops and minerals cease to be real property when they are harvested or extracted. In response to several requests for a more definite rule, paragraph (b)(3) now defines an improvement to land as a building or any other inherently permanent structure that constitutes "other tangible property" under the principles of § 1.48–1(d) (relating to the investment tax credit). Thus, the well-developed body of law under that provision will apply to determine what constitutes an improvement. Similarly, paragraph (b)(4) responds to requests for a more definite rule by describing the four categories of personal property that are associated with the use of real property. Personal property is defined as "tangible personal property" under the principles of § 1.48–1(c), and is considered to be associated with the use of real property only if it is used in mining, farming and forestry, in improving real property, in the operation of a lodging facility, or in the provision of furnished offices and other work spaces. Several commentators argued that associated personal property should be treated as real property only where the associated personalty and the underlying real estate are owned by the same (or related) parties. These proposed regulations adopt that position.

The definition of a "United States real property interest" in § 1.897–1(c) is substantially unchanged, providing generally that the term includes interests other than solely as a creditor in real property located in the U.S. or Virgin Islands and in domestic corporations unless it is established that the corporation is not a U.S. real property holding corporation. However, paragraph (c)(2) provides that interests in publicly traded corporations are treated as U.S. real property interests only in the case of persons with interests of more than 5 percent.

Proposed § 1.897–1(d) defines the term "interest other than an interest solely as a creditor" in real property or an entity. Many commentators argued that this definition should parallel the distinction drawn between debt and equity under section 385 of the Code. Several also argued that interests in gross proceeds or profits should be excluded from the term, since such interests are not generally viewed as true equity interests. However, whether an interest constitutes "debt" or "equity" for purposes of other Code sections is irrelevant to a determination of whether an interest is "other than solely as a creditor" within the meaning of sections 897 and 6039C, as the two terms serve different purposes. Therefore, these regulations retain the definition contained in the prior proposed regulations, so as to include as a non-creditor interest any direct or indirect right to share in the appreciation in value of, of gross or net proceeds or profits generated by, real property or an entity.

In order to prevent avoidance of FIRPTA through the artificial structuring of a part of a person's interest as one solely as a creditor, the prior proposed

regulations contained an aggregation rule providing that if a person held any interest in real property or in an entity other than solely as a creditor, then all of that person's interests would be treated as other than solely as a creditor. Many commentators argued that this rule was broader than necessary to prevent abuse and that it would affect legitimate transactions. Paragraph (d)(2) therefore replaces the aggregation rule with a narrower anti-abuse rule, providing that a person's interests will be aggregated only where the interest solely as a creditor has been separated from the interest other than solely as a creditor for a principal purpose of avoiding the provisions of sections 897 and 6039C.

Various commentators requested clarification of the appropriate treatment of installment obligations, options, security interests, loans with indexed interest rates, commissions, and royalties. Special rules are therefore provided in § 1.897–1(d) regarding when such interests will constitute interests other than solely as a creditor. In addition, these regulations adopt the position, advocated by one commentator, that production payments under section 636 do not constitute interests in real property other than solely as a creditor.

Paragraph (e) of proposed § 1.897–1 provides rules for determining a person's proportionate share of assets held by an entity in which that person has an interest. These rules are generally applicable for the purpose of determining assets held indirectly by a person under the look-through rules of section 897(c)(4)(B) and 6039C. A person's proportionate share of assets held by an entity is determined by multiplying the fair market value of the assets held by the entity by the person's percentage ownership interest in the entity. The manner of calculating a person's percentage ownership interest is described in paragraphs (e) (2) and (3). As suggested by two commentators, paragraph (e)(2) now specifies that percentage ownership interests in entities that have convertible interests outstanding must be calculated as though all presently exercisable conversion rights had been exercised. Paragraph (e)(3) provides that the percentage ownership interest of a contingent beneficiary of a trust or an estate is required to be determined by reference to the actuarial value of the entire portion of the trust or estate to which the beneficiary potentially may be entitled. The possibility exists in some instances, therefore, that the value of assets held by a trust or estate may be required to be attributed to more than one beneficiary in determining proportionate shares of the trust's or estate's assets. At the suggestion of one commentator, an anti-abuse rule has been added to this provision to prevent avoidance of section 897 or 6039C by deliberately causing interests other than U.S. real property interests to be attributed to several beneficiaries at once. Although two other commentators argued that the basic rule regarding contingent interests should be changed, that rule was retained as it is considered necessary to prevent avoidance of FIRPTA through the use of discretionary trusts and estates.

Paragraph (f) of § 1.897–1 defines the term "asset used or held for use in a trade or business." Many commentators argued that the definition given in the proposed regulations was excessively narrow, particularly in its exclusion of all liquid assets and intangibles. Therefore, paragraph (f)(1) provides that such assets may be included if they are used or held for use in a corporation's trade or business. Paragraph (f)(2) provides a test for determining whether such assets are used in a trade or business which adopts the principles of § 1.864–4(c)(2).

Paragraph (g) and (h) define the terms "disposition" and "gain," respectively. A disposition is any transaction that is treated as such for any purposes of the Internal Revenue Code, and gain or loss is determined as provided in section 1001. A separate definition of gain was not provided in the prior proposed regulations, but has been added here in response to several requests for clarification of the transactions subject to section 897. Paragraph (h) provides that principal and interest payments on any debt obligation (other than an installment obligation) do not give rise to gain that is subject to section 897.

Paragraph (i) provides a definition of "related person" which was contained in the text of the prior proposed regulations, but has been newly set out as a separate definition.

Paragraphs (j), (k), and (l) provide definitions of the terms "domestic corporation," "foreign person," and "foreign corporation," respectively, which are substantially unchanged from the prior proposed regulations. However, paragraph (k) now specifies that for purposes of sections 897 and 6039C foreign governments and international organizations will be treated as foreign persons only to the extent that they are considered to be engaged in commercial activities within the meaning of section 892 and the regulations thereunder.

Paragraph (m) defines the term "established securities market" as a national securities exchange or any over-the-counter market reflected by the existence of an interdealer quotation system. Several commentators objected to the exclusion of all foreign exchanges from the definition in the prior proposed regulations. Paragraph (m) now provides that a foreign securities exchange or over-the-counter market may qualify as an established securities market.

Paragraph (n) provides a separate definition of the term "regularly traded," which in the prior proposed regulations was combined with the definition of an established securities market. The earlier proposed regulations provided that a class of stock would be considered to be regularly traded on an established securities market only if the holders of that stock were subject to the reporting requirements of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m). Although the legislative history lends some support to such a requirement, after a review of the public comments it has been concluded that the purpose of the publicly-traded exception will be better served by a broader approach. Paragraph (n) now provides that a class or stock is regularly traded if it is regularly quoted by brokers or dealers making a market in such stock. Stock in a corporation that is held by 500 or more persons is presumed to be regularly traded.

Paragraph (o) defines the term "fair market value." Many commentators objected to the definition provided in the prior proposed regulations, which excluded from consideration any liabilities to which property was subject. Paragraph (o)((2) now provides that fair market value is the gross value of property reduced by the outstanding balance of debts secured by the property, but only if the debt proceeds were used to purchase or improve the property. In response to several requests for guidance, paragraph (o)(3) describes the manner of determining the fair market value of a leasehold interest in real property.

Paragraph (p) of § 1.897–1 defines the term "identifying number" as an individual's social security number and any other person's United States employer identification number.

U.S. Real Property Holding Corporations

Section 1.897–2 provides rules regarding the definition and consequences of U.S. real property holding corporation status. U.S. real property holding corporation status is important for determining whether gain

from the disposition by a foreign person of an interest in a domestic corporation is taxable. Such status is also important for reporting purposes. For instance, under section 6039C(a), a domestic corporation that is a U.S. real property holding corporation is required to report annually if it has foreign shareholders. In addition, for purposes of determining whether a domestic corporation is a U.S. real property holding corporation, an interest it holds in a foreign corporation is a U.S. real property interest unless it is established that the foreign corporation is not a U.S. real property holding corporation.

Paragraph (b) of § 1.897–2 provides the general definition of a U.S. real property holding corporation, which is substantially unchanged from the definition in the previous proposed regulations. However, in response to several comments paragraph (b)(2) now provides a simpler alternative test for certain corporations that are unlikely to be U.S. real property holding corporations. Under the alternative test, a corporation may presume that it is not a U.S. real property holding corporation if the book value of its real property interests is 25 percent or less of the total value of the corporation's assets included in the test.

Paragraph (c) sets forth rules for determining the dates on which a corporation must determine whether or not it is a U.S. real property holding corporation. Those rules are generally similar to those of the prior proposed regulations, although they have been adjusted to coordinate with other changes discussed below. Generally, a domestic corporation which knows it has a foreign interest-holder must determine its status as of each December 31 and as of the date of each transaction that may cause it to become a U.S. real property holding corporation. However, transactions involving small amounts of a corporation's trade or business assets do not trigger a determination; in response to several comments, the size of such exempted transactions has been increased, and varies with the proportion of corporate assets that are real property interests.

The assets that must be included in the determination of whether a corporation is a U.S. real property holding corporation are set forth in paragraph (d), which paragraph (e) provides special rules regarding the treatment of interests held by a corporation in partnerships, trusts, estates, and other corporations. Although these rules have been reorganized, they are substantially similar to the rules provided in the prior proposed regulations. Paragraph (e)(1) provides that an interest in a foreign corporation must be treated as a U.S. real property interest unless it is established that the foreign corporation is not a U.S. real property holding corporation. Paragraph (e)(2) provides that any corporation that holds an interest in a partnership, trust, or estate is treated as owning a proportionate share of the assets held by the entity, in accordance with the rules of § 1.897–1(e). Paragraph (e)(3) similarly provides that a corporation is treated as owning a proportionate share of the assets held by a corporation in which it holds a controlling interest. Application of the general proportionate share rules of § 1.897–1(e) in this context is a modification of the rule provided in the earlier proposed regulations, which employed the controlling corporation's stock ownership percentage rather than the more general percentage ownership interest. Several commentators pointed out that such a modification was necessary to prevent many anomalous results in the application of the statutory look-through rules.

Paragraph (f) provides that U.S. real property holding corporation status terminates on the date on which the corporation determines that its U.S. real property interests no longer equal or exceed 50% of the total fair market value of the assets included in the test. Generally, stock of such corporation will cease to be treated as a U.S. real property interest five years after the corporation ceases to be a U.S. real property holding corporation. However, a corporation can secure the early termination of such treatment of its stock if it disposes of all U.S. real property interests in transactions in which it recognizes the full amount of gain. In response to several comments, paragraph (f)(2) provides that for this purpose a corporation that retains only a limited leasehold interest is considered to have disposed of all its U.S. real property interests.

Paragraph (g) provides substantially amended rules regarding the manner of establishing that a corporation is not a U.S. real property holding corporation. Many commentators argued that the earlier regulations imposed too heavy a burden on persons disposing of interests in corporations that are not U.S. real property holding corporations, by requiring the filing of detailed schedules and a tax return in the year of disposition. The regulations now provide that a foreign person disposing of an interest in a domestic corporation need only ascertain from that corporation whether it was a U.S. real property holding corporation as of the determination date that most recently preceded the disposition. If the corporation informs the foreign person that it is not a U.S. real property holding corporation and that it has informed the Internal Revenue Service of its status, then the foreign interest-holder need not file any statement with the Internal Revenue Service to establish that the corporation is not a U.S. real property holding corporation. To qualify under this rule, the foreign person must obtain the corporation's statement no later than the date on which a tax return would otherwise be due with respect to a disposition. If the corporation does not notify the foreign person by that date that it has informed the Internal Revenue Service of its status, then the disposition of an interest in that corporation will be treated as the disposition of a U.S. real property interest, and will be subject to section 897(a) unless the disposing interest-holder can otherwise establish that the interest is not a U.S. real property interest. Similar rules apply with respect to a corporation that must determine whether an interest in another corporation is a U.S. real property interest. However, these rules do not apply to holders of interests in publicly traded corporations other than greater-than-five-percent interest-holders.

Paragraph (h) sets out notice requirements applicable to corporations. In general, a domestic corporation that knows it has a foreign interest-holder must determine whether it is a U.S. real property holding corporation. If it determines that it is a real property holding corporation, it must comply with the reporting requirements of section 6039C(a); if it determines that it is not, it must attach a brief statement to its tax return informing the Internal Revenue Service of its determination. In addition, such a corporation must respond to inquiries from interest-holders regarding its status. Although the previous proposed regulations imposed no such requirement on corporations directly, the information that was required to be supplied by shareholders would in fact have had to be provided to them by corporations. In view of the comments received, it has been concluded that the overall burden imposed on corporations and their shareholders will be decreased by imposing notification requirements directly upon the corporation. The relatively simple notifications required of corporations will enable foreign investors to dispose of their interests in a domestic corporation without seeking detailed information from the corporation. Foreign corporations, and

domestic corporations with no known foreign interest-holders, are not required to comply with the notification rules of paragraph (h). However, such corporations may voluntarily choose to do so, for the convenience of persons holding interests in the corporations who need to ascertain whether their interests are U.S. real property interests.

897(i) Election

Section 1.897–3 provides rules pursuant to which a foreign corporation may elect under section 897(i) to be treated as a domestic corporation for purposes of sections 897 and 6039C and the regulations thereunder. This section has been reorganized, and several major rules of the prior proposed regulations have been modified, as noted below. A foreign corporation with respect to which an election under section 897(i) is in effect is subject to all rules under sections 897 and 6039C that apply to domestic corporations.

Thus, for example, if a foreign corporation makes an election under section 897(i) and if the corporation is a U.S. real property holding corporation, its stock is a U.S. real property interest, and any gain or loss from the disposition of such stock by a foreign person will be treated as effectively connected with a U.S. trade or business under section 897(a). A foreign corporation that makes an election under section 897(i) will not be treated as a domestic corporation for purposes of any other provision of the Code or regulations, except to the extent that it consents to such treatment as a condition to making the election. An election under section 897(i) is the exclusive remedy of any foreign corporation claiming discriminatory treatment under any treaty with respect to sections 897 and 6039C. Therefore, if a corporation does not make an effective election, the nondiscrimination article of a treaty will not be otherwise available with respect to the application of sections 897 and 6039C to that corporation.

Paragraph (b) sets out three general conditions upon the availability of the section 897(i) election. First, the foreign corporation must hold a U.S. real property interest. In response to several inquiries, it has been clarified that this condition is satisfied when a real property interest is acquired simultaneously with the effective date of an election.

For example, this condition is satisfied when real property is acquired in a transfer pursuant to section 351 that is carried out simultaneously with the effective date of the election. In addition, it has been clarified that this condition is satisfied by a corporation that indirectly holds a U.S. real property interest through a partnership, trust, or estate. Second, the foreign corporation must be entitled to nondiscriminatory treatment with respect to its U.S. real property interest under any treaty to which the United States is a party. Third, the foreign corporation must comply with the requirements of paragraph (c), respecting the manner and form in which an election must be submitted.

Paragraph (c) sets out in detail the items that must be submitted to constitute a valid election under section 897(i). First, a general statement is required, setting forth pertinent information regarding the foreign corporation, the U.S. real property interests it holds, and the treaty under which the election is being made. Second, the foreign corporation must submit a binding waiver of the benefits of any U.S. treaty with respect to any gain or loss from the disposition of a U.S. real property interest during the period in which the election is in effect. Third, the foreign corporation must submit a binding agreement to pay tax on the disposition of any U.S. real property interest as though it were a domestic corporation, during the period in which the election is in effect. Fourth, the foreign corporation must submit a signed consent to the making of the election and waiver of treaty benefits from each person who holds an interest in the corporation on the date the election is made. However, in response to comments, paragraph (c) now provides that a foreign corporation that has applied for or entered into a security agreement with the Director of the Foreign Operations District prior to the making of an election under section 897(i) need not submit the signed consents of its interest-holders to the Internal Revenue Service. Such corporation may instead submit a statement that it has received and has on file the required consent and waiver from each interest-holder. Such a corporation is required to amend its security agreement to reflect its election to be treated as a domestic corporation.

Finally, the foreign corporation must state that no interests in it have been disposed of during the previous five years (or shorter relevant period), or that it has complied with certain alternative requirements described below.

Paragraph (d) provides rules regarding th time and duration of an election under section 897(i). Generally, a foreign corporation may make an election at any time before the first disposition of an interest in the corporation which would be subject to section 897(a) if the election had been made before that disposition. The period to which the election applies begins on the date on which the election is made, or other specified date. Unless revoked, the election applies for the duration of the time for which the corporation remains in existence.

Many commentators argued that an election should be permitted even after dispositions of interests in the corporation, provided there was a payment of an amount equal to any tax that would have been owed. Although the previous regulations provided such a rule as a transitional measure, paragraph (d)(2) would now adopt that approach generally. In addition, paragraph (d)(2) provides, as recommended by various commentators, that as an alternative to the immediate payment of prior taxes, any current interest-holders who under any other provision of the Code took a basis in their interests that was equal to the basis of the interest in the hands of the person from which the interest was acquired may retain that carryover basis.

An election under section section 897(i) may be revoked only with the consent of the Commissioner, in the manner provided in paragraph (e). The Commissioner will generally consent to a revocation if the corporation has not made a distribution or untaxed exchange of any U.S. real property interests. However, paragraph (e)(2) provides that a revocation may be made even after such a distribution or exchange, provided that certain conditions are met.

In response to a variety of comments, paragraph (f) provides transitional rules regarding section 897(i) elections and related transactions that took place before the publication of these regulations. In general, an election made earlier could be amended to comply with the requirements of these regulations. Paragraphs (f)(2) and (f)(3) provide special rules assuring that an election is not barred by transactions that took place before the issuance of regulations.

897(k) Election

Paragraph (a) of § 1.897–4 sets forth special rules whereby certain foreign corporations which adopt or have adopted a plan of liquidation described in section 334(b)(2)(A) and whose stock was acquired during a 12 month period beginning after December 31, 1979, and before November 26, 1980, may elect to be treated as domestic corporations under section 897(k). These rules take into account the fact that persons

purchasing stock in a foreign corporation prior to enactment of section 897 may reasonably have expected that a tax would have been imposed on the foreign seller rather than on the liquidating corporation. A foreign corporation need not be a beneficiary of a treaty nondiscrimination article nor satisfy any of the other prerequisites to making the election under section 897(i) to be eligible to make the election under section 897(k). The rules of this section are unchanged from the proposed regulations, except for minor clarifications suggested by two commentators.

Drafting Information

The principal author of these regulations is Robert E. Culbertson, Jr. 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 these regulations both on matters of substance and style.

Regulatory Flexibility Act and Executive Order 12291

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

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on a date announced in the notice of public hearing appearing elsewhere in this issue of the **Federal Register**. The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act.

Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

List of Subjects

26 CFR 1.861–1 through 1.997–1

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

26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investments in United States real property interests.

Withdrawal of Notice of Proposed Rulemaking

The portion of the notice of proposed rulemaking relating to section 897 published in the **Federal Register** (47 FR 41581) on September 21, 1982, is hereby withdrawn.

Proposed amendments to the regulations

PART 1—[AMENDED]

The proposed amendments to 26 CFR Parts 1 and 6a are as follows:

Paragraph 1. Sections 1.897–1 through 1.897–4 are added to Part 1, to read as set forth below:

§ 1.897–1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) *Summary.* This section defines certain terms for purposes of sections 897 and 6039C. These definitions are effective as of June 19, 1980, and apply when the terms are used in §§ 1.897–1 through 1.897–4 and §§ 1.6039C–1 through 1.6039C–5, unless it is stated otherwise in those sections.

(b) *Real property*—(1) *In general.* The term "real property" includes the following three categories of property: Land and unsevered natural products of the land, improvements, and personal property associated with the use of real property. The three categories of real property are defined, for purposes of sections 897 and 6039C, in subparagraphs (2), (3), and (4) of this paragraph (b). Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as it is used in sections 897 and 6039C and the regulations thereunder.

(2) *Land and unsevered natural products of the land.* The term "real property" includes land, growing crops and timber, and mines, wells, and other natural deposits. Crops and timber cease to be real property at the time that they are severed from the land. Ores, minerals, and other natural deposits cease to be real property when they are extracted from the ground.

(3) *Improvements.* The term "real property" includes improvements on land. An improvement is a building or any other inherently permanent structure. Any property that constitutes "other tangible property" under the principles of section 48(a)(1)(B) and § 1.48–1(d) is an improvement, without regard to whether such property qualifies as section 38 property. Thus, in addition to buildings, the term "real property" includes, for example, swimming pools, paved parking areas and other pavements, wharves and docks, bridges, fences, inherently permanent advertising displays, inherently permanent outdoor lighting facilities, railroad tracks and signals, telephone poles, telephone and television cables, broadcasting towers, oil derricks, oil and gas pipelines and storage tanks, and grain storage bins. Structural components of buildings and other inherently permanent structures, as defined in § 1.48–1(e)(2), themselves constitutes improvements. Structural components include walls, partitions, floors, ceilings, windows, doors, wiring, plumbing, central heating and central air conditioning systems, lighting fixtures, pipes, ducts, elevators, and escalators. Buildings and other inherently permanent structures (including the structural components of such buildings or structures) constitute improvements regardless of whether they are treated as property in the nature of machinery for purposes of § 1.48–1(c), and regardless of whether they are described in § 1.48–1(e)(1), (i) or (ii).

(4) *Personal property associated with the use of the real property*—(i) *In general.* The term "real property" includes movable walls, furnishings, and other personal property associated with the use of the real property. Personal property is associated with the use of real property only if it is described in one of the categories set forth in subdivisions (A) through (D) of this paragraph (b)(4)(i). "Personal property" for purposes of this section means any property (other than buildings, inherently permanent sturctures, and the structural components thereof) that constitutes "tangible personal property" under the principles of § 1.48–1(c), without regard to whether such property qualifies as section 38 property. Such property will be associated with the use of the real property only where both the personal property and the real property with which it is associated are held by

the same person or by related persons within the meaning of § 1.897–1(i).

(A) *Property used in mining, farming, and forestry.* Personal property is associated with the use of real property if it is used to exploit unsevered natural products in or upon the land. Such property includes mining equipment used to extract ores, minerals, and other natural deposits from the ground. It also includes any property used to cultivate the soil and harvest its products, such as farm machinery, draft animals, and equipment used in the growing and cutting of timber. However, personal property used to process or transport minerals, crops, or timber after they are severed from the land is not associated personal property.

(B) *Property used in the improvement of real property.* Personal property is associated with the use of real property if it is used to construct or otherwise carry out improvements to real property. Such property includes equipment used to alter the natural contours of the land, equipment used to clear and prepare raw land for construction, and equipment used to carry out the construction of improvements.

(C) *Property used in the operation of a lodging facility.* Personal property is associated with the use of real property if it is used in connection with the operation of a lodging facility. Property that is used in connection with the operation of a lodging facility includes property used in the living quarters of such facility, such as beds and other furniture, refrigerators, ranges and other equipment, as well as property used in the common areas of such facility, such as lobby furniture and laundry equipment. Such property constitutes personal property associated with the use of real property in the hands of the owner or operator of the facility, not of the tenant or guest. A lodging facility is an apartment house or apartment, hotel, motel, dormitory, residence, or any other facility (or part of a facility) where sleeping accommodations are offered or provided during periods totalling six months or more during any twelve-month period. However, the term "lodging facility" does not include a facility used primarily as a means of transportation (such as an aircraft, vessel, or a railroad car) or used primarily to provide medical or convalescent services, even though sleeping accommodations are provided. Nor does the term include any portion of a facility that constitutes a nonlodging commercial facility and that is available to persons not using the lodging facility on the same basis that it is available to tenants of the lodging facility. Examples of nonlodging commercial facilities include restaurants, drug stores, and grocery stores located in a lodging facility.

(D) *Property used in the rental or furnished office and other work space.* Personal property is associated with the use of real property if it is used to provide furnished office or other work space. Property that is so used includes office furniture and equipment included in the rental of furnished space. Such property constitutes personal property associated with the use of real property in the hands of the lessor, not of the lessee.

(ii) *Dispositions of associated personal property.* Personal property associated with the use of real property will be treated as real property upon disposition regardless of whether the personal property is disposed of without the concurrent disposition of the real property with which it is associated. However, associated personal property will lose its status as real property after it has been retained for one year following—

(A) Its removal from the real property with which it is associated, provided that it is not relocated on that property, or associated with the use of any other real property held by the same or a related person, within the one-year period;

(B) The disposition of all present rights to use or occupy the real property with which it is associated to persons that are not related within the meaning of § 1.897–1(i), provided that such right to use or occupy the real property is not reacquired, or acquired by a related person, within the one-year period; or

(C) The termination of the use, in any activity described in subdivisions (A), (B), (C), or (D) of paragraph (b)(4)(i) of this section, of the real property with which such personal property is associated.

Personal property that in accordance with this rule is no longer associated with the use of real property will not be treated as real property upon its subsequent disposition.

(iii) *Determination dates.* The determination of whether personal property is personal property associated with the use of real property as defined in this paragraph (b)(4) is to be made on the date the personal property is disposed of and on each applicable determination date. See § 1.897–2(c).

(c) *United States real property interest*—(1) *In general.* The term "United States real property interest" means an interest, other than an interest solely as a creditor, in real property located in the United States or the Virgin Islands or an interest, other than an interest solely as a creditor, in a domestic corporation unless it is established that the domestic corporation is not a U.S. real property holding corporation within the time period prescribed in section 897(c)(1)(A)(ii). In addition, for the limited purpose of determining whether any corporation is a U.S. real property holding corporation, the term "United States real property interest" means an interest, other than an interest solely as a creditor, in a foreign corporation unless it is established that the foreign corporation is not a U.S. real property holding corporation within the period prescribed in section 897(c)(1)(A)(ii). See § 1.897–2 for rules regarding the manner of establishing that a corporation is not a United States real property holding corporation. The term does not include an interest in a domestically-controlled REIT as defined by section 897(h)(4)(B), or an interest in a publicly-traded corporation, as defined in paragraph (c)(2) of this section. Nor does the term include an interest in a corporation which has disposed of all its U.S. real property interests in transactions in which the full amount of gain, if any, was recognized as provided in section 897(c)(1)(B). See § 1.897–2 (f) for rules regarding the requirements of section 897(c)(1)(B).

(2) *Publicly-traded corporations.* If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation shall be treated as a U.S. real property interest only in the case of:

(i) Stock of any regularly traded class held by a person who held more than 5 percent of the fair market value of that class of stock at any time during the five year period ending either on the date of disposition of such stock or other applicable determination date (or the period since June 18, 1980, if shorter).

(ii) Any other interest in the corporation (other than an interest solely as a creditor) if on the date such interest was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation's stock with the lowest fair market value. When a person holds separate non-regularly traded interests in a single corporation that were separately acquired for a significant purpose of avoiding the 5 percent limitation of this subdivision (ii), such interests shall be cumulated for purposes of applying that limitation.

In determining whether a shareholder holds 5 percent of a class of stock in a

corporation, section 318(a) shall apply (except that sections 318(a) (2)(C) and (3)(C) are applied by substituting the phrase "5 percent" for "50 percent").

(d) *Interest other than an interest solely as a creditor*—(1) *In general.* This paragraph defines an interest other than an interest solely as a creditor, with respect to real property, and with respect to corporations, partnerships, trusts, and estates. An interest solely as a creditor either in real property or in a domestic corporation does not constitute a United States real property interest. Similarly, where one corporation holds an interest solely as a creditor in a second corporation or in a partnership, trust, or estate, that interest will be disregarded for purposes of determining whether the first corporation is a U.S. real property holding corporation (except to the extent that such interest constitutes an asset used or held for use in a trade or business, in accordance with the rules of § 1.897–1(f)). In addition, the disposition of an interest solely as a creditor in a partnership, trust, or estate is not subject to sections 897 and 6039C. Whether an interest is considered debt under any provisions of the Code is not determinative of whether it constitutes an interest solely as a creditor for purpose of sections 897 and 6039C and the regulations thereunder.

(2) *Interests in real property other than solely as a creditor*—(i) *In general.* For purposes of sections 897 and 6039C an interest in real property other than an interest solely as a creditor includes a fee ownership, co-ownership, or leasehold interest in real property, a time sharing interest in real property, and a life estate, remainder, or reversionary interest in such property. The term also includes any direct or indirect right to share in the appreciation in the value of, or in the gross or net proceeds or profits generated by, the real property. A loan to an individual or entity under the terms of which a holder of the indebtedness has any direct or indirect right to share in the value of, or the gross or net proceeds or profits generated by, an interest in real property of the debtor or of a related person is, in its entirety, an interest in real property other than solely as a creditor. An interest in production payments described in section 636 does not constitute an interest in real property other than solely as a creditor. The rule of this paragraph (d)(2)(i) is illustrated by the following example.

Example. A, a U.S. citizen, purchases a condominium unit located in the United States for $500,000. A makes a $100,000 down payment and borrows $400,000 from B, a foreign person, to pay the balance of the purchase price. Under the terms of the loan, A is to pay B 13 percent annual interest each year for 10 years and 35 percent of the appreciation in the fair market value of the condominum at the end of the 10-year period. Because B has a right to share in the appreciation in value of the condominium, B has an interest other than solely as a creditor in the condominium. B's entire interest in the obligation from A, therefore, is a United States real property interest.

(ii) *Special rules*—(A) *Installment obligations.* The right to installment or other deferred payments from the disposition after June 18, 1980, of any interest in real property (other than an interest solely as a creditor) will itself constitute an interest in real property other than solely as a creditor for purposes of sections 897 and 6039C. The receipt of each payment shall be treated as the disposition of an interest in real property that is subject to section 897(a) to the extent of any gain required to be recognized pursuant to section 453. However, rights to payments arising from dispositions that took place before June 19, 1980, do not constitute interests in real property other than solely as a creditor, even if such payments are received after June 18, 1980. In addition, a right to installment or other deferred payments will not constitute an interest other than solely as a creditor once the full amount of gain arising from the disposition has been recognized. Thus, if an election is made under section 453(d) not to have the installment sale provisions of section 453 apply, and all gain is recognized in the year of disposition, the right to installment payments in subsequent years will not constitute an interest other than solely as a creditor. Similarly, where the original holder of the installment obligation subsequently disposes of the obligation and recognizes the entire gain, the obligation will constitute an interest in real property solely as a creditor in the hands of the subsequent holder. However, where for any reason the full amount of potential gain from the disposition of the real property has not been recognized upon such subsequent disposition of the installment obligation, the obligation shall continue to be an interest in real property other than solely as a creditor in the hands of the subsequent holder.

(B) *Options.* An option, a contract, or a right of first refusal to acquire any interest in real property (other than an interest solely as a creditor) will itself constitute an interest in real property other than solely as a creditor for purposes of sections 897 and 6039C.

(C) *Security interests.* A right to repossess or foreclose on real property under a mortgage, security agreement, financing statement, or other collateral instrument securing a debt will not be considered a reversionary interest in, or a right to share in the appreciation in value of or gross or net proceeds or profits generated by, an interest in real property. Thus, no such right of repossession or foreclosure will of itself cause an interest in real property which is otherwise an interest solely as a creditor to become an interest other than solely as a creditor.

(D) *Indexed interest rates.* An interest will not constitute a right to share in the appreciation in the value of, or gross or net proceeds or profits generated by, real property solely because it bears a rate of interest that is tied to an index of any kind that is intended to reflect general inflation or deflation of prices and interest rates. However, where an interest in real property bears a rate of interest that is tied to an index the principal purpose of which is to reflect changes in real property values, the real property interest will be considered an indirect right to share in the appreciation in value of, or gross or net proceeds or profits generated by, real property. Such an indirect right constitutes an interest in real property other than solely as a creditor.

(E) *Commissions.* A right to payment of a commission, brokerage fee, or similar charge for professional services rendered in connection with the arrangement or financing of a purchase, sale, or lease of real property does not constitute a right to share in the appreciation in value of, or gross or net proceeds or profits of, real property solely because it is based upon a percentage of the purchase price or rent. Thus, a right to a commission earned by a real estate agent based on a percentage of the sales price does not constitute an interest in real property other than solely as a creditor.

(F) *Trustees' fees, etc.* A right to payment of reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity does not constitute a right to share in the appreciation in the value of, or gross or net proceeds or profits of, real property solely because the assets of the trust or estate include U.S. real property interests.

(3) *Interest in an entity other than solely as a creditor*—(i) *In general.* For purposes of sections 897 an 6039C, and interest in an entity other than an interest solely as a creditor is—

(A) Stock of a corporation;

(B) An interest in a partnership as a partner within the meaning of section 761(b) and the regulations thereunder;

(C) An interest in a trust or estate as a beneficiary within the meaning of section 643(c) and the regulations thereunder or an ownership interest in any portion of a trust as provided in section 671 through 679 and the regulations thereunder;

(D) An interest which is, in whole or in part, a direct or indirect right to share in the appreciation in value of an interest in an entity described in subdivision (A), (B), or (C) of this paragraph (d)(3)(i) or a direct or indirect right to share in the appreciation in value of assets of, or gross or net proceeds or profits derived by, the entity; or

(E) A right (whether or not presently exercisable) directly or indirectly to convert or to exchange an interest which otherwise would constitute an interest in the entity solely as a creditor into or for an interest described in subdivision (A), (B), (C), (D), or (E) of this paragraph (d)(3)(i).

(ii) *Special rules*— (A) *Installment obligations.* The right to installment or other deferred payments from the disposition after June 18, 1980, of any interest in an entity (other than an interest solely as a creditor) will itself be treated under the rules of this subdivision as an interest in the entity other than solely as a creditor.

The receipt of each payment shall be treated as the disposition of such an interest and shall be subject to section 897(a) to the extent that: (*1*) It constitutes the disposition of a U.S real property interest and (*2*) gain or loss is required to be recognized pursuant to section 453. Such treatment shall not apply to payments arising from dispositions that took place before June 19, 1980, regardless of when such payments are received. A right to installment or other deferred payments will constitute an interest solely as a creditor once the full amount of gain arising from the disposition has been recognized. Thus, if an election is made under section 453(d) not to have the installment sale provisions of section 453 apply, and all gain is recognized in the year of disposition, the right to installment payments in subsequent years will not constitute an interest other than solely as a creditor. Similarly, where the original holder of the installment obligation subsequently disposes of the obligation and recognizes the entire remaining gain, the obligation will constitute an interest in the entity solely as a creditor in the hands of the subsequent holder. However, where for any reason the full amount of potential gain from the disposition of the interest in the entity has not been recognized upon such subsequent disposition of the installment obligation, the obligation shall continue to be treated as an interest in the entity other than solely as a creditor in the hands of the subsequent holder.

(B) *Contingent interests.* The interests described in subdivision (D) of paragraph (d)(3)(i) of this section include any right to a payment from an entity the amount of which is contingent on the appreciation in value of an interest described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section or which is contingent on the appreciation in value of assets of, or the gross or net proceeds or profits derived by, such entity. The right to such a payment is itself an interest in the entity other than solely as a creditor, regardless of whether the holder of such right actually holds an interest in the entity described in subdivision (A), (B), or (C) of paragraph (d)(3)(i) of this section. For example, a stock appreciation right constitutes an interest in a corporation other than solely as a creditor even if the holder of such right actually holds no stock in the corporation.

(C) *Royalties.* The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include rights to payments representing royalties, license fees, or similar charges for the use of patents, inventions, formulas, copyrights, literary, musical or artistic compositions, trademarks, trade names, franchises, licenses, or similar intangible property.

(D) *Commissions.* The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to a commission, brokerage fee or similar charge for professional services rendered in connection with the purchase or sale of an interest in an entity.

(E) *Trustee's fees.* The interests described in subdivision (D) of paragraph (d)(3)(i) of this section do not include a right to payment representing reasonable compensation for services rendered as a trustee, as an administrator of an estate, or in a similar capacity.

(4) *Anti-abuse rule.* Where a person holds both interests solely as a creditor and interests other than solely as a creditor in real property or in an entity, those interests will generally be treated as separate and distinct interests. However, such interests shall be aggregated and treated as interests other than solely as a creditor in their entirety where the interests solely as a creditor has been separated from, or acquired separately from, the interest other than solely as a creditor, for a principal purpose of avoiding the provisions of section 897 or 6039C by causing one or more of such interests to be an interest solely as a creditor. The existence of such a purpose will be determined with reference to all the facts and circumstances. Where an interest solely as a creditor has arm's-length interest and repayment terms it shall in no event be aggregated with and treated as an interest other than solely as a creditor. For purposes of applying this rule, a person shall be treated as holding any interests held by a related person within the meaning of § 1.897–1(i).

(5) *"Interest" means "interest other than solely as a creditor."* Unless otherwise stated, the term "interest" as used with regard to real property or with regard to an entity hereafter in this section and in §§ 1.897–2 through 1.897–4 and §§ 1.6039C–1 through 1.6039C–5 means an interest in such real property or entity other than an interest solely as a creditor.

(e) *Proportionate share of assets held by an entity*—(1) *In general.* A person that holds an interest in an entity is for certain purposes treated as holding a proportionate or pro rata share of the assets held by the entity. Such proportionate share must be calculated, in accordance with the rules of this paragraph, for the following purposes.

(i) In determining whether a corporation is a U.S. real property holding corporation—

(A) A person holding an interest in a partnership, trust, or estate is treated as holding a proportionate share of the assets held by the partnership, trust, or estate (see § 1.897–2(e)(2)), and

(B) A corporation that holds a controlling interest in a second corporation is treated as holding a proportionate share of the assets held by the second corporation (see § 1.897–2(e)(3)).

(ii) In determining reporting obligations under section 6039C(b)—

(A) An entity (other than a domestic corporation) must ascertain whether it has a "substantial investor in U.S. real property" by calculating its foreign investors' pro rata shares of the U.S. real property interests held by the entity, and

(B) In determining whether it has a substantial investor in U.S. real property, an entity is treated as holding a pro rata share of the U.S. real property interests held by a corporation in which it holds an interest.

(iii) In determining reporting obligations under section 6039C (b) and (c), the holder of an interest in a

partnership, trust, or estate is treated as owning a proportionate share of the U.S. real property interests held by the partnership, trust, or estate.

(2) *Proportionate share of assets held by a corporation or partnership*—(i) *In general.* A person's proportionate or pro rata share of assets held by a corporation or partnership is determined by multiplying—

(A) The fair market value of the assets held by the entity, by

(B) The person's percentage ownership interest in the entity.

(ii) *Percentage ownership interest.* A person's percentage ownership interest in a corporation or partnership is the percent age equal to the ratio of (A) the sum of the liquidation values of all interests in the entity held by the person to (B) the sum of the liquidation values of all outstanding interests in the entity. The liquidation value of an interest in an entity is the amount of cash and the fair market value of any property that would be distributed with respect to such interest upon the liquidation of the entity after satisfaction of liabilities to persons having interests in the entity solely as creditors. With respect to an entity that has interests outstanding that grant a presently-exercisable option to acquire or right to convert into or otherwise acquire an interest in the entity other than solely as a creditor, the liquidation value of all interests in such entity shall be calculated as though such option or right had been exercised, giving effect both to the payment of any consideration required to exercise the option or right and to the issuance of the additional interest. With respect to an entity that has interests outstanding that entitle any person to a distribution of U.S. real property interests upon liquidation that is disproportionate to such person's interest in the total assets of the entity, such disporportionate right shall be disregarded in the calculation of the interest-holders' proportionate shares of the U.S. real property interests held by the entity. The fair market value of the assets of the entity, the amount of cash held by the entity, and the amount of liabilities to persons having interests solely as creditors is determined for this purpose on the date with respect to which the percentage ownership interest is determined.

(iii) *Examples.* The rules of this paragraph (e)(2) are illustrated by the following examples.

Example (1). Corporation K's only assets are stock and securities with a fair market value as of the applicable determination date of $20,000,000. K's assets are subject to liabilities of $10,000,000. Among K's liabilities are a $1,000,000 loan from L, under the terms of which L is entitled, upon payment of the loan principal, to a profit share equal to 10 percent of the excess of the fair market value of K's assets over $18,000,000, but only if all other corporate liabilities have been paid. K has two classes of stock, common and preferred. PS1 and PS2 each own 100 of the 200 outstanding shares of preferred stock. CS1 and CS2 each own 500 of the 1,000 outstanding shares of common stock. Each preferred shareholder is entitled to $10,000 per share of preferred stock upon liquidation, subject to payment of all corporate liabilities and to any amount owed to L, but before any common shareholder is paid. The liquidation value of L's interest in K, which constitutes an interest other than an interest solely as a creditor, is $1,200,000 [$1,000,000 principal of the loan to K plus $200,000 (10 percent of the excess of $20,000,000 over $18,000,000). The liquidation value of each of PS1's and PS2's blocks of preferred stock is $1,000,000 ($10,000 times 100 shares each). The liquidation value of each of CS1's and CS2's blocks of common stock is $3,900,000 [$20,000,000 (the total fair market value of K's assets)−$9,000,000 (liabilities to creditors other than L)−$1,200,000 (L's liquidation value)−$2,000,000 (PS1's and PS2's liquidation value)] times 50 percent (the percentage of common stock owned by each)]. The sum of the liquidation values of all of the outstanding interests in K (i.e., interests other than solely as a creditor) is $11,000,000 [$1,200,000 (L's liquidation value)+$2,000,000 (PS1's and PS2's liquidation values)+$7,800,000 (CS1's and CS2's liquidation values)]. Each of CS1's and CS2's percentage ownership interests in K is 35.5 percent ($3,900,000 divided by $11,000,000). Each of PS1's and PS2's percentage ownership interests in K is 9 percent ($1,000,000 divided by $11,000,000). L's percentage ownership interest in K is 11 percent ($1,200,000 divided by $11,000,000).

Example (2). A, a U.S. person, and B, a foreign person are partners in a partnership the only asset of which is a parcel of undeveloped land located in the United States that was purchased by the partnership in 1980 for $300,000. The partnership has no liabilities, and its capital is $300,000. A's and B's interests in the capital of the partnership are 25 percent and 75 percent, respectively, and A and B each has a 50 percent profit interest in the partnership. The partnership agreement provides that upon liquidation any unrealized gain will be distributed in accordance with the partners' profit interests. In 1984 the partnership has no items of income or deduction, and the fair market value of its parcel of undeveloped land is $500,000. In 1984 the percentage ownership interest of A in the partnership is 35 percent [the ratio of $100,000 (the liquidation value of A's profit interest in 1984) plus $75,000 (the liquidation value of A's 25 percent interest in the partnership's $300,000 capital) to $500,000 (the sum of the liquidation values of all outstanding interests in the partnership)]. The percentage ownership interest of B in the partnership in 1984 is 65 percent [the ratio of $325,000 (B's $100,000 profit interest plus his $225,000 capital interest) to $500,000].

(3) *Proportionate share of assets held by trusts and estates*—(i) *In general.* A person's proportionate or pro rata share of assets held by a trust or estate is determined by multiplying—

(A) The fair market value of the assets held by the trust or estate, by

(B) The person's percentage ownership interest in the trust or estate.

(ii) *Percentage ownership interest*—(A) *General rule.* A person's percentage ownership interest in a trust or an estate is the percentage equal to the ratio of: (*1*) The sum of the actuarial values of such person's interests in the cash and other assets held by the trust or estate after satisfaction of the liabilities of the trust or estate to persons holding interests in the trust or estate solely as creditors, to (*2*) the entire amount of such cash and other assets after satisfaction of liabilities to persons holding interests in the trust or estate solely as creditors. For purposes of calculating this ratio, the fair market value of the trust's or estate's assets, the amount of cash held by the trust or estate, and the amount of the liabilities to persons having interests solely as creditors is determined on the date with respect to which the percentage ownership interest is determined. With respect to a trust or estate that has interests outstanding that grant a presently-exercisable option to acquire or right to convert into or otherwise acquire an interest in the trust or estate other than solely as a creditor, the liquidation value of all interests in such entity shall be calculated as though such option or right had been exercised, giving effect both to the payment of any consideration required to exercise the option or right and to the issuance of the additional interest. With respect to a trust or estate that has interests outstanding that entitle any person to a distribution of U.S. real property interests upon liquidation that is disproportionate to such person's interest in the total assets of the trust or estate, such disproportionate right shall be disregarded in the calculation of the interest-holders' proportionate share of the U.S. real property interests held by the entity. For purposes of determining his own percentage ownership interest in a trust, a grantor or other person will be treated as owning any portion of the trust's cash and other assets which such person is treated as owning under sections 671 through 679.

(B) *Discretionary trusts and estates.* In determining percentage ownership interest in a trust or an estate, the sum of the definitely ascertainable actuarial values of interests in the cash and the other assets of the trust or estate held by persons in existence on the date with respect to which such determination is made must equal the amount in

paragraph (e)(3)(ii)(A)(*2*) of this section. If the amount in paragraph (e)(3)(ii)(A)(*2*) of this section exceeds the sum of the definitely ascertainable actuarial values of the interests held by persons in existence on the determination date, the excess will be considered to be owned in total by each beneficiary who is in existence on such date, whose interest in the excess is not definitely ascertainable and who is potentially entitled to such excess. However, such excess shall not be considered to be owned in total by each beneficiary if the discretionary terms of the trust or estate were included for a principal purpose of avoiding the provisions of section 897 or 6039C by causing assets other than U.S. real property interests to be attributed in total to each beneficiary. See § 1.6039C–4 regarding limitations on the reporting requirements of persons whose interests in a trust or an estate do not have definitely ascertainable actuarial values. The rules of this paragraph (e)(3) are illustrated by the following example.

Example. A, a U.S. person, established a trust on December 31, 1984, and contributed real property with a fair market value of $10,000 to the trust. The terms of that trust provided that the trustee, a bank that is unrelated to A, at its discretion may retain trust income or may distribute it to X, a foreign person, or to the head of state of any country other than the United States. The remainder upon the death of X is to go in equal shares to such of Y and Z, both foreign persons, as survive X. On December 31, 1984, the total value of the trust's assets is $10,000. On the same date, the actuarial values of the remainder interests of Y and Z in the corpus of the trust are definitely ascertainable. They are $1,000 and $500, respectively. Neither the income interest of X nor of the head of state of any country other than the United States has a definitely ascertainable actuarial value on December 31, 1984. The interests of Y and Z in the income portion of the trust similarly have no definitely ascertainable actuarial values on such date since the income may be distributed rather than retained by the trust. Since the sum of the actuarial values of definitely ascertainable interests of persons in existence ($1,500) is less than $10,000, the difference ($8,500) is treated as owned by each beneficiary who is in existence on December 31, 1984, and who is potentially entitled to such excess. Therefore, X, Y, Z, and the head of state of any country other than the United States are each considered as owning the entire $8,500 income interest in the trust. On December 31, 1984, the total actuarial value of X's interest is $8,500, and his percentage ownership interest is 85 percent. The total actuarial value of Y's interest in the trust is $9,500 ($1,000 plus $8,500), and his percentage ownership interest is 95 percent. The total actuarial value of Z's interest is $9,000 ($500 plus $8,500), and his percentage ownership interest is 90 percent. The actuarial value of the interest of the head of state of each country other than the United States is $8,500, and his percentage ownership interest is 85 percent.

(4) *Dates with respect to which percentage ownership interests are determined.* The dates with respect to which percentage ownership interests are determined are the applicable determination dates outlined in §§ 1.897–2, 1.6039C–3 and 1.6039C–4.

(f) *Asset used or held for use in a trade or business*—(1) *In general.* The term "asset used or held for use in a trade or business" means—

(i) Property, other than real property, that is—

(A) Stock in trade of an entity or other property of a kind which would properly be included in the inventory or the entity if on hand at the close of the taxable year, or property held by the entity primarily for sale to customers in the ordinary course of its trade or business, or

(B) Depreciable property used or held for use in the trade or business, as described in section 1231(b)(1) but without regard to the holding period limitations of section 1231(b), or

(C) Livestock, including poultry, used or held for use in a trade or business for draft, breeding, dairy, or sporting purposes,and

(ii) Goodwill and going concern value (but only if each is purchased from an unrelated party), patents, inventions, formulas copyrights, literary, musical, or artistic compositions, trademarks, trade names, franchises, licenses, customer lists, and similar intangible property, but only to the extent that such property is used or held for use in the entity's trade or business and subject to the valuation rules of § 1.897–1(o)(4), and

(iii) Cash, stock, securities, receivables of all kinds, options or contracts to acquire any of the foregoing, and options or contracts to acquire commodities, but only to the extent that such assets are used or held for use in the corporation's trade or business.

(2) *Used or held for use in a trade or business.* An asset is used or held for use in an entity's trade or business if it is, under the principles of § 1.864–4(c)(2)—

(i) Held for the principal purpose of promoting the present conduct of the trade or business, as, for example, in the case of stock acquired and held to assure a constant source of supply for the trade or business,

(ii) Acquired and held in the ordinary course of the trade or business, as, for example, in the case of an account or note receivable arising from that trade or business (including the performance of services), or

(iii) Otherwise held in a direct relationship to the trade or business.

In determining whether an asset is held in a direct relationship to the trade or business, consideration shall be given to whether the asset is needed in that trade or business. A asset shall be considered to be needed in a trade or business only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business if, for example, the asset is held to meet the operating expenses of that trade or business. Conversely, an asset shall be considered as not needed in the trade or business if, for example, the asset is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies. An asset that is held to meet reserve or capitalization requirements imposed by applicable law shall be presumed to be held in a direct relationship to the trade or business.

(3) *Examples.* The application of this paragraph (f) may be illustrated by the following examples:

Example (1). M, a domestic corporation engaged in industrial manufacturing, is required to hold a large current cash balance for the purposes of purchasing materials and meeting its payroll. The amount of the cash balance so required varies because of the fluctuating seasonal nature of the corporation's business. In months when large cash balances are not required, the corporation invests the surplus amount in U.S. Treasury bills. Since both the cash and the Treasury bills are held to meet the present needs of the business, they are held in a direct relationship to that business, and therefore, constitute assets used or held for use in the trade or business.

Example (2). R, a domestic corporation engaged in the manufacture of goods, engages a stock brokerage firm to manage securities which were purchased with funds from R's general surplus reserves. The funds invested in these securities are intended to provide for the future expansion of R into a new trade or business. Thus, the funds are not necessary for the present needs of the business; they are accordingly not held in a direct relationship to the business and do not constitute assets used or held for use in the trade or business.

Example (3). B, a federally chartered and regulated bank, is required by law to hold substantial reserves of cash, stock, and securities. Pursuant to the rule of paragraph (f)(2) of this section, such assets are presumed to be held in a direct relationship to B's business, and thus constitute assets used or held for use in the trade or business. In addition, B holds substantial loan receivables which are acquired and held in the ordinary course of its banking business. Pursuant to the rule of paragraph (f)(1)(iii) of

this section, such receivables constitute assets used or held for use in the trade or business.

(g) *Disposition.* For purposes of section 897 and 6039C, the term "disposition" means any transfer that would constitute a disposition by the transferor for any purpose of the Internal Revenue Code and regulations thereunder.

(h) *Gain or loss.* the amount of gain or loss arising from the disposition of the U.S. real property interest shall be determined as provided in section 1001 (a) and (b). Such gain or loss shall be subject to the provisions of section 897(a) and (b), unless a nonrecognition provision is applicable pursuant to section 897 (d) or (e) and regulations thereunder. Amounts otherwise treated for Federal income tax purposes as principal and interest payments on debt obligations of all kinds (including obligations that are interests other than solely as a creditor) do not give rise to gain or loss that is subject to section 897(a). However, principal payments on installment obligations described in §§ 1.897–1(d)(2)(ii)(A) and 1.897–1(d)(3)(ii)(A) do give rise to gain or loss that is subject to section 897(a), to the extent such gain or loss is required to be recognized pursuant to section 453. The rules of paragraphs (g) and (h) are illustrated by the following examples.

Example (1). Foreign individual C has an undivided fee interest in a parcel of real property located in the United States. The fair market value of C's interest in $70,000, and C's basis in such interest is $50,000. The only liability to which the real property is subject is the liability of $65,000 secured by a mortage in the same amount. C transfers his fee interest in the property subject to the mortage by gift to D. C realizes $15,000 of gain upon such transfer. As a transfer by gift constitutes a disposition for purposes of the Code, and as gain is realized upon that transfer, the gift is a disposition for purposes of section 897 and 6039C and is subject to section 897(a) to the extent of the gain realized. However, section 897(a) would not be applicable to the transfer if the mortage on the U.S. real property were equal to or less than C's $50,000 basis, since the transfer then would not give rise to the realization of gain or loss under the Internal Revenue Code.

Example (2). Foreign corporation Y makes a loan of $1 million to domestic individual Z, secured by a mortgage on residential real property purchased with the loan proceeds. The loan agreement provides that Y is entitled to receive fixed monthly payments from Z, constituting repayment of principal plus interest at a fixed rate. In addition, the agreement provides that Y is entitled to receive a percentage of the apperciation in value of the real property as of the time that the loan is retired. The obligation in its entirely is considered debt for Federal income tax purposes. However, because of Y's right to share in the appreciation in value of the real property, the debt obligation gives Y an interest in the real property other than solely as a creditor. Nevertheless, as principal and interest payments do not constitute gain under section 1001 and paragraph (h) of this section, section 897(a) shall not apply to Y's receipt of such payments. However, Y's sale of the debt obligation to foreign corporation A would give rise to gain that is subject to section 897(a).

(i) *Related person.* For purposes of sections 897 and 6039C, persons are considered to be related if they are partners or partnerships described in section 707(b)(1) of the Code, if they are related within the meaning of section 267 (b) and (c) of the Code (without reference to the personal holding company or foreign personal holding company limitations of section 267(b)(3)), or if they are members of a controlled group of corporations. For this purpose the term "controlled group of corporations" has the same meaning given to it in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563 shall be disregarded.

(j) *Domestic corporation.* The term "domestic corporation" has the same meaning as set forth in section 7701(a) (3) and (4) and § 301.7701–5. For purposes of sections 897 and 6039C, it also includes a foreign corporation with respect to which an election under section 897(i) and § 1.897–3 or section 897(k) and § 1.897–4 to be treated as domestic corporation is in effect.

(k) *Foreign person.* The term "foreign person" means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (l) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined respectively by § 1.871–2 and by 7701 and the regulations thereunder. A resident alien individual, including a nonresident alien individual with respect to whom there is in effect an election under section 6013 (g) or (h) to be treated as a United States resident, is not a foreign person. For purposes of sections 897 and 6039C only, foreign governments and international organizations (as defined in § 1.892–1(b) and section 7701(a)(18), respectively) shall be treated as foreign persons only with respect to U.S. real property interests that are held for commercial activities within the meaning of section 892 and the regulations thereunder.

Thus, U.S. real property interests that are held by foreign governments for diplomatic or investment purposes and not for commercial activities will not be subject to sections 897 and 6039C.

(l) *Foreign corporation.* The term "foreign corporation" has the meaning ascribed to such term in section 7701(a) (3) and (5) and § 301.7701–5. For purposes of sections 897 and 6039C, however, the term does not include a foreign corporation with respect to which there is in effect an election under section 897(i) and § 1.897–3 or section 897(k) and § 1.897–4 to be treated as a domestic corporation.

(m) *Established securities market.* For purposes of sections 897 and 6039C, the term "established securities market" means—

(1) A national securities exchange which is registered under section of the Securities Exchange Act of 1934 (15 U.S.C. 78f),

(2) A foreign national securities exchange which is officially recognized sanctioned, or supervised by governmental authority, and

(3) Any over-the-counter market.

An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

(n) *Regularly traded.* A class of stock that is traded on an established securities market is considered to be "regularly traded" if it is regularly quoted by brokers or dealers making a market in such stock. A class of stock shall be presumed to be regularly traded if the corporation has a total of 500 or more shareholders.

(o) *Fair market value*—(1) *In general.* For purposes of sections 897 and 6039C only, the term "fair market value" means the value of the property determined in accordance with the rules contained in this paragraph (o). The definition of fair market value provided herein is not to be used in the calculation of gain or loss from the disposition of a U.S. real property interest pursuant to section 1001. An independent professional appraisal of the value of property must be submitted only when such an apprasial is specifically required or authorized by regulation in connection with the negotiation of a security agreement pursuant to section 6039C.

(2) *Method of calculating fair market value*—(i) *In general.* The fair market value of property is its gross value (as defined in paragraph (o)(2)(ii) of this section) reduced by the outstanding balance of any debts secured by the property which are described in paragraph (o)(2)(iii) of this section.

(ii) *Gross value.* Gross value is the price at which the property would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. Generally, with respect to trade or business assets, going concern value should be used as it will provide the most accurate reflection of such a price. However, taxpayers may use other methods of valuation if they can establish that such method will provide a more accurate determination of gross value and if they consistently apply such method to all assets to be valued. See subdivisions (3) and (4) of this paragraph (o) for special rules with respect to the valuation of leases and of intangible assets.

(iii) *Debts secured by the property.* The gross value of property is reduced by the outstanding balance of debts secured by the property, but only if the debt proceeds were used to purchase or improve the property. A debt shall qualify for this purpose only if it is secured by—

(A) A purchase money mortgage upon real property, properly recorded and enforceable under the law of the jurisdiction in which the real property is located,

(B) A purchase money security interest in personal property that is valid and enforceable pursuant to the provisions of state law respecting the creation and enforcement of such interest, or

(c) A mechanic's or materialman's lien or similar security interest in real or personal property, arising from the rendering of services or provision of materials with respect to the improvement of such property, enforceable pursuant to the provisions of state law respecting the creation and enforcement of such interests.

A purchase money mortgage or security interest is one that is taken or retained by the seller of the collateral to secure payment of all or part of the sales price, or is taken by a person who, by making advances or incurring an obligation, gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. However, no debt that is owed to a related person shall reduce the gross value of property. "Related person" for this purpose has the meaning given to it in § 1.897–1(i).

(iv) *Anti-abuse rule.* The gross value of real property located outside the United States and of assets used or held for use in a trade or business shall be reduced by the outstanding balance of any debt that was entered into for the principal purpose of avoiding the provisions of section 897 or 6039C by enabling the corporation to acquire such assets. The existence of such a purpose shall be determined with reference to all the facts and circumstances. Debts that a particular corporation routinely enters into in the ordinary course of its acquisition of assets used or held for use in its trade or business will not be considered to be entered into for the principal purpose of avoiding the provisions of section 897 or 6039C.

(3) *Fair market value of leases.* for purposes of sections 897 and 6039C, the fair market value of a leasehold interest in real property is the price at which the lease could be assigned or the property sublet, neither party to such transaction being under any compulsion to enter into the transaction and both having reasonable knowledge of all relevant facts. Thus, the value of a leasehold interest will generally consist of the present value over the period of the lease remaining, of the difference between the rental provided for in the lease and the current rental value of the real property. A leasehold interest bearing restrictions on its assignment or sublease has a fair market value of zero, but only if those restrictions in effect preclude (rather than merely condition) the lessee's ability to transfer, at a gain, the benefits of a favorable lease. If a lease is claimed to have a value of zero because of purported restrictions on its transfer, but is later disposed of at a gain by the lessee, the improper valuation of the lease at zero may constitute a failure to meet the requirements of section 6039C. See section 6652(g) and regulations thereunder.

(4) *Fair market value of intangible assets.* For purposes of determining whether a corporation is a U.S. real property holding corporation, the fair market value of intangible assets described in § 1.897–1(f)(1)(ii) may be determined in accordance with any of the following methods. However, goodwill and going concern value may only be valued in accordance with the purchase price method.

(i) *Purchase price.* Intangible asets described in § 1.897–1(f)(1)(ii) that were acquired by purchase from a person not related to the purchaser within the meaning of § 1.897–1(i) may be valued at their purchase price. However, such purchase price must be adjusted to reflect any amortization required by generally accepted accounting principles.

(ii) *Book value.* Intangible assets described in § 1.897–1(f)(1)(ii) (other than goodwill and going concern value) may be valued at the amount at which such assets are carried on the financial accounting records of the holder of such assets, provided that such amount is determined in accordance with generally accepted accounting principles. However, this method may not be used with respect to assets acquired by purchase from a related person within the meaning of § 1.897–1(i).

(iii) *Other methods.* Intangible assets described in § 1.897–1(f)(1)(ii) (other than goodwill and going concern value) may be valued pursuant to any other reasonable method at an amount reflecting the price at which the asset would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. However, a corporation that uses a method of valuation other than the purchase price or book value methods may be required to comply with the special notification requirements of § 1.897–2(h)(1)(iii)(A).

(p) *Identifying number.* The "identifying number" of an individual is the individual's United States social security number. The "identifying number" of any other person is its United States employer identification number.

§ 1.897–2 United States real property holding corporations.

(a) *Purpose and scope.* This section provides rules regarding the definition and consequences of U.S. real property holding corporation status. U.S. real property holding corporation status is important for determining whether gain from the disposition by a foreign person of an interest in a domestic corporation is taxable. Such status is also important for reporting purposes. For instance, under section 6039C(a), a domestic corporation that is a U.S. real property holding corporation is required to report annually if it has foreign shareholders. In addition, for purposes of determining whether another corporation is a U.S. real property holding corporation, an interest in a foreign corporation is a U.S. real property interest unless it is established that the foreign corporation is not a U.S. real property holding corporation. The general definition of a

U.S. real property holding corporation is provided in paragraph (b) of this section. Paragraph (c) provides rules regarding the dates on which U.S. real property holding corporation status must be determined. The assets that must be included in making the determination of a corporation's status are set forth in paragraph (d), while paragraph (e) provides special rules regarding the treatment of interests held by a corporation in partnerships, trusts, estates, and other corporations. Rules regarding the termination of U.S. real property holding corporation status are set forth in paragraph (f). Paragraph (g) explains the manner in which an interest-holder can establish that a corporation is not a U.S. real property holding corporation, and paragraph (h) provides rules regarding certain notification requirements applicable to corporations.

(b) *U.S. real property holding corporation*—(1) *In general.* A corporation is a U.S. real property holding corporation if the fair market value of the U.S. real property interests held by the corporation on any applicable determination date equals or exceeds 50 percent of the sum of the fair market values of its—

(i) U.S. real property interests;

(ii) Interests in real property located outside the United States; and

(iii) Assets other than those described in subdivision (i) or (ii) of this paragraph (b)(1) that are used or held for use in its trade or business.

See paragraphs (d) and (e) of this section for rules regarding the directly and indirectly held assets that must be included in the determination of whether a corporation is a U.S. real property holding corporation. The term "interest in real property located outside the United States" means an interest other than solely as a creditor (as defined in § 1.897–1(d)) in real property (as defined in § 1.897–1(b)) that is located outside the United States or the Virgin Islands. If a corporation qualifies as a U.S. real property holding corporation on any applicable determination date after June 18, 1980, any interest in it shall be treated as a U.S. real property interest for a period of five years from that date, unless the provisions of paragraph (f)(2) of this section are applicable.

(2) *Alternative test.* The fair market value of a corporation's U.S. real property interests shall be presumed to be less than 50 percent of the fair market value of the aggregate of its assets described in paragraphs (d) and (e) of this section if on an applicable determination date the total book value of the U.S. real property interests held by the corporation is 25 percent or less of the book value of the aggregate of the corporation's assets described in paragraphs (d) and (e) of this section.

For purposes of this section, the term "book value" means the value at which an item is carried on the financial accounting records of the corporation, provided that such records are kept in accordance with generally accepted accounting principles. Corporations that utilize this alternative test may be subject to the special notification rule of § 1.897–2(h)(1)(iii)(B). The Internal Revenue Service may conclusively rebut the presumption allowed by this paragraph (b)(2) by notifying the corporation that it cannot rely upon such presumption. No penalties shall be imposed for any past failure to comply with the requirements of section 897 or 6039C that arose from reliance upon the presumption, provided that:

(i) The corporation properly relied upon the presumption; and

(ii) All applicable requirements under sections 897 and 6039C are satisfied by the 90th day following the date of which the corporation receives notification from the Service that the presumption has been rebutted.

(c) *Determination dates for applying U.S. real property holding corporation test*—(1) *In general.* Whether a corporation is a U.S. real properly holding corporation is to be determined as of the following dates:

(i) Each December 31;

(ii) The date on which the corporation acquires any U.S. real property interest;

(iii) The date on which the corporation disposes of an interest in real property located outside the United States or disposes of other assets used or held for use in a trade or business during the calendar year, subject to the provisions of paragraph (c)(2)(i) of this section; and

(iv) In the case of a corporation that is treated pursuant to paragraph (d) (4) and (5) of this section as owning a portion of the assets held by an entity in which the corporation directly or indirectly holds an interest, the date on which that entity either (A) acquires a U.S. real property interest, (B) disposes of an interest in real properly located outside the United States or (C) disposes of other assets used or held for use in a trade or business during the calendar year, subject to the provisions of paragraph (c)(2)(ii) of this section.

A determination that is triggered by a transaction described in subdivision (ii), (iii), or (iv) of this paragraph (c)(1) must take such transaction into account. However, the first determination of a corporation's status need not be made until the 90th day after the later of the date of incorporation or of the date on which the corporation first acquires a shareholder. In addition, no determination of a corporation's status need be made during the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation, provided that all the assets of the corporation are distributed within such period.

(2) *Dispositons of trade or business assets not requiring a determination*—(i) *Disposition by corporation.* Notwithstanding the provisions of paragraph (c)(1)(iii) of this section, a determination of U.S. real property holding corporation status need not be made on the date of a corporation's disposition of inventory or livestock (as described in § 1.897–1(f)(1)(i) (A) and (C) or the date of the satisfaction of accounts receivable arising from the disposition of inventory or livestock. Furthermore, a determination need not be made on the date of a corporation's disposition of any other assets used or held for use in a trade or business, unless the fair market value of the assets disposed of exceeds a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2).

(ii) *Disposition by entity other than corporation.* Notwithstanding the provisions of paragraph (c)](1)(iv) of this section, in the case of a corporation that is treated as owning a portion of the assets held by an entity in which the corporation directly or indirectly holds an interest, a determination of U.S. real properly holding corporation status need not be made on the date of the entity's disposition of inventory or livestock (as described in § 1.897–1(f)(1)(i) (A) and (C)) or the date of the satisfaction of accounts receivable arising from the disposition of inventory or livestock. Furthermore, a determination need not be made on the date of the entity's disposition of any other assets used or held for use in a trade or business, unless the fair market value of the assets disposed of exceeds a limitation amount determined in accordance with the rules of subdivision (iii) of this paragraph (c)(2).

(iii) *Calculation of limitation amount.* The amount of assets used or held for use in a trade or business that may be disposed of by a corporation or other entity without triggering a determination date shall be calculated in accordance with the following rules.

(A) If, in accordance with the provisions of paragraphs (d) and (e) of this section, a corporation on its most recent determination date was

considered to hold U.S. real property interests having a fair market value that was less than 25 percent of the aggregate fair market value of all the assets it was considered to hold, then the applicable limitation amount shall be 10 percent of the fair market value of all trade or business assets held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(B) If, in accordance with the provisions of paragraphs (d) and (e) of this section, a corporation on its most recent determination date was considered to hold U.S. real property interests having a fair market value that was equal to or greater than 25 and less than 35 percent of the aggregate fair market value of all the assets it was considered to hold, then the applicable limitations amount shall be 5 percent of the fair market value of all trade or bussiness assets held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(C) If, in accordance with the provisions of paragraphs (d) and (e) of this section, a corporation on its most recent determination date was considered to hold U.S. real property interests having a fair market value that was equal to or greater than 35 percent of the aggregate fair market value of all the assets if was considered to hold, then the applicable limitations amount shall be 2 percent of the fair market value of all trade or bussiness assets held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on that determination date.

(D) If a corporation is not a U.S. real property holding corporation under the alternative test of paragraph (b)(2) of this section (relating to the book value of the corporation's assets), then the applicable limitations shall be 10 percent of the book value of all trade or bussiness assets held directly by the corporation or by another entity described in paragraph (c)(1)(iv) of this section on the most recent determination date.

Dispositions by the corporation or other entity of assets having a value less than the applicable limitation amount must be cumulated by the corporation or entity making such dispositions, and a determination must be made on the date of a disposition that causes the total to exceed the applicable limitation. Once a determination is triggered by a disposition that causes the applicable limitation to be exceeded, the computation of the amount of trade or business assets disposed of after that date shall begin again at zero.

The rules of this paragraph (c)(2) may be illustrated by the following examples.

Example (1). DC is a domestic corporation, no class of stock of which is regularly traded on an established securities market, that knows that it has several foreign shareholders. As of December 31, 1984, DC holds U.S. real property interests with a fair market value of $500,000, no real property interests located outside the U.S., and other assets used in its trade or business with a fair market value of $1,600,000. Thus, the fair market value of DC's U.S. real property interests ($500,000) is less than 25% ($525,000) of the total ($2,100,000) of DC's U.S. real property interests ($500,000), interests in real property located outside the United States (zero), and assets used or held for use in a trade or business ($1,600,000). DC is not a U.S. real property holding corporation, and under the rule of paragraph (c)(2)(i) of this section it may dispose of trade or business assets with a fair market value equal to 10 percent ($160,000) of the total fair market value ($1,600,000) of such assets held by it on its most recent determination date (December 31, 1984), without triggering a determination of its U.S. real property holding corporation status. Therefore, when DC disposes of $60,000 worth of trade or business assets (other than inventory or livestock) on March 1, 1985, and again on April 1, 1985, no determination of its status is required on either date. However, when DC disposes of a further $60,000 worth of such trade or business assets on May 1, its total dispositions of such assets ($180,000) exceeds its applicable limitation amount, and DC is therefore required to determine its U.S. real property holding corporation status. On May 1, 1985, the fair market value of DC's U.S. real property interests ($500,000) is greater than 25 percent ($480,000) and less than 35 percent ($672,000) of the total ($1,920,000) of DC's U.S. real property interests ($500,000), interests in real property located outside the United States (zero), and assets used or held for use in a trade or business ($1,420,000). DC is still not a U.S. real property holding corporation, but must now compute its applicable limitation amount as of the May 1 determination date. Under the rule of paragraph (c)(2)(iii)(B) of this section, DC could now dispose of trade or business assets other than inventory or livestock with a total fair market value equal to 5 percent of the fair market value of all trade or business assets held by DC on the May 1 determination date. Therefore, disposition of such trade or business assets with a fair market value of more than $71,000 (5 percent of $1,420,000) will trigger a further determination date for DC.

Example (2). DC is a domestic corporation, no class of stock of which is regularly traded on an established securities market, that knows that it has several foreign shareholders. As of December 31, 1986, DC's only assets are a U.S. real property interest with a fair market value of $300,000 other assets used or held for use in its trade or business with a fair market value of $600,000, and a 50 percent partnership interest in domestic partenrship DP. DC's interest in DP constitutes a percentage ownership interest in the partnership of 50 percent, and pursuant to the rules of paragraph (e)(2) of this section DC is treated as owning a portion of the assets of DP determined by multiplying that percentage by the fair market value of DP's assets. As of December 31, 1986, DP's only assets are U.S. real property interests with a fair market value of $120,000 and other assets used in its trade or business with a fair market value of $380,000. As of its December 31, 1986, determination date, the fair market value ($360,000) of the U.S. real property interests DC holds ($300,000) and is treated as holding ($60,000 [The fair market value of DP's U.S. real property interest ($120,000) multiplied by DC's percentage ownership interest in DP (50 percent)]), is equal to 31 percent of the sum of the fair market values ($1,150,000) of the U.S. real property interests DC holds and is treated as holding ($360,000) DC's interest in real property located outside the United States (zero), and assets used or held for use in a trade or business that DC holds or is treated as holding ($790,000 [$600,000 (held directly) plus $190,000 (DC's 50 percent share of assets used or held for use in a trade or business by DP)]). Thus, under the rules of paragraph (c)(2) (i) and (iii)(B) of this section DC may dispose of assets used or held for use in its trade or business with a fair market value equal to 5 percent ($30,000) of the total fair market value ($600,000) of such assets held directly by it on its most recent determination date (December 31, 1986), without triggering a determination of its U.S. real property holding corporation statue., In addition, under the rules of paragraph (c)(2)(ii) and (iii)(A) of this section, a determination date for DC would not be triggered by DP's disposition of trade or business assets (other than inventory or livestock) with a fair market value equal to 5 percent ($19,000) of the total fair market value ($380,000) of such assets held by it as of DC's most recent determination date (December 31, 1986). However, any disposition of such assets by DP exceeding that limitation would trigger a determination of DC's U.S. real property holding corporation status. In addition, under the rule of paragraph (c)(1)(iv) of this section, any disposition of a U.S. real property interest by DP would trigger a determination date for DC, while under the rule of paragraph (c)(2)(ii) of this section no disposition of inventory or livestock by DP would trigger a determination for DC.

(3) *Valuation methods*— (i) *In general.* For purposes of determining whether a corporation is a U.S. real property holding cortporation on any applicable determination date, the fair market value of the assets held by the corporation (in accordance with § 1.897–2(d)) as of that determination date must be used.

(ii) *Alternative valuation method for determination dates other than December 31.* For purposes of paragraph (c)(3)(i) of this section, if an applicable

determination date under paragraph (c)(1) or (2) of this section is other than December 31, property may be valued as of the later of the previous December 31 or the date such property was acquired.

(iii) *Consistent methods.* The valuation date methods selected under this paragraph (c)(3) for the first determination date in a calendar year must be used for all subsequent determination dates for such year. In addition, the valuation date method selected must be used for all property with respect to which the determination is made. The use of one method for one calendar year does not preclude the use of the other method for any other calendar year.

(4) *Illustrations.* The rules of this paragraph (c) are illustrated by the following examples:

Example (1). Nonresident alien individual C purchased 100 shares of stock of domestic corporation K on July 26, 1985. Although K has additional shares of common stock outstanding, its stock has never been traded on an established securities market. At all times dring calendar year 1985, K's only assets were a parcel of U.S. real estate (parcel A) and a parcel of country Z real estate (parcel B). On December 31, 1985, the fair market value of parcel A was $1,000,000 and the fair market value of parcel B was $2,000,000. For purposes of determining whether K was a U.S. real property holding corporation during 1985, the only applicable determination date was December 31, 1985, because K did not make any acquisitions or dispositions described in paragraph (c)(1) of this section during the year. The test of paragraph (b) of this section is applied using the fair market value of the property held on that date. K was not a U.S. real property holding corporation during 1985 because as of December 31, 1985, the fair market value ($1,000,000) of the U.S. real property interests held by K did not equal or exceed 50 percent ($1,500,000) of the sum ($3,000,000) of the fair market value of K's U.S. real property interest ($1,000,000), the interests in real property located outside the United States ($2,000,000), plus other assets used or held for use by K in a trade or business (zero).

Example (2). The facts are the same as in example (1), except that on April 7, 1986, K Purchased another parcel of U.S. real estate for $2,000,000. K's purchase of real property on April 7 triggered a determination on that date. As provided in paragraph (c) (3) (ii) of this section, K chooses to use the value of parcels A and B as of the previous December 31, while newly acquired parcel C must be valued as of its acquisition on April 7, 1986. On that date, K qualifies as a U.S. real property holding corporation, since the fair market value of its U.S. real property interests ($3,000,000) exceeds 50 percent ($2,500,000) of the sum ($5,000,000) of the fair market value of K's U.S. real property interests ($3,000,000), its interests in real property located outside the U.S. ($2,000,000), and its other assets used or held for use in a trade or business (zero).

(d) *Assets held by a corporation.* The assets that must be included in the determination of whether a corporation is a U.S. real property holding corporation are the following:

(1) U.S. real property interests that are held directly by the corporation (including directly-held interests in foreign corporations that are treated as U.S. real property interests pursuant to the rules of paragraph (e) (1) of this section);

(2) Interests in real property located outside the United States that are held directly by the corporation;

(3) Assets used or held for use in a trade or business that are held directly by the corporation;

(4) A proportionate share of assets held through a partnership, trust, or estate pursuant to the rules of paragraph (e) (2) of this section; and

(5) a proportionate share of assets held through a domestic or foreign corporation in which a corporation holds a controlling interest, pursuant to the rules of paragraph (e) (3) of this section.

(e) *Special rules regarding assets held by a corporation*—(1) *Interests in foreign corporations.* For purposes only of determining whether any corporation is a U.S. real property holding corporation, an interest in a foreign corporation shall be treated as a U.S. real property interest unless it is established that the interest was not a U.S. real property interest under the rules of this section on the applicable determination date. The rules of paragraph (g)(2) of this section must be complied with to establish that the interest is not a U.S. real property interest. However, regardless of whether an interest in a foreign corporation is treated as a U.S. real property interest for this purpose, gain or loss from the disposition of an interest in such corporation will not be treated as effectively connected with the conduct of a U.S. trade or business by reason of section 897(a). The rules of this paragraph (e)(1) are illustrated by the following examples. In each example, fair market value is determined as of the applicable determination dates under paragraph (c)(3)(i) of this section.

Example (1). Nonresident alien individual F holds all of the stock of domestic corporation DC. DC's only assets are 40 percent of the stock of foreign corporation FC, with a fair market value of $500,000, and a parcel of country W real estate, with a fair market value of $400,000. Foreign corporation FP, unrelated to DC, holds the other 60 percent of the stock of FC. FC's only asset is a parcel of U.S. real estate with a fair market value of $1,250,000. FC is a U.S. real property holding corporation because the fair market value of its U.S. real property interests ($1,250,000) exceeds 50 percent ($625,000) of the sum of the fair market values of its U.S. real property interests ($1,250,000), its interests in real property located outside the United States (zero), plus its other assets used or held for use in a trade or business (zero). Consequently DC's interest in FC is treated as a U.S. real property interest under the rules of this paragraph (e)(1). DC is a U.S. real property holding corporation because the fair market value ($500,000) of its U.S. real property interest (the stock of FC) exceeds 50 percent ($450,000) of the sum ($900,000) of the fair market value of its U.S. real property interests ($500,000), its interests in real property located outside the United States ($400,000), plus its other assets used or held for use in a trade or business (zero). If F disposes of her stock within 5 years of the current determination date, her gain or loss on the disposition of her stock in DC will be treated as effectively connected with a U.S. trade or business under section 897(a). However, FP's gain on the disposition of its FC stock would not be subject to the provisions of section 897 (a) because the stock of FC is a U.S. real property interest only for purposes of determining whether DC is a U.S. real property holding corporation.

Example (2). Nonresident alien individual B holds all of the stock of domestic corporation US. US's only assets are 40 percent of the stock of foreign corporation FC1. Nonresident alien individual N, unrelated to US, holds the other 60 percent of FC1's stock. FC1's only assets are 40 percent of the stock of foreign corporation FC2. The remaining 60 percent of the stock of FC2 is owned by nonresident alien individual X, who is unrelated to FC1. FC2's only asset is a parcel of U.S. real estate with fair market value of $1,000,000. FC2, therefore, is a U.S. real property holding corporation, and the stock of FC2 held by FC1 is a U.S. real property interest for purposes of determining whether FC 1 is a U.S. real property holding corporation (but not for purposes of treating FC1's gain from the disposition of FC2 stock as effectively connected with a U.S. trade or business under section 897(a)). As all of FC1's assets are U.S. real property interests, the stock of FC1 held by US is a U.S. real property interest for purposes of determining whether US is a U.S. real property holding corporation (but not for purposes of subjecting N's gain on the disposition of FC1 stock to the provisions of section 897(a)). As US is a domestic corporation and as all of its assets are U.S. real property interests, US is a U.S. real property holding corporation, and the stock of US held by B is a U.S. real property interest for purposes of section 897(a)). Therefore, B's gain or loss upon the disposition of the stock of US within 5 years of the most recent determination date is subject to the provisions of section 897(a).

(2) *Proportionate ownership of assets held by partnerships, trusts, and estates.* For purposes of determining whether a corporation is a U.S. real property holding corporation, a holder of an interest in a partnership, a trust, or an estate (whether domestic or foreign)

shall be treated pursuant to section 897(c)(4)(B) as holding a proportionate share of the assets held by the entity. Such share is to be determined in accordance with the rules of § 1.897–1(e) on each applicable determination date. Any asset treated as held by a holder of an interest by reason of this paragraph (e)(2) which is used or held for use in a trade or business by the partnership, trust, or estate shall be treated as so used or held for use by the holder of the interest. The proportionate ownership rule of this paragraph (e)(2) applies successively upward through a chain of ownership. The proportionate ownership rule of this paragraph (e)(2) is illustrated by the following examples. In each example fair market value is determined as of the applicable determination date under paragraph (c)(3)(i) of this section.

Example (1). Nonresident alien individual F holds all of the stock of domestic corporation DC. DC is a partner in foreign partnership FP, and DC's percentage ownership interest in FP is 50 percent. DC's other assets are a parcel of country F real estate with a fair market value of $500,000 and other assets which it uses in its business with a fair market value of $100,000. FP's assets are a parcel of country Z real estate with a fair market value of $300,000 and a parcel of U.S. real estate with a fair market value of $2,000,000. For purposes of determining whether DC is a U.S. real property holding corporation, DC is treated as holding its pro rata share of the assets held by FP. DC's pro rata share of the U.S. real estate held by FP is $1,000,000, determined by multiplying the fair market value ($2,000,000) of the U.S. real property interests held by FP by DC's percentage ownership interest in FP (50 percent). DC's pro rata share of the country Z real estate held by FP is $150,000, determined in the same manner. DC is a U.S. real property holding corporation because the fair market value ($1,000,000) of its U.S. real property interests (the U.S. real estate it is treated as holding proportionately) exceeds 50 percent ($875,000) of the sum ($1,750,000) of the fair market value of its U.S. real property interests ($1,000,000), its interests in real property located outside the United States [($650,000) (its country F real estate and its pro rata share of the country Z real estate)], plus its other assets which are used or held for use in a trade or business ($100,000). Because DC is a domestic U.S. real property holding corporation, the stock of DC is a U.S. real property interest and F's gain or loss on the disposition of his DC stock within 5 years of the current determination date will be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (2). Nonresident alien individual B holds all of the stock of domestic corporation US. US is a beneficiary of foreign trust FT. US's percentage ownership interest in FT is 90 percent. US has no other assets. FT is a partner in domestic partnership DP. FT's percentage ownership interest in DP is 30 percent. FT has no other assets. DP's only asset is a parcel of U.S. real estate with a fair market value of $1,000,000. FT is treated as holding U.S. real estate with a fair market value of $300,000 (30 percent of the U.S. real estate held by DP with a fair market value of $1,000,000). For purposes of determining whether US is a U.S. real property holding corporation, the proportionate ownership rule is applied successively upward through the chain of ownership. Thus, US is treated as holding 90 percent of FT's $300,000 pro rata share of the U.S. real estate held by DP. US is a U.S. real property holding corporation because the fair market value ($270,000) of its U.S. real property interests (its pro rata share of the U.S. real estate held by DP) exceeds 50 percent ($135,000) of the sum of the fair market values of its U.S. real property interests ($270,000), its interests in real property located outside the United States (zero), plus its other assets used or held for use in a trade or business (zero). Because US is a domestic U.S. real property holding corporation, the stock of US is a U.S. real property interest, and B's gain or loss from the disposition of US stock within 5 years of the current determination date will be treated as effectively connected with a U.S. trade or business under section 897(a).

(3) *Controlling interests in corporations.* For purposes only of determining whether a corporation is a U.S. real property holding corporation, if the corporation (the "first corporation") holds a controlling interest in a second corporation—

(i) The first corporation is treated as holding a proportionate share of each asset (i.e., U.S. real property interests, interests in real property located outside the United States, and assets used or held for use in a trade or business) held by the second corporation, determined in accordance with the rules of § 1.897–1(e);

(ii) Any asset so treated as held proportionately by the first corporation which is used or held for use by the second corporation in a trade or business shall be treated as so used or held for use by the first corporation, and

(iii) Interests in the second corporation held by the first corporation are not themselves taken into account as U.S. real property interests (regardless of whether the second corporation is a U.S. real property holding corporation) or as trade or business assets.

A determination of what portion of the assets of the second corporation are considered to be held by the first corporation shall be made as of the applicable dates for determining whether the first corporation is a U.S. real property holding corporation.

A "controlling interest" means 50 percent or more of the fair market value of all classes of stock of a corporation, determined as of the applicable determination date. In determining whether a corporation holds a controlling interest in another corporation, section 318(a) shall apply (except that sections 318(a), (2)(C) and (3)(C) are applied by substituting the phrase "5 percent" for "50 percent"). The controlling interest rules of this paragraph (e)(3) apply, regardless of whether a corporation is domestic or foreign, whenever it is necessary to determine whether a corporation is a U.S. real property holding corporation. The rules apply successively upward through a chain of ownership. For example, if the second corporation owns a controlling interest in a third corporation, the rules of this paragraph shall be applied first to determine the portion of the assets of the third corporation that is considered to be held by the second corporation and then to determine the portion of the assets held and considered to be held by the second corporation that is considered to be held by the first corporation. The rules of this paragraph (e)(3) are illustrated by the following examples. In each example fair market value is determined as of the applicable determination date under paragraph (c)(3)(i) of this section and no corporation holds constructively any interest not specified in the example.

Example (1). Nonresident alien individual N owns all of the stock of domestic corporation DC. DC's only assets are 60 percent of the fair market value of all classes of stock of foreign corporation FS and 60 percent of the fair market value of all classes of stock of domestic corporation DS. The percentage ownership interest of DC in each of FS and DS is 60 percent. The balance of the stock in FS and DS is held by nonresident alien individual B, who is unrelated to DC. FS's only asset is a parcel of country F real estate with a fair market value of $1,000,000. DS's only asset is a parcel of U.S. real estate with a fair market value of $2,000,000. The value of DC stock in FS and DS is not taken into account for purposes of determining whether DC is a U.S. real property holding corporation. Rather, because DC holds a controlling interest (60 percent) in each of FS and DS, DC is treated as holding a portion of each asset held by FS and DS. DC's portion of the country F real estate held by FS is $600,000, determined by multiplying the fair market value ($1,000,000) of the country F real estate by DC's percentage ownership interest (60 percent). Similarly, DC's portion of the U.S. real estate held by DS is $1,200,000 (60 percent of $2,000,000). DC is a U.S. real property holding corporation, because the fair market value ($1,200,000) of its U.S. real property interests (its portion of the U.S. real property interests (its portion of the U.S. real estate) exceeds 50 percent ($900,000) of the sum ($1,800,000) of the fair market values of its U.S. real property interests ($1,200,000), its interests in real property located outside the United States (the $600,000 portion of country F real estate), plus its other assets used or held for use in a trade or business (zero).

Because DC is a domestic U.S. real property holding corporation, the stock of DC is a U.S. real property interest, and N's gain or loss on the disposition of DC stock within 5 years of the current determination date would be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (2). Nonresident alien individual F owns all of the stock of domestic corporation US1. US1's only asset is 85 percent of the fair market value of all classes of stock of domestic corporation US2. US2's only assets are 60 percent of the fair market value of all classes of stock of domestic corporation US3, with a fair market value of $600,000, and a parcel of country D real estate with a fair market value of $800,000. US3's only asset is a parcel of U.S. real estate with a fair market value of $2,000,000. The percentage ownership interest of F in US1 is 100 percent; that of US1 in US2 is 75 percent; and that of US2 in US3 is 60 percent. US2 holds a controlling interest in US3 (60 percent). Consequently, the value of US2's stock in US3 is not taken into account in determining whether US2 is a U.S. real property holding corporation, even though US3 is a U.S. real property holding corporation. Instead, US2 is treated as holding a portion of the U.S. real estate held by US3. US2's portion of the U.S. real estate is $1,200,000, determined by multiplying US2's percentage ownership interest (60 percent) by the fair market value ($2,000,000) of the U.S. real estate. US1 holds a controlling interest in US2 (75 percent). By reapplying the rules of paragraph (e)(3) of this section successively upward through the chain of ownership, US1's stock in US2 is not taken into account, and US1 is treated as holding a portion of the country D real estate held by US2 and the U.S. real estate which US2 is treated as holding proportionately. US1's portion of the country D real estate is $600,000, determined by multiplying US1's percentage ownership interest (75 percent) by the fair market value ($800,000) of the country D real estate. US1's portion of the U.S. real estate which US2 is treated as owning is $900,000, determined by multiplying US1's percentage ownership interest (75 percent) by the fair market value ($1,200,000) of US2's portion of U.S. real estate held by US3. US1 is a U.S. real property holding corporation, because the fair market value ($900,000) of its U.S. real property interests (its portion of US2's portion of U.S. real estate) is more than 50 percent ($750,000) of the sum ($1,500,000) of fair market values of its U.S. real property interests ($900,000), its interests in real property located outside the United States ($600,000), plus its other assets used or held for use in a trade or business (zero). Because US1 is a U.S. real property holding corporation and is a domestic corporation, the stock of US1 is a U.S. real property interest, and F's gain or loss on the disposition of US1 stock within 5 years of the current determination date will be treated as effectively connected with a U.S. trade or business under section 897(a).

Example (3). Nonresident alien individual B holds all of the stock of domestic corporation DC. DC's only assets are 40 percent of the fair market value of all classes of stock of foreign corporation FC and a parcel of country R real estate with a fair market value of $100,000. FC's only asset is one parcel of U.S. real estate with a fair market value of $1,000,000. The fair market value of the FC stock held by DC is $200,000. FC is a U.S. real property holding corporation. Since DC does not hold a controlling interest in FC, the controlling interest rules of paragraph (e)(3) of this section do not apply to treat DC as holding a portion of the U.S. real estate held by FC. However, because FC is a U.S. real property holding corporation, the Stock of FC is a U.S. real property interest for purposes of determining whether DC is a U.S. real property holding corporation. DC is a U.S. real property holding corporation because the fair market value ($200,000) of its U.S. real property interest (the stock of FC) exceeds 50 percent ($150,000) of the sum ($300,000) of the fair market values of its U.S. real property interest ($200,000), its interests in real property located outside the United States ($100,000), plus its other assets used or held for use in a trade or business (zero). Because DC is a U.S. real property holding corporation and is a domestic corporation, its stock is a U.S. real property interest, and B's gain or loss on the disposition of DC stock within 5 years of the current determination date would be subject to the provisions of section 897(a).

Example (4). Nonresident alien individual C owns all of the stock of domestic corporation DC1's only assets are 25 percent of the fair market value of all classes of stock of domestic corporation DC2, and a parcel of U.S. real estate with a fair market value of $100,000. The stock of DC2 is not an asset used or held for use in DC1's trade or business. DC2's only assets are a building located in the U.S. with a fair market value of $100,000 and manufacturing equipment and inventory with a fair market value of $200,000. DC2 is not a U.S. real property holding corporation. Since DC1 does not hold a controlling interest in DC2, the rules of this paragraph (e)(3) do not apply to treat DC1 as holding a portion of the assets held by DC2. In addition, since DC2 is not a U.S. real property holding corporation, its stock does not constitute a U.S. real property interest. Therefore, for purposes of determining whether DC1 is a U.S. real property holding corporation, its interest in DC2 is not taken into account. Since DC1's only other asset is a parcel of U.S. real estate, DC1 is a U.S. real property holding corporation, and C's gain or loss on the disposition of DC1 stock within 5 years of the current determination date would be subject to the provisions of section 897(a).

(4) *Co-application of rules of this paragraph (e).* The rules of this paragraph (e) apply in conjunction with one another for purposes of determining whether a corporation is a U.S. real property holding corporation. The rule of this paragraph (e)(4) is illustrated by the following example. In the example fair market value is determined as of the applicable determination date in accordance with paragraph (c)(3)(i) of this section.

Example. Nonresident alien individual B holds 100 percent of the stock of domestic corporation US. US's only asset is 10 percent of the stock of foreign corporation FC1. FC1's only asset is 100 percent of the stock of foreign corporation FC2. FC2's only asset is a 50 percent interest in domestic partnership DP. FC2's percentage ownership interest in DP is 50 percent. DP's only asset is a parcel of U.S. real estate with a fair market value of $10,000,000. In determining whether US is a U.S. real property holding corporation, the rules of this paragraph (e) apply in conjunction with one another. Consequently, under paragraph (e)(2) of this section FC2 is treated as holding U.S. real estate with a fair market value of $5,000,000 (50 percent of $10,000,000, its pro rata share of real estate held by DP). Under paragraph (e)(3) of this section, FC1 is treated as holding 100 percent of the assets of FC2 (U.S. real estate with a fair market value of $5,000,000). FC1, therefore, is a U.S. real property holding corporation. Under paragraph (e)(1) of this section, the stock of FC1 is treated as U.S. real property interest. US is a U.S. real property holding corporation because 100 percent of its assets (the stock of FC1) are U.S. real property interests. As US is a U.S. real property holding corporation and is a domestic corporation, the stock of US is a U.S. real property interest, and B's gain or loss from the disposition of stock of US within 5 years of the current determination date will be subject to the provisions of section 897(a).

(f) *Termination of U.S. real property holding corporation status*—(1) *In general.* A U.S. real property holding corporation may voluntarily determine its status as of the date of any acquisition or disposition of assets. If the fair market value of its U.S. real property interests on such date no longer equals or exceeds 50 percent of the fair market value of all assets described in paragraphs (d) and (e) of this section, such corporation shall cease to be U.S. real property holding corporation as of such date, and on the day that is five years after such date interests in such corporation shall cease to be treated as U.S. real property interests (unless subsequent transactions within the five-year period have caused the fair market value of the corporation's U.S. real property interests to equal or exceed 50 percent of the fair market value of assets described in paragraphs (d) and (e) of this section). A corporation that determines that interests in it have ceased to be U.S. real property interests pursuant to the rules of this paragraph (f) may so inform the Internal Revenue Service, as provided in paragraph (h) of this section.

(2) *Early termination.* Interests in a U.S. real property holding corporation shall immediately cease to be U.S. real property interests as of the first date on which the following conditions are met—

(i) The corporation does not hold any U.S. real property interests, and

(ii) All of the U.S. real property interests held by such corporation at any time during the previous five years (but disregarding any disposed of before June 19, 1980) either (A) were disposed of in transactions in which the full amount of the gain (if any) was recognized or (B) ceased to be U.S. real property interests by reason of the application of this paragraph (f) to one or more other corporations.

For purposes of this paragraph (f)(2), a corporation that disposes of all U.S. real property interests other than a one-year or shorter lease at prevailing market rental rates will be considered to have disposed of all of its U.S. real property interests, provided that the leased property is used in the conduct by the corporation of a trade or business in the United States. Such a lease may include an option to renew, but only if such option is for a renewal of one year or less at fair market rental rates prevailing at the time of renewal.

(g) *Establishing that a corporation is not a U.S. real property holding corporation*—(1) *Foreign persons disposing of interests*—(i) *In general.* A foreign person disposing of an interest in a domestic corporation must ascertain from the corporation whether an interest in the corporation was a U.S real property interest as of the date of disposition. If the corporation informs the foreign person that the interest was not a U.S real property interest as of that date and that the corporation has complied with the requirements of paragraph (h)(1) of this section, then the foreign interest-holder need not otherwise establish that the interest disposed of is not a U.S. real property interest. To qualify under this rule, the foreign person must obtain the corporation's statement no later than the date, including any extensions, on which a tax return would otherwise be due with respect to a disposition. If the corporation does not notify the foreign person by that date that the interest disposed of is not a U.S real property interest and that it has informed the Internal Revenue Service of its status (as provided in paragraph (h)(1) of this section), then the disposition of an interest in that corporation shall be presumed to constitute the disposition of a U.S real property interest and shall be subject to the provisions of section 897(a), unless subdivision (ii) of this paragraph (g)(1) applies.

(ii) *Determination by Director.* Notwithstanding the provisions of subdivision (i) of this paragraph (g)(1), a foreign interest-holder need not treat an interest in a domestic corporation as a U.S. real property interest if the Director of the Foreign Operations District ("Director") determines and notifies the foreign interest-holder that interests in the corporation are not U.S. real property interests. A foreign transferor of an interest in a domestic corporation that supplies evidence to the Director establishing that it made a timely request to the corporation for information as to its status, to which the corporation failed to respond as required by paragraph (h)(1) of this section, may request the assistance of the Director. For this purpose, a timely request to the corporation is one made not later than 90 days before the date, including any extensions, on which a tax return would otherwise be due with respect to a disposition. If the Director is unable to make a determination he shall inform the transferor that the interest must be treated as a U.S. real property interest unless the transferor can otherwise establish that the corporation is not a U.S. real property holding corporation. The transferor may do so by providing the Director with detailed information, based on financial statements, annual reports, or records of the corporation, demonstrating to the satisfaction of the Director that the corporation is not a U.S. real property holding corporation. A foreign transferor who has requested a determination by the Director pursuant to the rules of this paragraph (g)(1)(ii) is not thereby excused from filing a return and paying any tax due by the date, including any extensions, on which such return and payment would otherwise be due with respect to a disposition. If the Director subsequently determines and notifies the foreign transferor that the interest was not a U.S. real property interest, the foreign transferor shall be entitled to a refund of any taxes paid by reason of the application of section 897(a) pursuant to the rules of paragraph (g)(1)(i) of this section.

(2) *Corporations determining U.S. real property holding corporation status.* A corporation that must determine whether it is a U.S. real property holding corporation, and that holds an interest in another corporation (other than a controlling interest, as defined in paragraph (e)(3) of this section), must ascertain from that second corporation whether its interest was a U.S. real property interest as of the first corporation's applicable determination date. If the second corporation informs the first corporation that the interest was not a U.S. real property interest and that the corporation has notified the Internal Revenue Service (as provided in paragraph (h)(1) of this section), then the first corporation need not treat the interest in the second corporation as a U.S. real property interest. If the second corporation does not inform the first corporation that its interest was not a U.S. real property interest and that it has notified the Internal Revenue Service of its status, then the first corporation must treat the interest in the second corporation (other than an interest solely as a creditor) as a U.S. real property interest, unless the Director of the Foreign Operations District determines otherwise. The first corporation may request a determination by the Director in the manner provided in paragraph (g)(1)(ii) of this section, with respect to determinations by the Director on behalf of foreign transferors.

(3) *Requirements not applicable.* If at any time during the calendar year any class of stock of a corporation is regularly traded on an established securities market, the requirements of this paragraph (g) shall not apply with respect to any holder of interest in such corporation other than a person who holds an interest described in § 1.897-1(c)(2) (i) or (ii). For example, a corporation detrmining whether it is a U.S. real property holding corporation need not ascertain from a regularly traded corporation in which it neither holds, nor has held during the period described in section 897(c)(1)(A)(ii), more than a 5 percent interest whether that regularly traded corporation is itself a U.S. real property holding corporation. In addition, the requirements of this paragraph (g) do not apply to any holder of an interest in a domestically-controlled REIT, as defined in section 897(h)(4)(B).

(h) *Notice requirements applicable to corporations*— (1) *Domestic corporations with foreign interest-holders*—(i) *In general.* A domestic corporation, any interest in which is known by the corporation to be held by a foreign person, must determine whether it is a U.S. real property holding corporation in accordance with the rules of this section. The existence of a foreign interest-holder is known by a corporation if such information is included on the books and records of the corporation or its agent (including a transfer agent), is known by its directors or officers, or is known by employees who in the course of their employment have reason to know such information. When such a corporation determines pursuant to the rules of paragraph (b) of this section that it is a U.S. real property holding corporation, it must comply with the requirements of section 6039(a) and

regulations thereunder. When such a corporation determines that it is not a U.S. real property holding corporation, it must inform the Internal Revenue Service of its determination in the manner described in subdivision (ii) of this paragraph (h)(1).

(ii) *Statements to Internal Revenue Service.* A domestic corporation, any interest in which is known to be held by a foreign person, that determines that it is not a U.S. real property holding corporation on each of the applicable determination dates in a given taxable year, must attach a statement to its income tax return for that year, informing the Internal Revenue Service that it has determined that is is not a U.S. real property holding corporation. With respect to taxable years ending after June 18, 1980, for which a return was filed before the date of publication of final regulations in the **Federal Register**, such statement must be separately delivered to the Internal Revenue Service office where the corporation filed its most recent income tax return no later than the date which is three months after the date of publication of final regulations in the **Federal Register**. If the statement is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. A corporation that determines during the course of its taxable year that interests in it have ceased to be U.S. real property interests pursuant to the rules of paragraph (f) of this section may immediately notify the Internal Revenue Service of that determination. Such notification will enable foreign interest-holders to dispose of their interests without being subject to section 897(a), as provided in paragraph (g) of this section. No particular form is required for the statement, which must set forth the name, address, place of incorporation, and identification number of the corporation, the last date after June 18, 1980, (if any) on which the corporation qualified as a U.S. real property holding corporation, and a statement that the corporation has determined that it was not a U.S. real property holding corporation on any applicable determination date during the taxable year. The calculations upon which such determination is based need not be included. The statement must be signed by a responsible corporate officer, who must verify under penalty of perjury that the statement is true and correct to his knowledge and belief. In addition, a corporation that had previously informed the Internal Revenue Service that it was not a U.S. real property holding corporation and that subsequently attains such status on a determination date must deliver a notification of such change of status to the Internal Revenue Service office where the corporation filed its most recent income tax return within 30 days of the determination date. If the notification is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. No particular form is required for such notification, which must set forth the name, address, place of incorporation, identification number of the corporation, and applicable determination date, as well as the statement that the corporation has determined that it became a U.S. real property holding corporation on that date.

(iii) *Supplemental statements*—(A) *By corporations with substantial intangible assets.* A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if—

(*1*) Such corporation values any of the intangible assets described in § 1.897–1(f)(1)(ii) by a method other than the purchase price or book value methods described in § 1.897–1(o)(4); and

(*2*) The fair market value of such intangible assets equals or exceeds 25 percent of the total of the fair market values of the assets the corporation is considered to hold in accordance with the provisions of paragraphs (d) and (e) of this section.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (*1*) and (*2*) of this paragraph (h)(1)(iii)(A), and must summarize the methods and calculations upon which the corporation's determination of the fair market value of its intangible assets is based. In addition, the supplemental statement must list any intangible assets that were purchased from any person that have been valued by the corporation at an amount other than their purchase price, and must provide a justification for such a departure from the purchase price. The supplemental statement must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(B) *Corporation using alternative U.S. real property holding corporation test.* A corporation that is subject to the requirements of subdivision (ii) of this paragraph (h)(1) (or that voluntarily complies with those requirements) must submit a supplemental statement to the Internal Revenue Service if—

(*1*) Such corporation utilizes the rule of paragraph (b)(2) of this section (regarding the book values of assets held by the corporation) to presume that it is not a U.S. real property holding corporation; and

(*2*) Such corporation is engaged in or is planning to engage in a trade or business of mining, farming, or forestry, or of buying and selling or developing real property, or of leasing real property to tenants.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (*1*) and (*2*) of this paragraph (h)(1)(iii)(B), and must be attached to or incorporated in the statement required by paragraph (h)(1)(ii) of this section.

(iv) *Statements to foreign interest-holders.* A domestic corporation must, within 30 days after receipt of an inquiry from a foreign person holding an interest in it, inform that person whether its interest constitutes a U.S. real property interest pursuant to the rules of this section and whether the corporation has notified the Internal Revenue Service of its status as required by paragraph (h)(1)(ii) of this section. No particular form is required for this statement, which need only indicate the corporation's determination and whether or not it has properly notified the Internal Revenue Service. Pursuant to the rules of paragraph (f) of this section, the foreign person's interest will not constitute a U.S. real property interest if the corporation was not a U.S. real property holding corporation on any determination date during the five-year period ending on the date of disposition specified by the foreign person (unless the conditions of paragraph (f)(2) of this section are met). Thus, if a corporation has filed the required statements with the Internal Revenue Service for each of its previous four taxable years, and it has not become a U.S. real property holding corporation on any determination date that preceded the date of disposition during the current taxable year, then the foreign person's interest will not constitute a U.S. real property interest. However, if the corporation did not file the required statements in any of the previous four years either because it did not know at that time that a foreign person held an interest in it or because no such person held an interest in it, such corporation must immediately determine whether it was a U.S. real property holding corporation on any determination date during the relevant period. Such a

corporation may take up to 90 days to make such a determination and to prepare and deliver its response to the foreign person. In addition, such corporation must within that period deliver the required notifications to the Internal Revenue Service, with respect to the years in which it was not a U.S. real property holding corporation but did not have or did not know that it had a foreign interest holder. If the corporation's response and notifications are delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery.

(2) *Foreign corporations and domestic corporations with no foreign interest-holders.* A foreign corporation or any domestic corporation that does not know that any interest in it is held by a foreign person is not required to determine its U.S. real property holding corporations status or to inform the Internal Revenue Service of its status. However, such corporation many voluntarily choose to comply with the requirements of paragraph (h)(1) of this section. Doing so will enable any interest-holder to establish that its interest is not a U.S. real property interest, for purposes of establishing that the interest-holder is not itself a U.S. real property holding corporation. A domestic or foreign corporation that had not previously complied with the requirements of paragraph (h)(1) of this section may do so retroactively by making the required determinations and filing the appropriate notifications with the Internal Revenue Service. Such retroactive compliance may be carried out simultaneously with the corporation's response to an inquiry from an interest-holder pursuant to paragraph (g)(2) of this section.

(3) *Requirements not applicable.* The requirements of this paragraph (h) do not apply to domestically-controlled REITS, as defined in section 897(h)(4)(B). Nor do these requirements apply to a corporation any class of stock in which is regularly traded on an established securities market at any time during the calendar year. However, such a corporation may voluntarily choose to comply with the requirements of paragraph (h)(1) of this section, in accordance with the rules of paragraph (h)(2) of this section.

(4) *Application of civil penalties.* A domestic corporation that improperly determines that it is not a U.S. real property holding corporation, and therefore fails to comply with the requirements of section 6039C(a), may be subject to the penalties provided by section 6652 (g), unless that failure was due to reasonable cause and not willful neglect.

§ 1.897-3 Election by foreign corporation to be treated as a domestic corporation under section 897(i).

(a) *Purpose and scope.* This section provides rules pursuant to which a foreign corporation may elect under section 897(i) to be treated as a domestic corporation for purposes of sections 897 and 6039C and the regulations thereunder. A foreign corporation with respect to which an election under section 897(i) is in effect is subject to all rules under sections 897 and 6039C that apply to domestic corporations. Thus, for example, if a foreign corporation that has made an election under section 897(i) is a U.S. real property holding corporation, interests in it are U.S. real property interests, and any gain or loss from the disposition of such interests by a foreign person will be treated as effectively connected with a U.S. trade or business under section 897(a). Similarly, if a foreign corporation makes an election under section 897(i), its distribution of a U.S. real property interest pursuant to section 301 will be subject to the carryover basis rule of section 897(f). However, an interest in an electing corporation is not a U.S. real property interest if following the election the interest is described in section 897(c)(1)(B) or § 1.897-1(c)(2) (subject to the exceptions of subdivisions (i) and (ii) of that section). In addition, section 897(d) will not apply to any distribution of a U.S. real property interest by such corporation or to any sale or exchange of such interest pursuant to a plan of complete liquidation under section 337. A foreign corporation that makes an election under section 897(i) shall not be treated as a domestic corporation for purposes of any other provision of the Code or regulations, except to the extent that it consents to such treatment as a condition to making the election. An election under section 897(i) is the exclusive remedy of any foreign person claiming discriminatory treatment under any treaty with respect to the application of sections 897 and 6039C to a foreign corporation. Therefore, if a corporation does not make an effective election, relief under a nondiscrimination article of any treaty shall not be otherwise available with respect to the application of sections 897 and 6039C to such corporation.

(b) *General conditions.* A foreign corporation may make an election under section 897(i) only if it meets all three of the following conditions.

(1) *Holding a U.S. real property interest.* The foreign corporation must hold a U.S. real property interest at the time of the election. This condition is satisfied when a U.S. real property interest is acquired simultaneously with the effective date of an election. For example, this condition is satisfied when real property is acquired in an exchange described in section 351 that is carried out simultaneously with the effective date of the election. This condition is also satisfied by a corporation that indirectly holds a U.S. real property interest through a partnership, trust, or estate.

(2) *Entitlement to nondiscriminatory treatment.* The foreign corporation must be entitled to nondiscriminatory treatment with respect to its U.S. real property interest under any treaty to which the United States is a party. Where the corporation indirectly holds a U.S. real property interest through a partnership, trust, or estate, the corporation itself must be entitled to nondiscriminatory treatment with respect to such property interest.

(3) *Submission of election in proper form.* The foreign corporation must comply with the requirements of paragraph (c) of this section respecting the manner and form in which an election must be submitted.

(c) *Manner and form of election.* An election under section 897(i) is made by filing the documents described in subparagraphs (1) through (5) of this paragraph (c) with the Director of the Foreign Operations District, 1325 K St., NW., Washington, D.C. 20225.

(1) *General statement.* The foreign corporation must supply a general statement indicating that an election under section 897(i) is being made. The general statement must be signed by a responsible corporate officer, who must verify under penalty of perjury that the statement and all other documents submitted pursuant to the requirements of this paragraph (c) are true and correct to his knowledge and belief. No particular form is required for the statement, which must set forth—

(i) The name, address, identifying number (if any), and place and date of incorporation of the foreign corporation;

(ii) The treaty and article under which the foreign corporation is seeking nondiscriminatory treatment;

(iii) A description of the U.S. real property interests held by the corporation, either directly or through a partnership, trust, or estate, including the dates such interests were acquired, the corporation's adjusted bases in such interests, and their fair market values as of the date of the election (or book values if the corporation is not a U.S. real property holding corporation under

the alternative test of § 1.897-2(b)(2)); and

(iv) A list of all dispositions of any interests in the foreign corporation after December 31, 1979, and before June 19, 1980, between related persons (as defined in section 453(f)((1)), giving the type and the amount of any interest transferred, the name and address of the related person to whom the interest was transferred, the transferor's basis in the interest transferred, and the amount of any nontaxed gain as defined in section 1125(d) of Pub. L. 96-499.

(2) *Waiver of treaty benefits.* The foreign corporation must submit a binding waiver of the benefits of any U.S. treaty with respect to any gain or loss from the disposition of a U.S. real property interest during the period in which the election is in effect.

(3) *Consent to be taxed.* The foreign corporation must submit a binding agreement to pay income tax as though it were a domestic corporation on the gain, if any, that is recognized upon—

(i) The disposition of any U.S. real property interest during the period in which the election is in effect, and

(ii) The disposition of any property that it acquired in exchange for a U.S. real property interest in a nonrecognition transaction (as defined in section 897(e)) during the period in which the election is in effect.

(4) *Interest-holders' consent to election*—(i) *In general.* The foreign corporation must submit both a signed consent to the making of the election and a waiver of U.S. treaty benefits with respect to any gain or loss from the disposition of an interest in the corporation from each person who holds an interest in the corporation on the date the election is made. In the case of a corporation any class of stock of which is regularly traded on an established securities market at any time during the calendar year, the signed consent and waiver need only be provided by a person who holds an interest described in § 1.897-1(c)(2)(i) or (ii) (determined after application of the constructive ownership rules of section 897(c)(6)(C)). The foreign corporation must also include with the signed consents and waivers a list that identifies and describes the interest in the corporation held by each interest holder, including the type and amount of such interest and its fair market value as of the date of the election.

(ii) *Effect of security agreement.* If, prior to the making of an election under section 897(i), a foreign corporation has entered into a security agreement with the Director of the Foreign Operations District pursuant to section 6039C and regulations thereunder, the corporation must, no later than the date of the election, deliver an application to the Director of the Foreign Operations District to amend its security agreement to reflect its election to be treated as a domestic corporation. Similarly, a corporation that has applied for, but not yet entered into, a security agreement must deliver an amendment to its application to the Director of the Foreign Operations District to reflect its election to be treated as a domestic corporation, no later than the date of the election. If such application or amendment is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. A corporation that has entered into or has applied for a security agreeement need not file the consents and waivers of its interest holders with its election, as required by paragraph (c)(4)(i) of this section, if it instead files the documents described in subdivisions (A) through (C) of this paragraph (C)(4)(ii).

(A) A statement that the corporation has received both a signed consent to the making of the election and a waiver of U.S. treaty benefits with respect to any gain or loss from the disposition of an interest in the coporation from each person who holds an interest in the corporation on the date the election is made. In the case of a corporation any class of stock of which is regularly traded on an established securities market at any time during the calendar year, the signed consent and waiver need only be provided by a person who holds or has held an interest described in § 1.897-(c)(2) (i) or (ii) (determined after application of the constructive ownership rules of section 897(c)(6)(C)).

(B) A list that describes the interests in the corporation held by each interest-holder. The list need not identify the interest-holders by name, but must set forth the type, amount, and fair market value of the interests held by each.

(C) An agreement that the foreign corporation will retain all signed consents and waivers for a period of three years from the date of the election and supply such documents to the Director of Foreign Operations within 30 days of his request for production thereof. Such request will generally be made only in the event of a termination of the corporation's security agreement, but may also be made for purposes of verifying the accuracy of the corporation's representations with respect to the consents and waivers. The Director's review of the signed consents and waivers pursuant to this provision shall not constitute an examination for purposes of section 7605(b).

A corporation that had applied for a security agreement must deliver the consents and waivers of its interest holders to the Director of the Foreign Operations District within 30 days after the Director's final rejection of the application.

(5) *Statement regarding prior dispositions.* The foreign corporation must state that no interest in the corporation was disposed of during the shortest of (A) the period from June 19, 1980, through the date of the election, (B) the period from the date on which the corporation first holds a U.S. real property interest through the date of the election, or (C) the five-year period ending on the date of the election. If the corporation cannot state that no such dispositions have been made, it may make the section 897(i) election only if it states that it has complied with the requirements of paragraph (d)(2) of this section.

(d) *Time and duration of election*—(1) *In general.* A foreign corporation that meets the conditions of paragraph (b) of this section may make an election under section 897(i) at any time before the first disposition of an interest in the corporation which would be subject to section 897(a) if the election had been made before that disposition, except as otherwise provided in paragraph (d)(2) of this section. The period to which the election applies begins on the date on which the election is made, or such earlier date as is specified in the election, but not earlier than June 19, 1980. Unless revoked, an election applies for the duration of the time for which the corporation remains in existence. An election is made on the date that the statements described in paragraph (c) of this section are delivered to the Director of the Foreign Operations District. If the election is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery.

(2) *Election after disposition of stock.* An election under section 897(i) may be made after any disposition of an interest in the corporation which would have been subject to section 897(a) if the election had been made before that disposition, but only if the requirements of either subdivision (i) or (ii) of this paragraph (d)(2) are met with respect to all dispositions of interests during the period described in paragraph (c)(5) of this section.

(i) There is a payment of an amount equal to any taxes which would have been imposed by reason of the application of section 897 upon all persons who had disposed of interests

in the corporation during the period described in paragraph (c)(5) of this section had the corporation made the election prior to such dispositions. Such payment must be made by the later of the date the election is made, or the date on which payment of such taxes would otherwise have been due, and must include any interest that would have accrued had tax actually been due with respect to the disposition. As an election made prior to any disposition of interests in the corporation would have been conditioned on a waiver of treaty benefits by the interest-holders, payment of an amount equal to tax and any interest with respect to such prior disposition is required as a condition to making a subsequent election under this subdivision (i) irrespective of the application of any treaty provision. For this purpose, it is not necessary that the payment be made by the person who would have owed the tax if the election under this section had been made prior to the disposition, and that person is under no obligation to supply any information to the present holders of interests in the electing corporation. The payment shall be made to the Director of the Foreign Operations District. Where the payment is made by a present holder of an interest, the basis of the person's interest in the corporation shall be increased to the extent of the amount paid.

(ii) The present holders of interests in the electing corporation took a basis in their interests that was equal to the basis of the interest in the hands of the person from which the interest was acquired, increased by the sum of any gain recognized by the transferor of the interest and any tax paid under chapter 1 by the present holder of the interest, if such interest was acquired after June 18, 1980.

(3) *Adequate proof of basis.* For purposes of meeting the conditions of paragraph (d)(2) (i) or (ii) of this section, a corporation must establish the bases of and amount of gain realized by all persons who disposed of interests in the corporation during the period described in paragraph (c)(5) of this section. See paragraph (g)(3) of this section for an exception to this rule.

(4) *Acknowledgement of receipt.* Within 30 days after its receipt of an election under section 897(i), the Internal Revenue Service will acknowledge receipt of the election. Such acknowledgement either will indicate that the information submitted with the election is complete or will specify any documents that remain to be submitted pursuant to the requirements of paragraph (c) of this section respecting the manner and form in which an election must be made.

(e) *Anti-abuse rule*—(1) *In general.* A corporation that is otherwise eligible to make an election under section 897(i) may do so only by complying with the requirements of subdivision (2) of this paragraph, if during the period described in paragraph (c)(5) of this section—

(i) Prior to receipt of a U.S. real property interest by the corporation seeking to make the election, stock in such corporation (or in any corporation controlled by such corporation) was acquired in a transaction in which the person acquiring such stock obtained an increase in basis in the stock over the adjusted basis of the stock in the hands of the person from whom it was acquired;

(ii) The full amount of gain realized by the person from whom the stock was acquired was not subject to U.S. tax; and

(ii) The corporation seeking to make the election received the U.S. real property interest in a transaction or series of transactions to which section 897(d)(1)(B) applies to allow for nonrecognition of gain.

(2) *Recognition of gain.* A corporation described in subparagraph (1) of this paragraph (e) may make an election under section 897(i) only if it pays an amount equal to the tax on the full amount of gain realized by the transferors of the stock of such corporation (or of any corporation controlled by it) in the transaction described in paragraph (e)(1)(i) of this section. However, such amount must be paid only if the stock of the corporation seeking to make the election (or the stock of a corporation controlled by it) would have constituted a U.S. real property interest had it (or a corporation controlled by it) made the election before that acquisition. Such amount must be paid by the later of the date of the election or the date on which such tax would otherwise be due, and must include any interest that would have accrued had tax actually been due with respect to the disposition.

(3) *Definition of control.* For purposes of this paragraph, a corporation controls a second corporation if it holds 80 percent or more of the total combined voting power of all classes of stock entitled to vote, and 80 percent or more of the total number of shares of all other classes of stock of the second corporation. In a chain of corporations where each succeeding corporation is controlled within the meaning of this subparagraph (3) by the corporation immediately above it in the chain, each corporation in the chain shall be considered to be controlled by all corporations that preceded it in the chain.

(4) *Examples.* The rules of this paragraph (e) are illustrated by the following examples.

Example 1. Nonresident alien individual X owns 100 percent of the stock of foreign corporation L which was organized in 1981. L's only asset is a parcel of U.S. real property which it has held since 1981. The fair market value of the U.S. real property held by L on January 1, 1984, is $1,000,000. L's basis in the property is $200,000. X's basis in the L stock is $500,000. On June 1, 1984, M corporation, a foreign corporation owned by foreign persons who are unrelated to X, purchases the stock of L from X for $1,000,000 with title passing outside of the United States. Since the stock of L is not a U.S. real property interest, X's gain from the disposition of the L stock ($500,000) is not treated as effectively connected with a U.S. trade or business under section 897(a). In addition, since X was neither engaged in a U.S. trade or business nor present in the U.S. at any time during 1984, such gain is not subject to U.S. tax under section 871. On January 1, 1987, M liquidates L under a plan of liquidation adopted on that same date. Under section 332 of the Code M recognizes no gain on receipt of the parcel of U.S. real property distributed by L in liquidation. Under section 334(b)(1) M takes $200,000 as its basis in the U.S. real property received from L. Under section 897(d)(1)(B) no gain would be recognized to L under section 897(d)(1)(A) on the liquidating distribution. As a consequence, no gain is recognized to L under section 336 of the Code. After its receipt of the U.S. real property from L, M seeks to make an election to be treated as a domestic corporation. Thus, M acquired the L stock in a transaction in which it obtained a basis in such stock in excess of the adjusted basis of X in the stock. U.S. tax was not paid on the full amount of the gain realized by X, and M has received the property in a distribution to which section 897(d)(1)(B) applied to provide for nonrecognition of gain to L. Therefore, M may make the election only if it pays an amount equal to the tax on the full amount of X's gain, pursuant to the rule of subparagraph (e)(2) of this section.

Example 2. Nonresident alien individual X owns 100 percent of the stock of foreign corporation A which owns 100 percent of the stock of foreign corporation B. X's basis in the A stock is $500,000. A's basis in the B stock is $500,000. B owns U.S. real property with a fair market value of $1,000,000. B's basis in the U.S. real property is $500,000. On January 1, 1985, X sells the stock of A to Y, an unrelated individual, for $1,000,000 with title passing outside of the United States. In addition, X was neither engaged in a U.S. trade or business nor present in the U.S. at any time during 1985. Since the A stock is not a U.S. real property interest, X's gain on such disposition is not treated as effectively connected with a U.S. trade or business under section 897(a) and is therefore not subject to U.S. tax under section 871. On July

1, 1987, a plan of liquidation is adopted, and B is liquidated into A. Under sections 332, 334(b)(1), 336, and 897(d)(1)(B), there is no tax to A on receipt of U.S. real property from B and no tax to B on the distribution of the U.S. real property interest to A. After receipt of the property A seeks to make an election under section 897(i). Under the rules of paragraph (e) of this section, A may make the election only if it pays an amount equal to the tax on the full amount of X's gain. (Assuming that A is a U.S. real property holding corporation, the same result would be required by the rule of paragraph (d)(2) of this section.)

(f) *Revocation of election*—(1) *In general.* An election under section 897(i) may be revoked only with the consent of the Commissioner. A request for revocation shall be in writing and shall be addressed to the Director, Foreign Operations District, 1325 K St. NW., Washington, D.C. 20225. The request shall include the name, address, and identifying number of the corporation seeking to revoke the election, and a description of all U.S. real property interests held by the corporation on the date of the request for revocation, including the dates such interests were acquired, the corporation's adjusted bases in such interests, and their fair market values as of the date of the election [or book value if the corporation is not a U.S. real property holding corporation under the alternative test of § 1.897(b)(2)]. The request shall be signed by a responsible officer of the corporation under penalty of perjury and shall contain a statement either that the corporation has made no distributions described in subparagraph (2) of this paragraph (f) or that the conditions of that subparagraph have been satisfied. A revocation will be effective as of the date the request is delivered to the Foreign Operations District, unless the Commissioner provides otherwise in his consent to the revocation. If the request is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. The Commissioner will generally consent to a revocation, provided either that there have been no distributions described in subparagraph (2) of this paragraph (f), or that the conditions of that subparagraph have been satisfied.

(2) *Revocation after distribution.* If there have been any distributions of U.S. real property interests by the corporation during the period to which an election made under section 897(i) applies, the Commissioner shall consent to the revocation of such election only if one of the following conditions is met.

(i) The full amount of gain realized by the corporation upon the distribution was subject to U.S. income tax.

(ii) There is a payment of an amount equal to the taxes that would have been imposed upon the corporation by reason of the application of section 897 if the election had not been in effect on the date of the distribution. Such payment must be made by the later of the date of the request for revocation or the date on which payment of such tax would otherwise have been due, and must include any interest that would have accrued had tax actually been due with respect to the distribution. If under the terms of any treaty to which the United States is a party such distribution would not have been subject to U.S. income tax notwithstanding the provisions of section 897, then this condition may be satisfied by providing a statement with the request for revocation setting forth the treaty and article which would have exempted the distribution from U.S. tax had the election under section 897(i) not been in effect on the date thereof.

(iii) At the time of the receipt of the distributed property, the distributee would be subject to taxation under chapter 1 of the Code on a subsequent disposition of the distributed property, and the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation. For purposes of this paragraph (f)(2)(i)(C), a distributee shall be considered to be subject to taxation upon a subsequent disposition of distributed property only if such distributee waives the benefits of any U.S. treaty that would otherwise render such disposition not taxable by the United States. Such waiver must be attached to the corporation's request for revocation.

(g) *Transitional rules*—(1) *In general.* An election under section 897(i) that was made at any time after June 18, 1980, may be amended to comply with the requirements of paragraphs (b), (c), and (d) of this section if such amendment is delivered in writing to the Director of the Foreign Operations District by the date which is 3 months after the date of publication of final regulations in the **Federal Register**. If the amendment is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery.

(2) *Dispositions of all real property prior to publication.* A foreign corporation that would have been entitled under the rules of this section to make a section 897(i) election at any time between June 19, 1980, and January 3, 1984, may make an election pursuant to the requirements of this section, notwithstanding the fact that it disposed of all U.S. real property interests before January 3, 1984.

(3) *Interests in corporation disposed of prior to publication.* Where interests in a corporation were disposed of before January 3, 1984, the requirement of paragraph (d)(2) of this section may be met, notwithstanding the requirement of paragraph (d)(3), by paying a tax that is based upon a reasonable estimate of the gain upon the prior dispositions. Such estimate must be based on all facts and circumstances known to, and ascertainable through the exercise of reasonable diligence by, the corporation seeking to make the election.

§ 1.897-4 Special election under section 897(k) for certain foreign corporations, acquisitions of which were begun before November 26, 1980.

(a) *In general.* This section provides special rules under which certain foreign corporations may make the election under section 897(k) to be treated as domestic corporations for purposes of sections 897 and 6039C. The election may be made if—

(1) The foreign corporation holds a U.S. real property interest;

(2) The foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A) (as it existed prior to its repeal by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248); and

(3) The 12 month period described in section 334(b)(2)(B) (as it existed prior to its repeal by TEFRA) for the acquisition by purchase of the stock of the foreign corporation begun after December 31, 1979, and before November 26, 1980.

A foreign corporation with respect to which an election under this paragraph (a) is in effect is subject to all rules under section 897 and 6039C that apply to domestic corporations, except that in any acquisition of stock of the electing corporation described in section 334(b)(2) (as it existed prior to its repeal by TEFRA) the selling shareholder shall be considered to have disposed of an interest in a foreign corporation, and any gain or loss from the disposition shall not be taken into account by such shareholder pursuant to section 897(a). If a corporation that has made an election under section 897(k) is a U.S. real property holding corporation, interests in such corporation shall constitute U.S. real property interests in the hands of any foreign person that acquired such interest in an acquisitior

described in section 334(b)(2) (as it existed prior to its repeal by TEFRA).

(b) *No conditions to election.* An election under paragraph (a) of this section is not subject to the conditions described in § 1.897–3.

(c) *Election procedures.* An election under paragraph (a) of this section is made by filing a statement with the Commissioner. No particular form is required for the statement. The statement must provide that an election under section 897(k) is being made. The statement must include the name, address, identifying number (if any), and place and date of incorporation of the foreign corporation, and establish that the requirements of paragraph (a) of this section have been met. The statement must be verified as true and signed by a responsible officer of the foreign corporation under penalty of perjury. The statement shall be forwarded to the District Director, Foreign Operations District, 1325 K Street NW., Washington, D.C. 20225. The rules of § 1.897–3(d) concerning the time and duration of the election, and of § 1.897–3(f), concerning revocation of the election, apply to elections made under this section.

PART 6a—[AMENDED]

§§ 6a.897–1—6a.897–4 [Removed]

Par. 2. Part 6a is amended by removing §§ 6a.897–1 through 6a.897–4

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83–29800 Filed 11–2–83; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 52

[LR–16–81]

Environmental Taxes on Petroleum and Certain chemicals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking relating to the imposition of taxes on petroleum and certain chemicals. The extended deadline for submission of comments and requests for a public hearing is January 20, 1984.

DATES: Comments must be delivered or mailed by January 20, 1984.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (LR–16–81), Washington, D.C. 20224

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the **Federal Register** for Friday, October 21, 1983 (48 FR 48839), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–16–81), Washington, D.C. 20224, by December 21, 1983. The date by which comments or requests must be delivered or mailed is hereby extended to January 20, 1984.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83–29859 Filed 11–2–83; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act of 1974; Personal Privacy and Rights of Individuals Regarding Personal Records

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army proposes to delete three exemption rules for systems of records subject to the Privacy Act of 1974. The rule for A0727.050SA, "Army Council of Review Boards Files," is deleted as unnecessary in view of the blanket exemption for properly classified material in all Army systems of records. The rules for systems AO201.08aDACS and AO201.08cOSA are no longer required as these two ystems have been consolidated into system AO24.01HQDA, "HQDA Correspondence and Control/Central Files System."

DATES: Comments must be received by December 5, 1983.

ADDRESS: Send comments to: Office of the Adjutant General, (Attn: Mrs. Dorothy Karkanen), Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA, 22331.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Karkanen, Office of the Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA, 22331; Telephone: (703) 325–6163.

SUPPLEMENTARY INFORMATION: The blanket exemption for properly classified information in all Army systems of records can be found at 32 CFR 505.9(b). The notice for system AO241.01HQDA was published in the **Federal Register** at 48 FR 49087, October 24, 1983.

PART 505—[AMENDED]

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly it is proposed to amend § 505.9(b) of Title 32 of the Code of Federal Regulations by removing the exemptions for systems of records AO201.08aDACS, AO201.08cOSA, and AO727.05OSA, and adding a new exemption rule for system AO241.HQDA. The new rule will read as follows:

§ 505.9 Exemption rules for Army systems of records.

* * * * *

(b) * * *

Exempted Records Systems

(Specific Exemptions)

ID—AO241.01HQDA.

SYSNAME—HQDA Correspondence and Control/Central File System.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(k) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Authority: 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7).

REASON—Documents are generated by other elements of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system and since the introduction of documents is largely unregulatable, specific portions or documents that may require an exemption cannot be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempted from disclosure under any of the provisions of sections (k)(1) through (k)(7) of Title 5, U.S.C 552a."

* * * * *

October 31, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83–29810 Filed 11–2–83; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-6-FRL 2463-5]

Hazardous Waste Management Program; Louisiana Application for Interim Authorization, Phase II

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of a public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Louisiana application for Phase II, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that EPA will hold a public hearing on the application.

DATE: A public hearing is scheduled for December 6, 1983 at 7:00 p.m.

ADDRESSES: EPA will hold a public hearing on Louisiana's application for Interim Authorization on December 6, 1983, at 7:00 p.m., at the State Land and Natural Resources Building, Mineral Board Hearing Room, 625 North Fourth Street, Baton Rouge, Louisiana 70804.

Written comments on the Louisiana application must be sent to: U.S. Environmental Protection Agency, Region VI, Air and Waste Management Division, Attn: H. J. Parr, Hazardous Materials Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

Copies of the Louisiana Interim Authorization application for Phase II are available during normal business hours at the following addresses for inspection and copying:

Louisiana Department of Natural Resources, Hazardous Waste Division, 6th Floor, 625 North Fourth Street, Baton Rouge, Louisiana 70804

Environmental Protection Agency, Region 6, Library, 28th Floor, 1201 Elm Street, Dallas, Texas 75270, (214) 767-7341

EPA Headquarters Library, 401 M St., SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, U.S. Environmental Protection Agency, Region 6, Dallas, Texas 75270, (214) 767-2645

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

The State of Louisiana received Interim Authorization for Phase I on December 19, 1980

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

In the July 26, 1982 **Federal Register** (47 FR 32378), the Environmental Protection Agency announced that states with qualified programs can be authorized for Phase II Interim Authorization, Component C. Component C published in the **Federal Register** includes standards for permitting of land disposal facilities.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123, Subpart F (45 FR 33479).

As noted in the May 19, 1980 **Federal Register**, copies of complete state submittals for Phase II Interim Authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians-land, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 27, 1983.

Dick Whittington,

Regional Administrator.

[FR Doc. 83-29875 Filed 11-2-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL 2462-8]

Hazardous Waste Management Program; North Carolina, Application for Interim Authorization, Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of a public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the North Carolina application for Phase II, Component C, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the application.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for December 14, 1983. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by December 9, 1983. EPA will determine by December 9, 1983, whether there is significant interest to hold the public hearing. All written comments on the North Carolina interim authorization application must be received by the close of business on December 14, 1983.

ADDRESSES: If significant public interest is expressed, EPA will hold a public hearing on North Carolina's application for interim authorization on December 14, 1983, at 7:00 p.m. at the McKimmon Center, North Carolina State University, Western Boulevard, Raleigh, North Carolina.

Written comments on the application and written or telephoned communication of interest in EPA's holding a public hearing on the North Carolina application must be sent to: James H. Scarbrough, Chief, Residuals Management Branch, U.S. EPA, 345 Courtland St., N.E., Atlanta, Georgia 30365, (404) 881-3016.

If you wish to find out whether or not EPA will hold a public hearing on the North Carolina application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after December 9, 1983, the EPA contact

person listed below or telephone Mr. O. W. Strickland, Head, Bureau of Solid and Hazardous Waste Management Branch, Environmental Health Section, Department of Human Resources, Division of Health Services, P.O. Box 2091 Raleigh, North Carolina 27602.

Copies of the North Carolina interim authorization application for Phase II, Component C, are available during normal business hours at the following addresses for inspection and copying:

Solid and Hazardous Waste Management Branch, Environmental Health Section, Department of Human Resources, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602

Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: (404) 881-4216.

Written comments should be sent to: James H. Scarbrough, Chief, Residuals Management Branch, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: (404) 881-3016.

The public hearing will be held at: McKimmon Center, North Carolina State University, Western Boulevard, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residual Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia Telephone: (404) 881-3016.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified state hazardous waste management programs to operate in lieu of the federal program. The regulations provide for a transitional stage in which qualified state programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying federal program will take effect.

The State of North Carolina received interim authorization for Phase I on December 18, 1981.

In the January 26, 1981, **Federal Register** (46 FR 7965), the Environmental Portection Agency announced the availability of portions or components of Phase II of interim authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

The State of North Carolina received interim authorization for Phase II, Components A and B, on March 26, 1982.

In the July 26, 1982 **Federal Register** (47 FR 32378) the Environmental Protection Agency announced that states with qualified programs can be authorized for Phase II Interim Authorization, Component C. Component C published in the **Federal Register** includes standards for permitting of land disposal facilities.

A full description of the requirement and procedures for state interim authorization is included in 40 CFR Part 271, Subpart B (48 FR 14257).

As noted in the May 19, 1980, **Federal Register**, copies of complete state submittals for Phase II interim authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties and confidential business information.

Dated: October 26, 1983.

John A. Little,

Deputy Regional Administrator.

[FR Doc. 83-29601 Filed 11-2-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 71

Foreign Quarantine

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Extension of comment period of proposed rulemaking.

SUMMARY: This notice extends the public comment period for the Notice of Proposed Rulemaking which proposed major revisions in the Foreign Quarantine regulations. The regulations were developed to implement the provisions of the Public Health Service Act in preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. The proposed revisions will update the regulations to reflect current concepts of disease surveillance, investigation, and control.

DATE: Written comments must be received on or before December 11, 1983.

ADDRESS: Written comments should be addressed to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) in Room 202, 1600 Tullie Circle, Centers for Disease Control, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Acting Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404 329-2574, or FTS 236-2574.

SUPPLEMENTARY INFORMATION: The proposed rule was published on August 9, 1983 (48 FR 36143), and provided a 60-day comment period ending October 11, 1983. To be responsive to those affected by the proposed regulations, the Secretary has elected to extend the comment period for 60 days.

Dated: October 12, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: October 27, 1973.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-29665 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-18-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6538]

Proposed Flood Elevation Determination; Georgia

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of proposed rule for the unincorporated areas of Douglas County, Georgia.

SUMMARY: The Federal Emergency Management Agency has erroneously published the proposed flood elevation detemination for the Unincorporated

Areas of Douglas County, Georgia at 48 FR 30720, on July 5, 1983. This notice will serve to delete that publication.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R.. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency has determined that the notice of proposed flood elevation determination for the Unincorporated Areas of Douglas County, Georgia, published at 48 FR 30720, on July 5, 1983, should be deleted. The proposed flood elevations were published correctly at 48 FR 40916, on September 12, 1983.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.C. 12127, 44 FR 19367; and delegation of authority to Federal Emergency Management Agency)

Issued: October 25, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

FR Doc. 83–29851 Filed 11–2–83; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–6538]

Proposed Flood Elevation Determination; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of proposed rule for the Unincorporated Areas of Isanti County, Minnesota.

SUMMARY: The Federal Emergency Management Agency has erroneously published the proposed flood elevation determination for the Unincorporated Area of Isanti County, Minnesota, at 48 FR 30721, on July 5, 1983. This notice will serve to delete that publication.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency has determined that the notice of proposed flood elevation determination for the Unincorporated Areas of Isanti County, Minnesota, published at 48 FR 30721, on July 5, 1983, should be deleted. The proposed flood elevations were published correctly at 48 FR 34085, on July 27, 1983.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 193567; and delegation of authority to Federal Emergency Management Agency)

Issued: October 25, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83–29849 Filed 11–2–83; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–6532]

Proposed Flood Elevation Determination; South Carolina

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of proposed rule for the City of Conway, Horry County, South Carolina.

SUMMARY: The Federal Emergency Management Agency has erroneously published the proposed flood elevation determination for the City of Conway, Horry County, South Carolina, at 48 FR 26631, on June 9, 1983. This notice will serve to delete that publication.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency has determined that the notice of proposed flood elevation determination for the City of Conway, Horry County, South Carolina, published at 48 FR 26632, on June 9, 1983, should be deleted. The proposed flood elevations were published correctly at 48 FR 30722, on July 5, 1983.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Federal Emergency Management Agency).

Issued: October 25, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83–29850 Filed 11–2–83; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 151

Reimbursement for Costs of Firefighting on Federal Property

AGENCY: Federal Emergency Management Agency (FEMA)

ACTION: Proposed rule.

SUMMARY: This regulation updates an existing regulation to reflect organizational changes resulting from the transfer of functions under the Federal Fire Prevention and Control Act from the Department of Commerce to the Federal Emergency Management Agency.

DATE: Comment on this rule is due no later than January 3, 1984.

ADDRESS: Comment should be sent to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington DC 20472.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Chief, Policy Division, Office of the Comptroller, Federal Emergency Management Agency, Telephone: (202) 287–0630.

SUPPLEMENTARY INFORMATION: When issued in 1977, this regulation placed responsibilities for administration of section 11 of the Federal Fire Prevention and Control Act in the Administrator of what became the United States Fire Administration. Reorganization Plan No. 3 of 1978 transferred the functions of the Administrator to the Director, Federal Emergency Management Agency. The United States Fire Administration was transferred from the Department of Commerce to FEMA. The regulation needs to be amended to reflect these changes. Certain other changes are needed such as a reference to the Court of Claims (now the U.S. Claims Court), and to 31 U.S.C. 231, now recodified.

Other changes are editorial.

This regulation deals with administrative matters, and hence is categorically excluded from requirments for an environmental assessment under 44 CFR Part 10.

The rule is not a major rule as defined in section 1(b) of Executive Order 12291 nor will it have a significant economic impact on a substantial number of small entities. Hence, regulatory impact analyses are unnecessary. Subpart B contains collection of information

requirements which have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act. Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, OMB, Room 3201, New Executive Office Building, Washington DC 20503, Attention: FEMA Desk Officer.

List of Subjects in 44 CFR Part 151

Claims, Government property.

Accordingly, it is proposed to amend Part 151 of Title 44, Code of Federal Regulations, by revising it to read as follows:

PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

Subpart A—Purpose, Scope, Definitions

Sec.
151.01 Purpose.
151.02 Scope.
151.03 Definitions.

Subpart B—Submission, Determination, Appeal

151.11 Submission of claims.
151.12 Determination of amount authorized for payment.
151.13 Reconsideration of amount authorized for payment.
151.14 Adjudication.

Subpart C—Administration, Penalties

151.21 [Reserved]
151.22 Audits.
151.23 Penalties.

Authority: Secs. 11 and 21(b)(5), Pub. L. 93-498, 88 Stat. 1535 (15 U.S.C. 2210, and 2218(b)(5)); Reorg. Plan No. 3 of 1978 (43 FR 41943) and E.O. 12127, dated March 31, 1979 (44 FR 19367).

Subpart A—Purpose, Scope, Definitions

§ 151.01 Purpose.

Section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*), provided that "each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file claim with the Director of the Federal Emergency Management Agency for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire." This part, 44 CFR Part 151, implements section 11 of the Act and governs the submission, determination, and appeal of claims under section 11.

§ 151.02 Scope

Fire services in any State may file claims for reimbursement under section 11 and this part for the direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States. Section 11 requires that certain payments be deducted from those costs and that the Treasury Department will ordinarily pay the amount resulting from the application of that formula. Where the United States has entered into a contract (which is not a mutual aid agreement, defined in § 151.03) for the provision of fire protection, and it is the intent of the parties that reimbursement under section 11 is unavailable, this intent will normally govern. Where a mutual aid agreement is in effect between the claimant and an agency of the United States for the property upon which the fire occurred, reimbursement will be available in otherwise proper situations. However, any payments (including the value of services) rendered under the agreement during the term of the agreement (or the Federal fiscal year in which the fire occurred, if no term is discernible) shall be deducted from the cost claimed, pursuant to § 151.12.

§ 151.03 Definitions.

(a) *The Act* means the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.)*

(b) *Additional firefighting costs over and above normal operating costs.* means reasonable and authorized (or ratified by a responsible Federal official) costs ordinarily associated with the function of firefighting as performed by a fire service. Such costs would normally arise out of response of personnel and apparatus to the site of the fire, search and rescue, exposure protection, fire containment, ventilation, salvage, extinguishment, overhaul, and preparation of the equipment for further use. This would also include costs associated with emergency medical services to the extent normally rendered by a fire service in connection with a fire. Not included are administrative expenses, costs of employee benefits, insurance, disability, death, litigation or health care, and the costs associated with processing claims under section 11 of the Act and this part.

(c) *Director* means the Director of the Federal Emergency Management Agency, or his/her designee.

(d) *Claimant means a fire service as defined in paragraph (g) of this section.*

(e) *Direct expenses and losses* means expenses and losses which would not have been incurred had not the fire in question taken place. This includes salaries for specially employed personnel, overtime pay, the cost of supplies expended, and the depreciated value of equipment destroyed or damaged. It does not include such costs as the ordinary wages of firefighters, overhead costs, or depreciation (if based on other than hours of use during fires). Expenses, as defined herein, would normally cease upon the first of the following: return to station, report inservice and ready for further operations, or commence response to another incident.

(f) *Fire* means any instance of destructive or uncontrolled burning, including scorch burns and explosions of combustible dusts or solids, flammable liquids and gases. The definition does not include the following except where they cause fire or occur as a consequence of fire: lightening or electrical discharge, explosion of steam boilers, hot water tanks, or other pressure vessels, explosions of ammunition or other detonating materials, overheating, mechanical failures, or breakdown of electrical equipment in power transmission facilities, and accidents involving ships, aircraft or other vehicles. Not included in this definition are any costs associated with false alarms, regardless of cause.

(g) *Fire service* means any organization in any State consisting of personnel, apparatus and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district.

(h) *Mutual aid agreement* means any reciprocal agreement whether written or oral between a Federal agency and the claimant fire service, or its parent jurisdiction, for the purpose of providing fire protection for the property of the United States upon which the fire which gave rise to the claim occurred and for other property for which the claimant normally provides fire protection. Such agreement must be primarily one of service rendered for service, or must be entered into under 42 U.S.C. 1856-1856d. Not included are all other agreements and contracts, particularly those in

which the intent of the parties is that the United States pays for fire protection.

(i) *FEMA* means the Federal Emergency Management Agency.

(j) *Over and above normal operating expenses* means costs, losses and expenses which are not ordinarily and necessarily associated with the maintenance, administration, and day-to-day operations of a fire service and which would not have been incurred absent the fire out of which the claim arises.

(k) *Payments to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question* means any Federal monies, or the value of services, including those made available through categorical or block grants, contracts, mutual aid agreements, taxes, and payments in lieu of taxes which the United States has paid to the fire service or its parent jurisdiction for fire protection and firefighting services. Such payments will be determined on the basis of the term of the arrangement, or if no such term is discernible, on the basis of the Federal fiscal year in which the fire occurred.

(l) *Property which is under the jurisdiction of the United States* means real property and Federal improvements thereon and appurtenances thereto in which the United States holds legal fee simple title. This excludes Federal leasehold interests. This likewise excludes Federal personal property on land in which the United States does not hold fee simple title.

(m) *State* means any State, of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Subpart B—Submission, Determination, Appeal

§ 151.11 Submission of claims.

Any fire service in any State which believes it has a claim(s) cognizable under section 11 shall submit its claim(s) in writing within 90 days of the occurrence of the fire(s) for which a claim(s) is made except that if the fire(s) occurred between October 29, 1974 and the effective date of these regulations, the claim(s) for those fires shall be submitted within 6 months of that effective date. If the fire is of such duration that the claimant desires to submit a claim before its conclusion, it may do so, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred. Claims shall be submitted to the Director, FEMA, Washington, D.C. 20472. Each claim shall include the following information:

(a) Name, address, jurisdiction and nature (volunteer, private, municipal, etc.) of claimant's fire service organization;

(b) Name, title, address and telephone number of individual authorized by the claimant fire service to make this claim in its behalf;

(c) Name and telephone number of Federal employee familiar with the facts of the event and the name and address of the Federal agency having jurisdiction over the property on which the fire occurred;

(d) Location of fire (within building, land area or complex);

(e) Description of property burned (contents and/or structure, area, or natural resources);

(f) Proof of authority to fight the fire (source of alarm, whether fire service was requested by responsible Federal official or whether such an official accepted the assistance when offered) and time of alarm and proof that the costs were reasonable;

(g) Personnel and equipment committed to fighting the fire (type of equipment and number of items);

(h) Copy of fire report;

(i) Itemized list of direct expenses (e.g., hours of equipment operation, fuel costs, consumables, overtime pay and wages for any specially hired personnel) and direct losses (e.g., damaged or destroyed equipment, to include purchase cost, estimate of the cost of repairs, statement of depreciated value immediately preceding and subsequent to the damage or destruction and the extent of insurance coverage) actually incurred in fighting the fire. A statement should be included explaining why each such expense or loss is considered by the claimant not to be normal operating cost, or to be in excess of normal operating costs;

(j) Such other information or documentation as the Director considers relevant to those considerations to be made in determining the amount authorized for payment, as set forth in § 151.12 of these regulations;

(k) Signed and sworn statement be authorized official of claimant fire service organization that the information and documentation provided in support of the claim are true and acurate to the best of his/her knowledge and belief; and

(l) Source and amount of any payments received or to be received for the fiscal year in which the fire occurred, including taxes or payments in lieu of taxes and including all monies received or receivable from the United states through any program or agreement including categorical or block grants, and contracts, by the claimant fire service or its parent jurisdiction for the support of fire services on the property on which the fire occurred. If this information is available when the claim is submitted, it should accompany the claim. If it is not, the information should be submitted as soon as practicable, but no later than 15 days after the end of the Federal fiscal year in which the fire occurred.

§ 151.12 Determination of amount authorized for payment.

(a) The Director shall determine the amount to be paid on a claim (subject to payment by the Department of the Treasury). The amount to be paid is the total of eligible expenses, costs and losses under paragraph (a)(1) of this section which exceeds the amount of payments under paragraph (a)(2) of this section. The Director shall establish the reimbursable amount by determing:

(1) The extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim, i.e., the "amount of costs"; and

(2) What payments, if any, including taxes or payments in lieu of taxes, the fire service or its parent jurisdiction has received from the United States for the support of fire services on the property on which the fire occurred. The reimbursable amount is the amount, if any, by which the amount of costs, determined under paragraph (a)(1) of this section exceeds the amount of payments determined under paragraph (a)(2) of this section. Where more than one claim is filed the aggregate reimbursable amount is the amount by which the total amount of costs, determined under paragraph (a)(1) of this section exceed the amount of Federal payments (in the case of a mutual aid agreement—its terms or if none is determinable, the Federal fiscal year) determined under paragraph (a)(2) of this section.

(b) The Director will first determine the costs as contemplated in paragraph (a)(1) of this section. The Director will then notify the claimant as to that amount. The claimant must indicate within 30 days its acceptance or rejection of that amount.

(l) If the determination is accepted by the claimant, this will be the final and conclusive determination of the amount of costs by the claimant in conjunction

with the fire for which the claim is submitted.

(2) If the claimant rejects this amount, it must notify the Director, within 30 days, of its reasons for its rejection. Upon receipt of notification of rejection, the director shall reconsider his determination and notify the claimant of the results of the reconsideration. The amount determined on reconsideration will constitute the costs to be used by the Director in determining the reimbursable amount.

(c) Upon receipt of documentation from the claimant on the amount of payments the Federal Government has made for the support of fire services on the property in question, the Director will, following such verification or investigation as the Director may deem appropriate, calculate the full amount to be reimbursed under the section 11 formula as set forth in § 151.12(a). This calculation of the reimbursable amount is based upon the costs determined pursuant to § 151.12(b) and the documentation of Federal payments that the claimant submitted.

(d) The Director's determination of the reimbursable amount will be sent to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination made under § 151.12(a), (b) and (c), determine the amount authorized for payment, which shall be the amount actually available for payment from from any monies in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred. This shall be a sum no greater, although it may be less, than the reimbursable amount determined by the Director, FEMA, with respect to the claim under § 151.12(a), (b) and (c).

(e) Upon receipt of written notification from the claimant of its intention to accept the amount authorized as full settlement of the claim, accompanied by a properly executed document of release, the Director will forward the claim, a copy of the Director's determination and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount authorized.

(f) Subject to the discovery of additional material evidence, the Director may reconsider any determination in this section, whether or not made as his final determination.

§ 151.13 Reconsideration of amount authorized for payment.

(a) If the claimant elects to protest the amount authorized for payment, after the applicable procedures of §151.12 have been followed, it must within 30 days of receipt of notification of the amount authorized notify the Director in writing of its objections and set forth the reasons why the Director should reconsider the determination. The Director will upon notice of protest and receipt of additional evidence reconsider the determination of the amount of Federal payments under §151.12(a)(2) but not the determination of the amount of costs under §151.12(a)(1). The Director shall cause a reconsideration by the Secretary of the Treasury of the amount actually available and authorized for payment by the Treasury. The Director, upon receipt of the Secretary of the Treasury's reconsidered determination, will notify the claimant in writing of the amount authorized, upon reconsideration, for payment in full settlement of the claim.

(b) If the claimant elects to accept the amount authorized, upon reconsideration, for payment in full settlement of its claims, it must within 30 days (or a longer period of time acceptable to the Director) of its receipt of that determination notify the Director of its acceptance in writing accompanied by a properly executed document of release. Upon receipt of such notice and document of release, the Director will forward the claim, a copy of the Director's final determination, and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount of final authorization.

§ 151.14 Adjudication.

If the claimant, after written notice by the Director of the amount authorized for payment in full settlement of the claim and after all applicable procedures of §151.12 and § 151.13 have been followed elects to dispute the amount authorized, it may then initiate action in the United States Claims Court, which shall have jurisdiction to adjudicate the claim and enter judgment in accordance with section 11(d) of the Act.

Subpart C—Administration, Penalties

§ 151.21 [Reserved]

§ 151.22 Audits.

At the discretion of the Director, all claims submitted under section 11 of the Act and all records of the claimant will be subject to audit by the Director or his/her designee. In addition, the Comptroller General of the United States or his/her designee shall have access to all books and records of all claimants making claims under section 11.

§ 151.23 Penalties.

Claimant's officials or others who provide information or documentation under this Part are subject to, among other laws, the criminal penalties of Title 18 of the United States Code, Sections 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements and which provide for a fine of not more than $10,000 or imprisonment for not more than five years, or both. For such a violation, the person is likewise subject to the civil penalties set out in 31 U.S.C. 3729 and 3730.

Dated: October 27, 1983.

Louis O. Giuffrida,

Director.

[FR Doc. 83-29844 Filed 11-2-83; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 52, 53, 54, 63, and 162

[CGD 81-079]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME S, E, A and H Symbol Stamps for Power and Heating Boilers

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: In the Federal Register of August 18, 1983, (48 FR 37441) the Coast Guard proposed changes in boiler requirements. This notice extends the public comment period to January 3, 1984. The original closing date for public comments was October 3, 1983. This action has been taken in response to a request for additional time to review the proposed rules.

DATES: As discussed above, the public comment period has been extended to January 3, 1984.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44), (CGD 81-079), U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying between 8 a.m. and 5 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/44), Room, 4402, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be delivered to this address.

FOR FURTHER INFORMATION CONTACT:
Mr. Howard L. Hime, Office of Merchant Marine Safety, (202) 426–2160.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 81–079) and the specific section of the proposal to which each comment applies, and give the reason for the comment. The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make an oral presentation will aid the rulemaking process. If acknowledgement of receipt of a comment is desired, a stamped, self-addressed postcard or envelope must be enclosed.

Dated: October 25, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 83–29890 Filed 11–2–83; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 31004–196]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 83–27461 beginning on page 45806 in the issue of Friday, October 7, 1983, make the following corrections:

1. On page 45806, second column, twenty-eight lines from the bottom of the page, "54°35′ N. latitude" should have read "54°36′ N. latitude".

2. On page 45808, second column, § 611.93(c)(2)(ii)(C) in the list of coordinates, "52°48′ N. latitude, 170°10′ W. longitude" should have read "52°48′ N. latitude, 170°00′ W. longitude".

BILLING CODE 1505–01–M

Notices

Federal Register
Vol. 48, No. 214
Thursday, November 3, 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

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Intent to Reestablish an Advisory Board

Notice is hereby given that the Secretary of Agriculture intends to reestablish the Human Nutrition Board of Scientific Counselors. This Board is reestablished subsequent to the reorganization of Human Nutrition Research in the USDA Science and Education Agencies. The purpose of this Board is to review and advise the Department as to the scope and quality of the research carried out at the Human Nutrition Research Centers in Houston, Texas; Boston, Massachusetts; San Francisco, California; Grand Forks, North Dakota; and Beltsville, Maryland. Members will review the research activity of each center on site, and in addition will meet as a Board semiannually. The Board will prepare and submit to the Secretary of Agriculture annually a written report of its review which shall include its evaluation and recommendations.

It has been determined that the establishment of this Board is in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Mr. James T. Hall, Management Staff, Science and Education, Agricultural Research Service, USDA, Room 115, Bldg. 005, BARC–West, Beltsville, Maryland 20705 by November 18, 1983.

Done at Washington, D.C., the 28th day of October, 1983.

John J. Franke, Jr.,

Assistant Secretary, Administration.

[FR Doc. 83-29613 Filed 11-2-83; 8:45 am]

BILLING CODE 3410-03-M

Soil Conservation Service

Assiscunk Creek Park Recreation Development RC&D Measure, New Jersey; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Assiscunk Creek Park Recreation Development RC&D Measure, Burlington County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1205.

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

The measure concerns a plan for installing recreational facilities in Assiscunk Creek Park. The planned facilities include picnic shelters and tables, trails, a boat ramp and fishing pier, access roads, parking lots and associated service facilities. The park will provide needed water based recreation opportunities in a rapidly growing area.

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

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

(Catalog of Federal Domestic Assistance Program No. 10.901, resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 26, 1983.

Joseph C. Branco,

State Conservationist.

[FR Doc. 83-29601 Filed 11-2-83; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 PM to 5:00 PM, (the period from 1:00 to 2:00 will be closed to the public) on Tuesday, November 8, 1983, to take place in the Main Hall of the Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Main Avenue, SW., Washington, D.C. 20024.

Items to be considered are as follows: ATBCB Comments on Proposed Uniform Federal Accessibility Standard (UFAS); Report of the ATBCB to the President and Congress for FY 1983; Development of a 504 Regulation for ATBCB Programs and Activities; Semi-Annual Report by the Executive Director; ATBCB Contacts with Accessibility Related Organizations.

The meeting will be closed to the public during discussion of two additional agenda items: ATBCB Discretionary Funds for FY 1984 (1:00–2:00); and discussion of the last item on the agenda: Report by the Executive Director on the ATBCB Staff Reorganization (closed due to the personal nature of this item).

DATE: November 8, 1983, 1:00 pm–5:00 pm.

ADDRESS: Main Hall, Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Main Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Director of Public Information (202) 245–1591 (voice or TDD).

Committee meetings of the ATBCB will be held on Monday, November 7 and Tuesday morning, November 8, in the Hubert Humphrey Building. Contact Larry Allison, Director of Public Information (202) 245–1591 (voice or TDD), for further information.

Wm. Bradford Reynolds,

Chairperson.

[FR Doc. 83-29805 Filed 11-2-83; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council, established by Section 3022 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established Plan Maintenance Teams for Fishery Management Plans initiated by the Council.

The Plan Maintenance Teams for the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan and Gulf of Alaska Groundfish Fishery Management Plan will hold Team meetings at the Northwest and Alaska Fisheries Center, 2725 Montlake Blvd. E., Seattle, Washington, on November 15, 16, 17, 1983. The purpose of the meetings is to review groundfish stock assessments, formulate recommendations and alternatives for the 1984 total allowable catches and optimum yields, consideer amounts of groundfish required for the 1984 U.S. groundfish fisheries, prepare an amendment for emergency closure authority for conservation reasons, and consider an amendment to revise the groundfish management measures in the Gulf of Alaska. Plan Team meetings are open to the public and may be shortened or lengthened as necessary. The meetings will begin at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jim Branson, Executive Director, North Pacific Fishery Management Council, P.O Box 103136, Anchorage, Alaska 99510.

Dated: October, 28, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-29871 Filed 11-2-83; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a Halibut Workgroup to develop management objectives and possible management options for presentation to the Council.

The Halibut Workgroup will meet at 9:00 a.m. on Thursday, November 17, 1983 in the Conference Room of the Council offices at 605 W. 4th Avenue, Anchorage, Alaska. The purpose of the meeting is to draft a moratorium on new entry into the halibut fishery. This draft will be presented to the Council at its meeting on December 7–8, 1983.

This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ron W. Miller, Special Advisor, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

Dated: October 28, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-29872 Filed 11-2-83; 8:45 am]

BILLING CODE 3510-22-M

New North American Vertical Datum of 1988, Reference for the National Geodetic Vertical Control Network

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This notice serves as official notification of the establishment of a new Datum to which the geodetic height (elevation) values for the National Geodetic Vertical Control Network will be referenced. The new Datum shall be known as the "North American Vertical Datum of 1988," and will be referred to as "NAVD of 1988," or "NAVD 88." The North American Vertical Datum of 1988 will replace the present Datum which is known as the "National Geodetic Vertical Datum of 1929"; also called "NGVD of 1929," or "NGVD 29."

The National Geodetic Survey Division, National Ocean Service, NOAA, is in the process of redefining the existing Datum and readjusting the National Geodetic Vertical Control Network. The end result will be improved values of geodetic heights for all published National Geodetic Survey vertical control points (bench marks). Completion is scheduled for 1988. Until then, the published height values will continue to be referenced to the National Geodetic Vertical Datum of 1929.

FOR FURTHER INFORMATION CONTACT: Charles T. Whalen, National Geodetic Survey Division, National Ocean Service, NOAA, Rockville, Maryland 20852, telephone (301) 443–8567.

Date: October 26, 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services.

[FR Doc. 83-29833 Filed 11-2-83; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

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

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

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

Department of Agriculture

SN 6–509,091 Shielded Sniffing Device

Department of the Air Force

SN 6-195,693 (4,392,775) Flat Workpiece Pickup
SN 6-201,860 (4,392,709) Method of Manufacturing Holographic Elements for Fiber and Integrated Optic Systems
SN 6-232,094 (4,392,624) Implanted Boundary Layer Trip
SN 6-283,245 (4,395,469) Low Pressure Nickel Hydrogen Battery
SN 6-300,761 (4,391,660) Copper Containing Ballistic Additives
SN 6-300,762 (4,395,684) R.F. Primed Plasma Limiter for Radar Receiver Protector
SN 6-307,347 (4,393,198) Copolymers from Octafluoronaphthalene
SN 6-308,973 (4,394,223) Tin and Gold Plating Process
SN 6-368,785 (4,393,997) Removable Secondary Aircraft Fuel Enclosure
SN 6-387,580 (4,393,101) Diethynylbenzene-Ethynylpyrene Copolymers

Department of the Army

SN 4-578,938 (4,354,192) Radio Ranging
SN 5-953,292 (4,369,811) Null Balancing for Fluidic Sensors and Amplifiers
SN 6-074,634 (4,357,713) Method and Apparatus for Reduction of Modal Noise in Fiber Optic Systems
SN 6-111,738 (4,373,553) Broad Band Flueric Amplifier
SN 6-133,735 (4,335,655) Method and Apparatus for Detonating Explosive in Response to Detonation of Remote Explosive
SN 6-142,548 (4,362,106) Flow Deflector for Air Driven Power Supply
SN 6-153,461 (4,350,315) Device to De-Spin Objects with Very High Spin
SN 6-158,556 (4,345,460) Multi-Caliber Projectile Soft Recovery System
SN 6-169,004 (4,341,158) Apparatus for Eliminating Power Source Rise Time Effects in a Time Fuze System
SN 6-175,543 (4,367,474) Frequency-Agile Polarization Diverse Microstrip Antennas and Frequency Scanned Arrays
SN 6-176,319 (4,348,649) Microwave Power Pulse Generator
SN 6-198,673 (4,379,296) Selectable-Mode Microstrip Antenna and Selectable-Mode Microstrip Antenna Arrays
SN 6-216,232 (4,375,082) High Speed Rectangle Function Generator
SN 6-217,881 (4,381,002) Fluidic-Controlled Oxygen Intrermittent Demand Flow Device
SN 6-230,177 (4,360,896) Write Mode Circuitry for Photovoltaic Ferroelectric Memory Cell
SN 6-278,263 (4,382,678) Measuring of Feature for Photo Interpretation
SN 6-290,138 (4,392,348) Device for Bleeding Motor Gases Thru Motor Pole Piece
SN 6-311,368 (4,385,055) 2-Acetyl-and 2-Propionylpyridine Thiosemicarbazones as Antimalarials
SN 6-316,574 (4,393,048) Protective Gel Composition for Wounds
SN 6-316,575 (4,391,799) Protective Gel Composition for Treating White Phosphorus Burn Wounds

Department of Health and Human Services

SN 6-515,169 Automated System for Determining the Molecular Weight and/or Concentration of Macromolecules Via Sedimentation Equilibrium

[FR Doc. 83-29836 Filed 11-2-83; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 27, 1983.

The USAF Scientific Advisory Board Ad Hoc Committee for the Assessment of The Development of Prophylactic/Antidote Drugs for Use Against Chemical Agents will hold meetings on November 28–30 and December 1, 1983, from 8:30 am to 5 pm each day at the ANSER Bldg, 400 Army-Navy Drive, Arlington, VA.

The Committee will review and revise the first draft of their report to the Air Force.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-29885 Filed 11-2-83; 8:45 am]
BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lower Ohio River Navigation Project—Cumberland River to Mouth

AGENCY: Army Corps of Engineers, Louisville District, DOD.

ACTION: Updated notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The Louisville District is preparing a Feasibility Report to determine waterway transportation needs on the Lower Ohio River from the Cumberland River (Mile 920.5) to the Mississippi River (Mile 981.5). A Notice of Intent to prepare a DEIS for this study effort was previously published in the **Federal Register** on May 15, 1980 (FR 32037, Vol. 48, No. 96). A number of alternatives are being investigated that will allow the continued navigational use of the Ohio River. Structural measures which are being considered include the rehabilitation and reconstruction of the existing Locks and Dams 52 and 53 and the replacement of these structures with a single locks and dam facility downstream of Locks and Dam 53 near Olmsted, Illinois.

As indicated in the prior Notice of Intent, the DEIS will address the effects of alternative measures considered as well as those of the recommended plan. The DEIS will address a variety of issues, including but not limited to water quality, terrestrial and aquatic flora and fauna, cultural resources, land use, transportation, and socioeconomics as they would relate to the construction and operation of the recommended plan.

A public meeting concerning the Lower Ohio River Navigation Project was held on May 24, 1979 at Paducah, Kentucky. No additional public scoping meeting is planned. Coordination with various Federal, state, and local agencies will continue to identify significant issues to be discussed in the DEIS. The Louisville District estimates that the DEIS will be available for public review on or before July 1, 1984. An additional public meeting will be held following the release of the DEIS.

ADDRESS: Questions regarding the proposed action and the DEIS should be directed to Mr. David J. Weyer, Chief, Navigation Planning Support Center, or Mr. Terry S. Siemsen, Environmental Specialist, Planning Division, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201 Telephone: 502–582–5641.

Dwayne G. Lee,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 83-29833 Filed 11-2-83; 8:45 am]
BILLING CODE 3710-JB-M

Department of the Navy

Final Notice of Decision To Locate the West Coast Landing Craft Air Cushion (LCAC) Operational Complex at Cockleburr Mesa on the Marine Corps Base, Camp Pendleton, California

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1505.2 of Title 40 Code of Federal Regulations), the Department of the Navy announces its decision to locate the west coast Landing Craft Air Cushion (LCAC) operational complex at Cockleburr Mesa on the Marine Corps Base, Camp Pendleton, California. The Draft and Final Environmental Impact Statements for this project were filed with the Environmental Protection Agency and the public on August 23, 1982, and January 21, 1983, respectively.

It is the opinion of the Department of the Navy that environmental impacts associated with the project can be minimized by implementing mitigation measures that are incorporated within the FEIS. In addition, however, the following mitigation/enhancement measures will be incorporated into the project as a result of consultation with the United States Fish and Wildlife Service subsequent to filing the FEIS:

As part of the vernal pool mitigation program, all vernal pools on Cockleburr Mesa destroyed by base development shall be replaced on a one-for-one basis with new vernal pools.

Implement portions of the *Santa Margarita River Estuary Resources Values and Management Recommendations—July, 1981* prepared by the United States Fish and Wildlife Service for the Marine Corps Base, Camp Pendleton. Specifically, the following construction will be accomplished:

Mechanically open the mouth of the Santa Margarita River estuary during commencement of restoration activities and monitor attendant effects. Complete four excavations (as described on pages 129–130 of the Management Recommendations) to increase the tidal prism, and use the excavated material to create two 0.25 acre least tern nesting islands. The two channel inlets to the main flow of the river will also be deepened.

The Department of the Navy recognizes the potential for conflicts with federally listed endangered species and commits to review operational procedures within the context of formal consultation in the future if monitoring reveals an effect on endangered species.

Dated: October 28, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83-29785 Filed 11-2-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of the Secretary

International Atomic Energy Agreements; Proposed Subsequent Arrangement; International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of approximately 12,896 grams of uranium, enriched to approximately 19.9% in the isotope U-235, for use as fuel in the TRIGA Mark I research reactor, at Rabat, Morocco. The supply of this material is to be approved pursuant to an IAEA project and supply agreement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 28, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-29821 Filed 11-2-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-83-026; OFP Case No. 55376-9241-20-24]

Petition for Exemption and Availability of Certification; Nekoosa Papers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Nekoosa Papers, Inc. for its Ashdown, Arkansas, facility.

SUMMARY: On September 27, 1983, Nekoosa Papers, Inc. (Nekoosa), a subsidiary of Great Northern Nekoosa Corporation, Port Edwards, Wisconsin, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for a package boiler (hereafter referred to as Ashdown 2) at its Ashdown, Arkansas, pulp and paper mill facility. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI). Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

Ashdown 2 is rated at 150,000 pounds of steam per hour and operated at 850 psig. Together with five existing boilers, it will feed a common 850 psig steam header that drives two turbine generators. It is designed to burn natural gas or oil. At present, the net annual electric generation of the Ashdown cogeneration facility is used at the pulp and paper mill, and the resulting increase in electric power generated through the planned use of Ashdown 2 will be consumed on site. Accordingly, Ashdown 2 is a major fuel burning installation in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

Within thirty days of the receipt of the petition, ERA found it to be incomplete due to minor deficiencies and so notified Nekoosa. On October 18, 1983 additional data and information addressing the deficiencies were received from Nekoosa. ERA has determined that the amended petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file

containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before December 19, 1983. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA–FC–83–026 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Robert A. McCann, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–033, Washington, D.C. 20585, Phone (202) 252–1649

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B–235, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–2967.

SUPPLEMENTARY INFORMATION:

Nekoosa's Ashdown power complex consists of six boilers, one of which, Ashdown 2, is natural gas-fired, rated at 150,000 pounds of steam per hour, and operated at 850 psig. Ashdown 2 is currently leased by Nekoosa from A. F. Holman Boiler Works, Inc., Dallas, Texas. Its use in the past has been limited to operations during temporary emergency conditions at the plant. Accordingly, no exemption from the Title II prohibitions on the use of natural gas or oil in a new boiler MFBI has been required heretofore, although Ashdown 2 is, for purposes of FUA, a new MFBI. Nekossa's current plans, however, call for the future use of Ashdown 2 as a boiler unit component in the congeneration facility, with its present functions to be assumed by another existing package boiler unit currently at the site. Accordingly, Kekoosa has petitioned ERA for a cogeneration exemption that would permit Ashdown 2 to operate in the future with natural gas or oil as its primary energy source.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Nekossa has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of Ashdown 2, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in Ashdown 2, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Nekoosa has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Nekoosa is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on October 27, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-29820 Filed 11-2-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–FC–83–015; OFP Case No. 68010–9233–21–24]

Powerplant and Industrial Fuel Use Prohibitions; Turbo-Resources

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Turbo-Resources exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On July 8, 1983, Turbo-Resources, Santa Monica, Calif., filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.)* ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981). Criteria governing the cogeneration exemption are contained in 10 CFR 503.37.

Turbo-Resources seeks an exemption for a proposed powerplant consisting of (1) a simple cycle turbine generator capable of using natural gas or .25% sulfur distillate oil to produce electricity, and (2) a supplementary-fired waste heat recovery system to generate process steam and heat at the Witco Chemical Corporation's (Witco) Oildale, California, refinery. It is expected that virtually all of the net annual electric power produced by the cogenerator will be sold to the Pacific Gas & Electric Company (PG&E), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. Witco will operate the facility for Turbo-Resources in accordance with the provisions of an agreement between Witco and Turbo-Resources.

Pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby grants a permanent cogeneration exemption for

Turbo-Resources' afore-described powerplant. The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: In accordance with section 702(a) of FUA, this Order shall take effect on January 3, 1984.

The public file containing a copy of this Order as well as other documents and supporting materials on this proceeding are available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-235, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: Turbo-Resources proposes to install a cogeneration system at Witco's Oildale, California refinery which will (1) generate electrical power for sale to PG&E, and (2) produce steam and heat to meet the Witco refinery's process requirements. The proposed cogeneration system will be operated by Witco and owned by Turbo-Resources. The system will consist of a simple cycle gas turbine generator which will produce electric power and a supplementary-fired waste heat recovery system which will produce steam and provide process heat for Witco's use in the refinery process.

Turbo-Resources expects to sell virtually all of the net annual electric power generation to PG&E. The sale of in excess of 50 percent of the facility's net annual electric power-generation causes it to be classified as an electric powerplant under FUA (10 CFR 500.2). It is therefore subject to the Title II construction and fuel use prohibitions contained in the Act.

Pursuant to 10 CFR 503.37(a)(1), Turbo-Resources certified that the natural gas or oil to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and that the use of mixtures is not feasible, as required under 10 CFR 503.9.

Documentary evidence submitted by Turbo-Resources in support of its petition under 10 CFR 503.37(a)(1) includes: (1) The duly executed certifications required under the subparagraph; (2) exhibits containing the basis for the certification, including supporting factual and analytical materials; and (3) an environmental impact analysis, as required under 10 CFR 503.13(a).

After review of Turbo-Resources environmental impact analysis and other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

In accordance with 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to Turbo-Resources in the **Federal Register** on August 15, 1983, (48 FR 36875), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the petition to the Environmental Protection Agency for comments. During the 45-day public comment period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on September 29, 1983. No comments were received and no hearing was requested.

Decision and Order

Based upon the entire record of this proceeding, ERA has determined that Turbo-Resources has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1) and, pursuant to section 212(c) of FUA, ERA hereby grants Turbo-Resources a permanent cogeneration exemption for the proposed powerplant to be located at Witco Chemical Corporation's Oildale, California, refinery.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this Order may petition for judicial review thereof at any time before the 60th day following the publication of this Order in the **Federal Register.**

Issued in Washington, D.C., on October 27, 1983.

Robert L. Davies,

Director, Fuels Conversion Division, Office of Fuels Programs, Economic regulatory Administration.

[FR Doc. 83-29819 Filed 11-2-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ID-2073-000]

Margaret M. Stapleton; Application

October 28, 1983.

The filing individual submits the following:

Take notice that on October 20, 1983, Margaret M. Stapleton filed a request for a determination that the interlock is not jurisdictional, or, alternatively an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Eastern Edison Company
Second Vice President—John Hancock Mutual Life Insurance Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 November 22, 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. 83-29795 Filed 11-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-4-000]

Minnesota Power & Light Co.; Application

October 28, 1983.

Take notice that on October 21, 1983 Minnesota Power & Light Company ("MP&L") tendered for filing an "Application For Sale, Lease Or Other Disposition, Merger Or Consolidation Of Facilities, Or For Purchase Or Acquisition Of Securities Of A Public Utility."

MP&L states that this Application is being made for the Commission's approval of the disposition of facilities owned by MP&L by sale of a portion of an electric substation and related 23 kV distribution facilities to the City. The total consideration is $137,838.30.

MP&L further states that the facilities being transferred are a portion of the 115/23 kV Hibbing Substation near the City of Hibbing, St. Louis County, Minnesota. Also included are 23 kV electric distribution feeders.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 November 28, 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. 83-29794 Filed 11-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-43-000]

New England Power Pool; Filing

October 27, 1983.

The filing Company submits the following:

Take notice that on October 24, 1983, the New England Power Pool (NEPOOL) tendered for filing an Agreement Amending New England Power Pool Agreement (Amendment), dated as of October 1, 1983, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971.

NEPOOL states that the Amendment changes Sections 5.5, 6.2, and 10.1 of the NEPOOL Agreement to (1) liberalize procedures for proxy voting on the Management Committee and Executive Committee, and (2) to permit generating and transmission facilities determined by the Management Committee to be needed for use by Participants in meeting the pool's reliability standards and other objectives to be formally designated as "pool-planned," although such facilities are owned by affiliates of Participants or other persons who are not themselves Participants.

NEPOOL requests an effective date of November 15, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 November 8, 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. 83-29796 Filed 11-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-14-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

October 28, 1983.

Take notice that on October 24, 1982, Northwest Central Pipeline Corporation (Northwest Central) tendered for filing Third Revised Sheet No. 6; First Revised Sheet Nos. 77 through 80 and Second Revised Sheet No. 81; and, Original Sheet Nos. 96 through 99 to Original Volume No. 1 and, First Revised Sheet No. 2A, Second Revised Sheet No. 2B and Original Sheet No. 2C; and Second Revised Sheet No. 91 and Second Revised Sheet No. 219 to orginal Volume No. 2 of its FERC Gas Tariff. The proposed effective date of these revised tariff sheets is November 23, 1983.

Northwest Central states that the filing proposes an increase above its previously filed rates which reflects an increase in revenues of $19,615,441 inclusive of gathering services, based on the test period (the twelve months ended July 31, 1983), adjusted for known changes through April 30, 1984). Northwest Central states that the increased rates are required to reflect an overall rate of return of 14.91 percent; increases in prepayments for gas; and, increases in operating expenses including wages, benefits and administrative expenses.

Northwest Central proposes revisions to Article 21 of the General Terms and Conditions to Original Volume No. 1 of its FERC Gas Tariff, as set forth in First Revised Sheet Nos. 77 through 81, to conform Northwest Central's Purchased Gas Adjustment tariff provisions to a sales volume basis methodology.

Northwest Central states that Third Revised Tariff Sheet No. 6 also includes a column for rate adjustments pursuant to a prepayment rate adjustment provision proposed as Article 25 of the General Terms and Conditions of Northwest Central's FERC Gas Tariff, Original Sheet Nos. 96 through 99.

Northwest Central also states that First Revised Sheet No. 2A, Second Revised Sheet No. 2B and Original Sheet No. 2C reflect an increase in the presently filed interruptible transportation rate and certain revisions to the transportation rate schedule.

Northwest Central states that this filing was served on each of its customers and affected state commissions pursuant to section 154.16(b) of the Commission's Regulations.

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, NE., 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 November 14, 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. 83-29793 Filed 11-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-6-000]

Pacific Gas & Electric Co.; Order Granting Waivers in Part and Accepting Rate Schedule for Filing

Issued October 27, 1983.

On October 3, 1983, Pacific Gas & Electric Company (PG&E) tendered for filing as an initial rate schedule an executed contract (the Agreement) covering a variety of services to be rendered by PG&E to the City of Santa Clara, California (Santa Clara). At the same time PG&E and Santa Clara filed a joint motion asking that the Commission waive section 35.15 of its regulations to allow termination of service in

accordance with the terms of the Agreement.

The purpose of the Agreement is to allow Santa Clara to make better use of the geothermal generating capacity that it has recently constructed and put into commercial service in Sonoma County, California. The Agreement provides Santa Clara with firm transmission service. It also provides: (1) Partial requirements service to supplement Santa Clara's own power resources and such power resources as Santa Clara may obtain from other suppliers; (2) emergency power service; (3) maintenance power service; (4) short-term firm power service; (5) Geyers curtailment power service; (6) firm transmission service; (7) interruptible transmission service; and (8) reserve service. PG&E characterizes the rates for these services as initial rates. The Agreement also provides that PG&E will make available to Santa Clara the following services, subject to the appropriate terms and conditions of the Agreement: (1) curtailment power service; (2) station use service for Santa Clara projects; (3) power factor correction service; and (4) transmission leaseback service.

PG&E states that it and Santa Clara are anxious that the Agreement become effective at the earliest possible time. PG&E requests that the Commission waive the notice requirements of section 35.3 of the regulations and act as expeditiously as possibly, following the filing of the Agreement, to issue an order of acceptance. Section 9.3 of the Agreement provides that the Agreement shall become effective on the date it is permitted to become effective by the Commission.

PG&E states in its cover letter that the parties have agreed on a formula and mechanism for increasing the rates for all of the services covered by the Agreement, except for station use service. The effective date for the agreed-upon increase is to be January 1, 1984 or such other date as the California Public Utilities Commission (CPUC) may set for a general increase in PG&E's retail rates. The parties have also agreed to a formula and mechanism for a further increase in the rate levels for all of the services covered by the Agreement, except for station use service, to become effective January 1, 1985, or such other date as the CPUC may set as the effective date for a 1985 revenue enhancement adjustment to PG&E's retail rates.

The parties have also agreed to formulas and mechanisms for adjusting the rate levels for all services, except station use service, to reflect retail rate base adjustments authorized by the CPUC, including but not limited to recognition of the costs associated with PG&E's Diablo Canyon and Helms Creek generating units. The parties have agreed that this last rate adjustment is to coincide with the date that PG&E's retail rates are adjusted by the CPUC, should the CPUC act prior to January 1, 1986. The parties have agreed that the existing fuel cost adjustment mechanism currently applicable to Santa Clara shall remain unchanged. PG&E states that the rate agreement set out in Appendix A to the Agreement is almost identical to rate agreements filed in settlements in Docket Nos. ER81-679-000 and ER82-271-000.

PG&E further asserts that although the Agreement contains a provision for station service to the Santa Clara generating station at times when the facility is not in operation, PG&E regards this service as subject to the jurisdiction of the CPUC since the service to Santa Clara under the provision is not for resale.

PG&E asserts that the rates proposed in the filing reflect a normalization method of accounting in compliance with the applicable provisions of the Internal Revenue Code and § 35.25 of the Commission's regulations. PG&E asks that the Commission so find in its order dealing with PG&E's filing.

In their joint motion PG&E and Santa Clara seek waiver of section 35.15 of the regulations to allow section 9.4.1 of the Agreement to take effect. That section provides that termination can take place automatically, with no further regulatory filings, on three years written notice by either party. The joint motion also asks that the Commission grant authorization for termination of service under the terms of the agreement in its order accepting the agreement for filing. In the alternative, section 9.4.3 provides that Santa Clara will not oppose any regulatory filing required to terminate the Agreement.

Notice of the filing was published in the **Federal Register**,[1] with comments due on or before October 24, 1983. On October 17, 1983, Santa Clara filed a motion to intervene and request for expedited action. In support of the latter request, Santa Clara states that the NCPA Project No. 2 geothermal steam generating unit, in which Santa Clara has an ownership interest, is currently operational; however, absent the Agreement, Santa Clara has no contractual vehicle for transmission of the capacity and energy from the plant to Santa Clara's distribution system. As a result, Santa Clara states that it is suffering substantial economic harm on a daily basis until the Agreement is accepted for filing.

Santa Clara states in its motion that, although the parties have requested pregranted termination of service approval under section 9.4.1 of the Agreement, they have made alternative termination provisions under section 9.4.3. Thus, Santa Clara emphasizes in its latest motion that granting the joint motion for pregrant of termination approval is not a prerequisite to acceptance of the Agreement for filing.

Discussion

PG&E has filed cost support materials as justification for the rate levels initially set for the various types of service covered by the Agreement. A review of this material indicates that the rate levels initially provided appear to be cost justified. The Agreement and the resulting rates will therefore be accepted for filing and allowed to go into effect without suspension or refund obligation. The request of PG&E for waiver of section 35.3 of the regulations to allow the agreement to become effective on the date of issuance of this order is granted for good cause shown.

Concerning the Agreement's provisions linking changes in rates to the outcomes of various proceedings before the CPUC, PG&E is advised that Commission acceptance of the Agreement does not constitute preacceptance of such prospective rate adjustments; nor should such acceptance be considered in any way as binding upon the actions of the Commission with respect thereto. PG&E will be required to submit appropriate filings for each rate adjustment with the Commission for approval.

Regarding PG&E's request that the Commission find that the rates proposed in the filing reflect a normalization method of accounting in compliance with the applicable provisions of the Internal Revenue Code and section 35.24 of the Commission's regulations, our review of PG&E's submittals in this docket leads us to the conclusion that the proposed rates are based upon the tax normalization requirements provided for in the Economy Recovery Tax Act of 1981.

As noted, PG&E and Santa Clara have requested waiver of the notice of termination requirements of section 35.15. This regulation implements the notice provisions of section 205(d) of the Federal Power Act, since termination is a change in service for which notice is statutorily required. 18 CFR 2.4; *Florida Power & Light*, 3 FERC ¶61,081 at 61,231 (1978); *Nevada Power Company*, 1 FERC ¶63,004 (1976); *Pennsylvania Water &*

[1] 48 FR 48509 (Oct. 19, 1983).

Power Co., et al. v. *Federal Power Commission, et al.*, 343 U.S. 414, 422–424 (1952). The parties in effect request that we waive the notice requirement and specify that the termination shall take effect pursuant to the terms of the contract without further regulatory review.

In their request for "pregrant" of termination, we believe the parties have misapprehended the sequence of regulatory events needed to accomplish the objectives of their Agreement. Upon acceptance of the Agreement, PG&E will have on file a rate schedule effective through 2013. If either party gives notice of termination of service under the Agreement, the statute requires a filing to amend the rate schedule containing that term of service. Under section 9.4.3 of the Agreement Santa Clara has bound itself not to oppose a required filing to change the term of the rate schedule. Moreover, under section 9.4.1, as elaborated upon in the joint motion, Santa Clara has foreclosed itself from taking any service pursuant to the Agreement, or rate schedules or service arising under or related to the Agreement, after the end of the notice period. The latter undertaking, which is beyond our regulatory control, would effectively render the rate schedule ineffective at the completion of the three year notice period. The parties to the Agreement have made extremely clear their intentions to limit the duration of both the Agreement and of the service being provided under the Agreement.[2] Great weight would be given to the parties' clear intent. In addition, the three year notice provision of the Agreement itself should give both parties ample time in which to litigate the specifically reserved question of whether Santa Clara has an independent basis, totally apart from the Agreement, for receiving continued service.[3] Under these circumstances, the filings that would be necessary if notice were given would be largely clerical in nature, and any review by the Commission would have to recognize the rights and obligations then existing under the Agreement. The relief requested in the joint motion is therefore not necessary to accomplish the objectives of the Agreement.

Acceptance for filing of this Agreement does not constitute Commission approval of any service, rate, charge, classification, or rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against PG&E.

The Commission orders:

(A) PG&E's request for waiver of § 35.3 is hereby granted. The Agreement filed by PG&E is hereby accepted for filing to become effective, without suspension or hearing, on the date of issuance of this order.

(B) The joint request for waiver of § 35.15 is denied. Section 9.4 of the Agreement is accepted as discussed above. In the event that a notice of termination is given by one of the parties under section 9.4.1 of the Agreement, PG&E shall make a filing with the Commission, listing every rate schedule affected by the termination.

(C) Docket No. ER84–6–000 is hereby terminated.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–29797 Filed 11–2–83; 8:45 am]

BILLING CODE 6717–01–M

[2] We shall incorporate the Joint Motion by reference as part of the Agreement in order to make this intention completely clear.

[3] See § 9.4.1, page 64 of the Agreement, page 3 of the Joint Motion.

[Docket No. ER84–42–000]

Portland General Electric Co.; Filing

October 28, 1983.

The filing Company submits the following:

Take notice that on October 21, 1983, Portland General Electric Company (PGE) tendered for filing the written report regarding Average System Cost (ASC) prepared by the Bonneville Power Administration (BPA), the BPA's Average System Cost determination and the PGE ASC filing on which BPA's report is based. In accordance with the provisions of 18 CFR 35.13a(d)(5)(i) these documents are required to be filed with FERC within 15 working days of BPA's ASC determination. This determination was made on September 28, 1983.

Jurisdiction	Filed rate	Adjusted rate
Oregon	42.13 Mills/kWh	30.54 Mills/kWh

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 November 15, 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. 83–29792 Filed 11–2–83; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51479B; BH–FRL 2461–7]

Polycarboxylic Acid, Alkanolamine Salt; Premanufacture Notice, Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) PMN 83–1005, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on January 24, 1984.

FOR FURTHER INFORMATION CONTACT: Jane Talarico, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–217, 401 M St., SW., Washington, D.C. 20460, (202–382–3748).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On July 29, 1983, EPA received PMN 83–1005 for polycarboxylic acid, alkanolamine salt. The PMN substance will be imported for use as a ferrous metal corrosion inhibitor for water based fluids. The submitter of the PMN claimed its identity, chemical identification, and volume to be confidential business information. Notice of receipt of the PMN was published in the **Federal Register** of August 12, 1983 (48 FR 36647). The

original 90-day review period is scheduled to expire on October 28, 1983.

EPA's detailed analysis of the substance described in the PMN addressed the following: chemical analysis of the PMN substance, effects of human health, human exposure, import volume, environmental release, ecological effects, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Exposure to the PMN substance may result in adverse health effects, among which may be carcinogenicity.

2. During processing and use of the PMN substance, the potential exists for significant worker exposure.

Based on this analysis, EPA finds that there is a possibility that the substance submitted for review in PMN 83–1005 may be regulated under section 5 of TSCA. The Agency requires an extension of the review period to further investigate potential health effects and use conditions, to examine its regulatory options and to prepare the necessary documents, should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to January 24, 1984.

PMN 83–1005 is available for public inspection in Room E–107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Dated: October 24, 1983.

Joseph J. Merenda,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-29806 Filed 11-2-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of OMB No. 3067–0020.

Title: Application for Participation in the National Flood Insurance Program.

Abstract: To provide communities the opportunity to become eligible to participate in the National Flood Insurance Program.

Type of respondents: State or Local Governments.

Number of respondents: 300.

Burden hours: 1,200.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, 500 C St., SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building Washington, D.C. 20503.

Dated: October 28, 1983.

Walter A. Girstantas,

Assistant Associate Director, Administrative Support.

[FR Doc. 83-29846 Filed 11-2-83; 8:45 am]

BILLING CODE 6718-01-M

[Docket: FEMA-REP-3-WV-1]

Receipt of Radiological Emergency Response Plans

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plans.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local governments' plans, the State of West Virginia has submitted radiological emergency plans to the FEMA Regional office. These plans support nuclear power plants which impact on West Virginia and include the plan of Hancock County which is near the Duquesne Light Company's Beaver Valley Power Station located in Beaver County, Pennsylvania.

DATE: Plans received October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas M. Sherlock, Regional Director, FEMA Region III, 7th Floor, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for emergency response plans, FEMA has established a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350.8) "Review and Approval of State Radiological Emergency Plans and Preparedness," 48 FR 44338, the States Radiological Emergency Plan for the State of West Virginia was received by the Federal Emergency Management Agency Region III Office.

Included is the plan for Hancock County which is partially within the plume exposure pathway emergency planning zone of the nuclear plant.

Copies of the Plan are available for review at the FEMA Region III Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 575 pages in the document, reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Thomas M. Sherlock, Regional Director, at the above address within thirty days of this **Federal Register** Notice.

Dated: October 24, 1983.

Thomas M. Sherlock,

Regional Director, Region III.

[FR Doc. 83-29847 Filed 11-2-83; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-693-DR]

Major Disaster and Related Determinations; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–693–DR), dated October 26, 1983, and related determinations.

DATED: October 26, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of October 26, 1983, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and flooding, beginning on or about October 19, 1983, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 406(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The Counties, of Caddo, Canadian, Cleveland, Comanche, Garvin, Grady, Logan, McClain, Oklahoma and Pottawatomie for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718–02)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83–29848 Filed 11–2–83; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Compliance With Regulatory Flexibility Act

AGENCY: Federal Maritime Commission.

ACTION: Notice of revision of Ten-Year Schedule for Review of Rules.

SUMMARY: Pursuant to section 610 of the Regulatory Flexibility Act (Pub. L. 96–354), the Federal Maritime Commission hereby publishes notice of its revised schedule for review of Commission rules.

DATES: None.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202)523–5725.

SUPPLEMENTARY INFORMATION: Section 610 of the Regulatory Flexibility Act (Pub. L. 96–354) requires that each agency subject thereto publish in the **Federal Register** a plan for periodic review of its rules. Incorporated herein is the revised plan of the Federal Maritime Commission for FY 1984 through FY 1991. Any revision of this plan will likewise be published in the **Federal Register**

Francis C. Hurney,

Secretary.

Subject	Code	CFR	G.O.	Eff. date	Dkt. No.	Action	Eff. date	FR	CFR
Fiscal Year 1984									
Public Information	020	46 CFR 503	22	1967		Amended			
P.L. 92–463—Availability of Transcripts	020	46 CFR 530.8							
Filing of Documents and Confidentiality of Closed Commission Meetings	020	46 CFR 53016.		1962					
Terminal Lease Agreements	30	46 CFR 530.5		1967	83–38	Pending Comments.			
Free Time and Demurrage Charges on Import Property Applicable to All Common Carriers by Water.	60	46 CFR 526	8	1963		Projected 3rd Quarter.			
			35	1975					
Compromise, Assessment, Settlement, and Collection of Civil Penalties Under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.	11	46 CFR 505	30	1973		Projected 1st Quarter.			
Shippers' Requests and Complaints	30	46 CFR 527	14	1965		Projected 2nd Quarter.			
Fiscal Year 1985									
Admission, Withdrawal and Explusion Provisions of Steamship Conference Agreements	30	46 CFR 523	9	1964					
Filing of Tariffs by Terminal Barge Operators in Pacific Slope States	60	46 CFR 550	34	1975					
Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the U.S.	11	46 CFR 552	43	1980					
Fiscal Year 1986									
Rules Governing the Right of Independent Action in Agreements	30	46 CFR 529	6	1963					
Financial Reports by Common Carriers by Water in the Domestic Offshore Trades	60	46 CFR 512	11	1980					
Financial Exhibits and Schedules Non-vessel Operating Common Carriers in the Domestic Offshore Trades.	60	46 CFR 514	42	1980					
Implementation of the Right of Independent Action in Tariff Filing	30	46 CFR 14		1981					
Fiscal Year 1987									
Dual Rate Contract Systems in the Foreign Commerce of the U.S.	30	46 CFR 538	19	1966					
Audits and Auditing Procedures	60	46 CFR 513	21	1967					
Fiscal Year 1988									
Rules of Practice and Procedure	060	45 CFR 502	16	1965					
Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce	60	46 CFR 531	38	1977					
Procedures for Environmental Policy Analysis	025	46 CFR 547	45	1980					
Fiscal Year 1989									
Interest on Awards	030	46 CFR 530.15.							
Conference Agreement Provisions Relating to Concerted Activities (Minutes)	30	46 CFR 537	18	1966					
New and Initial Rates Conference Member	60	46 CFR 530.7		1967					
Bulk Cargo Loaded in Containers	60	46 CFR 530.15.		1982					

Subject	Code	CFR	G.O.	Eff. date	Dkt. No.	Action	Eff. date	FR	CFR
Fiscal Year 1990									
Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the U.S.	10	46 CFR 506	33	1975					
Exemption from Self-Policing Requirements	30	46 CFR 530.10.		1978					
Exemptions from Self-Policing Requirements	30	46 CFR 530.16.		1982					
Truck Detention at the Ports of New York	60	46 CFR 551	35	1975					
Fiscal Year 1991									
Licensing of Independent Ocean Freight Fowarders	40	46 CFR 510	4	1981					
Exemption of Non-Exclusive Trans-shipment Agreements from the Approval Requirements of Section 15, Shipping Act, 1916.	30	46 CFR 524	23	1968					
Exemption from Husbanding and Agency Agreements	30	46 CFR 520	46	1980					
Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the U.S.	60	46 CFR 536	13	1977					

[FR Doc. 83-29786 Filed 11-1-83; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Office of Policy and Management Systems

Agency Collection of Information Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice of existing collections of information.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve the collections of information identified below for the continued collection of data. GSA is required under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), to consider comments on collections of information that affect the public.

DATES: Comments on these collections must be submitted on or before November 28, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB (OMB), Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss on 703-696-5180.

SUPPLEMENTARY INFORMATION: 1. *Coverage.* The following information collections are necessary to monitor and evaluate program functions within GSA. The collections are listed by title, purpose, annual respondents, responses and burden hours.

a. *Presolicitation Notice and Response.* Firms wishing to participate in certain procurements are required to indicate their interest in advance of the issuance of a solicitation (537; 3,222; 215).

b. *Mistake in Bid.* Firms submitting bids containing mistakes are required to verify those bids or submit evidence of the mistake (810; 810; 405).

c. *Descriptive Literature.* Bidders are required to furnish information which shows the characteristics or construction of a product or explains its operation. This helps to determine before award whether the proposed products meet specifications and to establish exactly what the bidder proposes to furnish (535; 1,605; 268).

d. *Bid Sample Disposition Instructions.* Firms which are required to submit bid samples must provide instructions for disposition of the samples (535; 1,605; 268).

e. *Technical Proposal (2-Step).* Firms participating in two-step formal advertising are required to submit technical proposals for evaluation (30; 30; 240).

f. *Bid Labeling.* Bidders are required to seal and label bids to ensure protection prior to bid opening (4,050; 162,000; 2,754).

g. *Delivery Schedules.* Under certain circumstances, firms offering supplies or services may be required to propose delivery schedules (606; 9,090; 1,518).

h. *Bid/Offer Acceptance Period.* Firms proposing to sell supplies or services may request additional time for acceptance of offers (303; 9,090; 155).

i. *Bid, Performance, and Payment Bonds.* Under certain conditions, contractors are required to execute bonds for any construction contracts exceeding $25,000 (6,445; 10,700; 4,280).

j. *Type of Business.* Firms proposing to sell supplies or services are required to indicate their type of business to ensure that subsequent contracts are written properly (18,189; 90,945; 637).

2. *Obtaining copies of proposals.* A copy of these proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3004, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: October 25, 1983.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 83-29896 Filed 11-2-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Clinical Research Centers on Psychopathology of the Elderly

AGENCY: National Institute of Mental Health, ADAMH, HHS.

ACTION: Issuance of program announcement for clinical research centers on psychopathology of the elderly (CRC/PE)

SUMARY: The National Institute of Mental Health announces the availability of a special research grant announcement concerning Clinical Research Centers on Psychopathology of the Elderly. The awards will provide support to centers with access to elderly clinical populations for research studies on the mental disorders of later life. Support may be requested for up to 5 years. It is expected that the maximum support for each center will be $350,000 (direct costs) per year.

Receipt date of applications for FR 1984 funding: March 1, 1984.

For further information or a copy of the announcement, contact: Dr. Nancy E. Miller, Chief, Clinical Research Centers on Psychopathology of the Elderly, Center for Studies of the Mental Health of the Aging, Division of Prevention and Special Mental Health Programs, National Institute of Mental Health, Room 11C-03 Parklawn Building, 5600

Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1185.

Robert L. Trachtenberg,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83-29830 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Analytical Method for Total Organics on Charcoal; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: November 15, 1983.
Time: 1:00 p.m.–4:30 p.m.
Place: Conference Room B, 5555 Ridge Avenue, Cincinnati, Ohio 45213.
Purpose: To review and discuss the protocol for the project, "Analytical Method for Total Organics on Charcoal." The project seeks to improve the characterization of hydro-carbon mixtures obtained on charcoal-tube air samplers through the application of high-resolution gas chromatography and plasma emission detection.
Additional information may be obtained from: Alexander W. Teass, Ph.D., Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, Centers for Disease Control, Robert Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684–4233, Commercial: 513/684–4233.

Dated: October 28, 1983.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 83-29887 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-19-M

Epidemiologic Study of Specific Health Effects of Exposure to Chemicals; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: November 8, 1983.
Time: 9 a.m. to 4 p.m.
Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, OH 45213.
Purpose: To discuss the protocol for a study of medical and reproductive outcomes in persons with occupational and environmental exposue to chemicals.
Additional information may be obtained from: Lynne Moody, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, Robert Taft Laboratory, 4676 Columbia Parkway, Cincinnati, OH 45226. Telephones: FTS: 684–4481, Commercial: 513/684–4481.

Dated: October 27, 1983.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 83-29886 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 83N-0070]

Licensing of a Biological Monoclonal Antibody Product Prepared by Hybridoma Technology

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that any biological monoclonal antibody product prepared by hybridoma technology that is intended for in vivo use or for in vitro testing of a licensed biological product is a biological product, subject to licensure under the Public Health Service Act. In those instances where a licensed manufacturer of a final product intends to obtain partially processed monoclonal antibody from another establishment, that second establishment and its partially processed antibody also must be licensed.

FOR FURTHER INFORMATION CONTACT:

For general information: Albert Rothchild, National Center for Drugs and Biologics (HFN–813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

For licensing information: Donald Hill, National Center for Drugs and Biologics (HFN–825), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–5433.

SUPPLEMENTARY INFORMATION: A monoclonal antibody product prepared by hybridoma technology consist of homogeneous immunoglobulins all of which have identical structure and identical antibody reactivity. Hybridoma technology used in manufacturing monoclonal antibodies involves fusing a normal antibody-forming cell with a malignant cell (e.g., a myeloma cell) to create a continuously growing clone of hybrid antibody secreting cells, the hybridoma. Selected hybrid cells are then cloned and progated in the peritoneum of an animal (mouse) of in tissue culture where quantities of the epitope-specific monoclonal antibody are produced. Usually, the monoclonal antibody is separated from the ascitic fluid of the animal or the tissue culture medium, purified, and prepared for use as a final product. Monoclonal antibodies are highly specific and homogeneous and are, therefore, potentially valuable in the manufacture of a variety of in vivo products, e.g., tissue specific antibody labeled with a radioisotope or a drug, or neutralizing antibody to a drug, toxin, or microbe. Monoclonal antibodies also are used as the active components of in vitro diagnostic products, e.g., a blood banking reagent intended for the testing of a licensed biological product.

FDA is issuing this notice to advise interested persons of the licensing requirements for a monoclonal antibody product prepared by hybridoma technology that is intended either for in vivo use or for in vitro testing of a licensed biological product. Section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)) requires, in part, that any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, applicable to the prevention, treatment, or cure of diseases or injuries of humans must be propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license. A monoclonal antibody product is analogous to both an antitoxin and a therapeutic serum. Therfore, by definition, any monoclonal antibody product intended either for in vivo use or for in vitro testing testing of a licensed biological product is biological product and is subject to the licensing provisions of the Public Health Service Act. Accordingly, after the initial development of a hybridoma cell line, any manufacturing process for the preparation of a monoclonal antibody product intended either for in vivo use in human or for in vitro testing of a licensed biological product, must be performed at an establishment holding an approved license to manufacture the product. In those instances where the licensed manufacturer of the final product intends to obtain partially processed monoclonal antibody from another establishment, that second establishment and its partially processed monoclonal antibody also must be licensed. To ensure that a partially processed monoclonal antibody product is not misbranded, the label affixed to each container of such a product intended for further manufacturing into injectable products must contain the statement "Caution: For Manufacturing Use Only"; and the label for such a product intended for further manufacturing into noninjectable

products must contain the statement "Caution: For Use in Manufacturing Noninjectable Products Only". Manufacturers seeking licensure of a monoclonal antibody product must file license applications with the Office of Biologics, Licensing Branch (address above). The license application for either a partially processed or final monoclonal antibody product must include, among other information, the manufacturing methods, specifications, and controls that ensure the safety, purity, potency, and effectiveness of the final product. An in vivo monoclonal antibody product that is intended to be administered to humans presents a greater potential risk to health than an in vitro monoclonal antibody product that is not intended to be administered to humans. Accordingly, FDA's requirements may be more stringent for license approval for partially processed or final monoclonal antibody products intended for in vivo use that FDA's requirements for license approval for partially processed or final products intended for in vitro use. A monoclonal antibody product intended for use in vivo or in vitro that is undergoing development before marketing may be shipped in interstate commerce under the provisions of § 312.1(g) or § 312.9 (21 CFR 312.1(g) or 312.9), respectively.

If a licensed or unlicensed manufacturer of a partially processed or final monoclonal antibody product that is intended for use in vitro intends to market the product for use in vivo, FDA emphasizes that before marketing the monoclonal antibody product that is intended for use in vivo, the manufacturer must file with FDA a new license application for the partially processed bulk or final monoclonal antibody product.

Dated: October 26, 1983.

Mark Novitch,

Acting Commissoner of Food and Drugs.

[FR Doc. 83-29818 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0352]

Travenol Laboratories, Inc.; Premarket Approval of CPS-10™ Capillary Plasma Separator, TMP Regulator Set, Fenwal® PS-400 Plasma Separator Module, and Plasma Separation Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the CPS-10™ Capillary Plasma Separator, TMP Regulatory Set, Fenwal® PS-400 Plasma Separator Module, and Plasma Separation Kit sponsored by Travenol Laboratories, Inc., Deerfield, IL. After reviewing the recommendation of the Gastroenterology-Urology Device Section of the General Medical Devices Panel, FDA notified the sponsor that the application was approved because the devices had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 5, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 25, 1982, Travenol Laboratories, Inc., Deerfield, IL, submitted to FDA an application for premarket approval of the CPS-10™ Capillary Plasma Separator, TMP Regulator Set, Fenwal® PS-400 Plasma Separator Module, and Plasma Separation Kit indicated for use in therapeutic plasma exchange to remove circulating plasma components or protein bound toxins. The application was reviewed by the Gastroenterology-Urology Device Section of the General Medical Devices Panel, an FDA advisory committee, which recommened approval of the application for these devices for use in therapeutic plasma exchange to remove circulating plasma components or protein bound toxins. On October 7, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independnet advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1983, file with the Dockets Management Branch (address above), two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 27, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-29814 Filed 11-2-83; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Diabetes Advisory Board; Cancellation of Meeting

Notice of the meeting of the National Diabetes Advisory Board scheduled for November 10, 1983, 8:30 a.m. to 5:00 p.m., at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland, published in the Federal Register on October 28, 1983, (48 FR 49928) is hereby cancelled due to a conflict in the majority of the

member's schedules. This meeting will be rescheduled at a future date.

Dated: October 28, 1983.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83-29624 Filed 11-2-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Skokomish Indian Reservation, Washington; Resolution Amending the Skokomish Liquor Ordinance

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 18 U.S.C. 1161. I certify that Resolution No. 83-13 which amends the Skokomish Liquor Ordinance, which was published in the Federal Register on December 23, 1980, 45 FR 84873, was duly adopted by the Skokomish Tribal Council on May 16, 1983. The Skokomish Tribal Council has jurisdiction over the areas of Indian country within which this resolution will apply and it reads as follows:

Kenneth Smith,

Assistant Secretary—Indian Affairs.

Skokomish Tribal Council Resolution No. 83-13

Whereas, the Skokomish Tribal Council is the governing body of the Skokomish Indian Tribe pursuant to the Constitution and By-Laws of the Skokomish Indian Tribe, approved by the Secretary of the Interior March 17, 1980; and

Whereas, the Skokomish Tribal Council, on September 12, 1980, adopted and enacted the Skokomish Liquor Ordinance, which was duly approved by the Acting Deputy Assistant Secretary—Indian Affairs on December 17, 1980, and published in the Federal Register on December 23, 1980, in accordance with 18 U.S.C. Section 1161; and

Whereas, the Skokomish Tribal Council is empowered by Article V, Section 1(j) of the Constitution of the Skokomish Indian Tribe to enact tribal laws and ordinances, as needed, to achieve intended tribal purposes; and

Whereas, the Skokomish Tribe through Skokomish Indian Tribal Enterprises is undertaking the construction and management of a restaurant and the Skokomish Tribal Council has determined, based upon marketing projections by Skokomish Indian Tribal Enterprises that sales of alcoholic beverages by the drink is a necessary component of the financial success of the enterprise; and

Whereas, the Skokomish Tribal Council finds that the sale of alcoholic beverages by the drink can be best regulated by tribal licensing of tribal business enterprises wishing to sell such drinks; and

Be it resolved, that the Skokomish Tribal Council, acting in both its governing capacity and in its capacity as the Skokomish Indian Liquor Board pursuant to section 205(a) of the Skokomish Liquor Ordinance, hereby amends Sections 208, and 210(a)[5] of said ordinance as follows: (brackets indicate deletions and underlining indicates additions).

Section 208 Sales

A. *Only Tribal Sales Allowed.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Skokomish Indian Reservation, except at a tribal liquor store (or) *at a tribal business enterprise licensed pursuant to this section.*

b. *All Sales Cash.* All sales at tribal liquor stores shall be on a cash only basis and no credit shall be extended to any person, organization, or entity.

c. *All Sales for Personal Use.* All sales shall be for the personal use of the purchaser, and resale for profit of any alcoholic beverage at a tribal store and subsequent resale of that beverage for profit, whether in the original container or not, shall be a violation of this ordinance and the violator shall be subject to the penalties prescribed in Section 210(c).

d. *Tribal Property.* The entire stock of liquor and alcoholic beverages referred to under this ordinance shall remain tribal property, owned and possessed by the Skokomish Indian Tribe until sold.

e. *License for Sale by the Drink. There shall be a tribal retailer's license to sell alcoholic beverages by the individual glass for consumption on the premises. Such a license shall be issued only to a tribally operated business enterprise.*

Section 210 Illegal Activities

(a) *Violations.*

* * * * *

5. *Illegal Purchase of Liquor.* It shall be a violation of this ordinance for any person within the boundaries of the Skokomish Indian Reservation to buy liquor from any person other than at a properly authorized tribal liquor store (or) *at a tribal business enterprise licensed pursuant to Section 208(e).*

Certification

I, Lucy Schaefer, Chairperson of the Skokomish Tribal Council, do certify that the foregoing resolution was adopted at a meeting of the Skokomish Tribal Council held May 16, 1983, at which a quorum was present, by a vote of 4 for and 0 against.

Lucy A. Schaefer,

Chairperson, Skokomish Tribal Council.

[FR Doc. 83-29626 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[A-15985]

Order Providing for Opening of Public Lands; Arizona

October 28, 1983.

1. In Federal Register Volume 46, Number 25, Pages 11368–11369, dated February 6, 1981, approximately 11,808 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All the lands have been transferred to the State of Arizona with the exception of 880.00 acres, which have been deleted from the State's application and are described as follows:

T. 3 S., R. 4 W., GSR Mer., Arizona
Section 2: S½NW¼, SW¼.
T. 4 S., R. 4 W.,
Section 3: SE¼;
Section 10: E½;
Section 11: W½W½.

The areas described aggregate 880.00 acres in Maricopa County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–4774).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-29840 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[A-17000-0]

Order Providing for Opening of Pubic Lands; Arizona

October 28, 1983.

1. In Federal Register Volume 46, Number 195, pages 44953–49955, dated October 8, 1981, approximately 8,001 acres were segregated from entry because of application by the State of Arizona under the State Indemnity Selection Program. Segregation was for a period of two years and pursuant to 43 CFR 2091.2–6, effective August 27, 1981.

The State of Arizona has since withdrawn the State Indemnity Selection on these lands.

Lands involved are described as follows:

T. 3 S., R. 1 E., GSR Mer., Arizona
Section 4, Lots 1–4, incl., S½, S½N½;
Section 9, all;
Section 16, all;
Section 17, NE¼, S½;
Section 18, all;
Section 19, NW¼, S½;
Section 20, all;
Section 21, all;
Section 28, all;
Section 29, all;
Section 30, all;
Section 32, all;
Section 33, all;

The areas described aggregate 8,001.32 acres in Maricopa County.

2. Subject valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to inititate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–4774).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-29841 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Arizona, Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona, Safford District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Safford District Grazing Advisory Board will be held on Friday, December 9, 1983.

The meeting will begin at 9:00 a.m. in the Conference Room of the Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546.

The agenda for the meeting will include:

1. Update on grazing decisions;
2. Proposed policy and guidelines for Arizona's cooperative management agreement program;
3. Procedures for allottees to follow when requesting advisory board funds;
4. BLM management update;
5. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, December 8, 1983.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within Thirty (30) days following the meeting.

Dated: October 28, 1983.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 83-29836 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Boise District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Boise District, Idaho, Grazing Advisory Board meeting.

SUMMARY: In accordance with Pub. L. 92–483, the Federal Advisory Committee Act, and Pub. L. 94–579, the Federal Land Policy and Management Act,, notice is hereby given that the Boise District Grazing Advisory Board will meet November 29, 1983.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 4:00 p.m. in the main floor conference room of the BLM, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. The public is invited and a public comment period is scheduled from 2:00 p.m. to 3:00 p.m. Major topics for discussion are as follows:

—Maintenance of Echo Pipeline System
—FY–83 Status Report of District 8100 and 7120 Projects
—Maintenance of Range Improvements in WSAs
—Cooperative Management Agreement (CMA) Nomination Criteria.

FOR FURTHER INFORMATION CONTACT: Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

Kent Frandsen,

Acting District Manager.

October 17, 1983.

[FR Doc. 83-29843 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[C-4436]

Hearing on Proposed Withdrawal of National Forest Lands Near Woodland Park, Colorado

October 26, 1983.

Notice is hereby given that a public hearing will be held on Wednesday, December 14, 1983, at 7:00 p.m., at Centennial Hall, 200 So. Cascade Ave., Colorado Springs, Colorado, concerning the request by the Forest Service, U.S. Department of Agriculture, for withdrawal of 820.34 acres of forest land from mineral location and entry for protection of resource values. The lands proposed to be withdrawn are located in the Pike National Forest, Tps. 12 and 13 S., R. 68 W., Sixth Principal Meridian, and are a part of a scenic travel corridor

off of Highway 24 between Colorado Springs and Woodland Park, Colorado.

This application was filed in 1968 and closed to mineral location and entry under the mining laws (30 U.S.C. Ch. 2) subject to valid existing rights by notice published in the Federal Register August 7, 1968 (33 FR 11181), and amended January 21, 1977 (42 FR 3629). The land will continue to be closed to mineral location and entry through October 20, 1991, unless sooner terminated or extended by Administrative Action and published in the Federal Register. The Forest Service proposes that the land be withdrawn for a period of 50 years or the life of the Forest Management Plan.

The hearing will be open to attendance to all interested persons who desire to be heard on the subject. Those who desire to be heard in person and those who desire to submit written statements on this subject, should file notice thereof no later than December 2, 1983, with the State Director, Bureau of Land Management, 1037—20th Street, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 83-29839 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Filing of Plats of Survey

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., October 27, 1983.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel North (south boundary), a portion of the east and north boundaries, a portion of the subdivisional lines, and a portion of the subdivision of sections 7 and 18, and the survey of the subdivision of certain sections, T. 9 N., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 683, was accepted October 11, 1983.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 47 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 665, was accepted October 11, 1983.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the north boundary, T. 4 S., R. 73 W., a portion of the Ninth Guide Meridian West (west boundary, T. 3 S., R. 72 W.), the east boundary, T. 3 S., R. 74 W., a portion of the south boundary, T. 2 S., R. 73 W., and the NW¼ of section 11, a completion survey of the subdivisional lines, and the subdivision of section 11, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted October 13, 1983.

The plat representing the dependent resurvey of a portion of the south boundary, T. 3 S., R. 74 W., the east boundary, T. 3 S., R. 75 W., the south boundary, T. 2 S., R. 74 W., a portion of the subdivisional lines, and the completion survey of the subdivisional lines, T. 3 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 695, was accepted October 13, 1983.

The plat representing the survey of a Private Land Claim, Tract 37, T. 39 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group No. 681, was accepted October 11, 1983.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, T. 17 S., R. 67 W., Sixth Principal Meridian, Colorado, Group No. 609, was accepted October 11, 1983.

The plat representing the dependent resurvey of the east boundary, and a portion of the subdivisional lines, T. 17 S., R. 68 W., Sixth Principal Meridian, Colorado, Group No. 609, was accepted October 11, 1983.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037–20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 83-29829 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[W-61397]

Realty Action, Proposed Non-Competitive Sale of Public Land in Sweetwater County, Wyoming

October 27, 1983.

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value:

Sixth Principal Meridian, Wyoming

T 19 N., R. 96 W.
Section 18, SW¼NE¼NE¼, NE¼SE¾ NW¼NE¼, S½SE¼NW¼NE¼

The area described contains 17.5 acres in Sweetwater County.

The above described land is being offered as a direct non-competitive sale to Niels Hansen at the appraised fair market value of $1,750. As a final solution to a long standing, but inadvertent occupancy trespass, the sale would give Mr. Hansen title to the land upon which his ranch headquarters, consisting of a house and various ranch buildings, are situated. The sale would not affect access to or resource values on adjacent public land. Disposal by direct sale, rather than by public auction, would protect his equity in the improvements, secure his tenure on the land, and eliminate a hardship if he were compelled to remove or otherwise dispose of the improvements.

This land is located approximately 55 miles west of Rawlins, Wyoming. The property lies south of the railroad tracks at Tipton Station. Legal access is available along Sweetwater County Road 4–80.

Because of the existing improvements, the land is difficult and uneconomic to manage as part of the public land system, and is not suitable for management by another federal agency. The land is specifically identified in the Bureau planning system for disposal to Mr. Hansen, and Sweetwater County officials have been notified of the proposed sale. The public interest will be served by offering this land for sale.

Patent for this parcel, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary may prescribe. "All minerals" is defined as, but not limited to, metalliferous and non-metalliferous locatable minerals, leasable minerals such as oil, gas, coal, sodium, potassium, and geothermal resources, and salable minerals such as sand and gravel.

3. A right-of-way for public access across the existing road.

4. The proposed sale would be subject to all valid existing rights and reservations of record, including those rights granted by oil and gas lease W–68404.

Detailed information concerning the proposed sale, including planning documents, land report and environmental assessment, and mineral reports, is available at the Bureau of Land Management, Rawlins District Office, Divide Resource Area, 1300 Third Street, Rawlins, Wyoming 82301.

The proposed sale will not be held until 60 days after the date of this notice.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

David J. Walter,

District Manager.

[FR Doc. 83-29842 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[A-17000-A]

Arizona; Order Providing for Opening of Public Lands

October 28, 1983.

1. In **Federal Register** Volume 46, Number 131, Page 35561 dated July 9, 1981, approximately 21,869.33 acres were proposed as suitable for classification for transfer to the State of Arizona under the State Indemnity Selection Program. All the lands have been transferred to the State of Arizona with the exception of 850.00 acres, which have been deleted from the State's application and are described as follows:

T. 2 S., R. 1 E., GSR Mer., Arizona
Section 29: N½, NE¼SW¼, N½SW¼SW¼, SE¼NW¼SW¼, E½NE¼SW¼SW¼, N½SE¼SW¼, E½SW¼SE¼SW¼, SE¼SE¼SW¼, SE¼;
Section 30: NE¼NE¼, E½NE¼NW¼NE¼, NE¼SE¼NE¼, E½SE¼SE¼NE¼;
Section 32: N½NE¼, E½SW¼NE¼, E½NW¼SW¼NE¼, SE¼NE¼, NE¼NE¼NW¼, N½NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼, NE¼SE¼SE¼.

The areas described aggregate 850.00 acres in Maricopa County.

2. Subject to valid existing rights the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 will be opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on November 14, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and November 14, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, will vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquires concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602-261-4774).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-29799 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Nominations for Cooperative Management Agreements in the California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Nominations requested for outstanding livestock operations with grazing leases in the California Desert District for Cooperative Management Agreements.

SUMMARY: Nominations are requested by anyone knowledgeable of good stewards of public grazing leases in the California Desert District. These nominated will be screened to determine the most deserving stewards of public rangeland by the Grazing Advisory Board and the Desert Advisory Council. Those recommended by these two advisory groups will be offered the opportunity to enter into a written Cooperative Management Agreement with the Desert District.

The Cooperative Management Agreement allows the operator more flexibility in meeting multiple-use objectives for his grazing allotment, after the fact billing based on actual use, more assurance of long-term tenure, and an incentive for demonstrated good management. The operator must also agree to contribute toward and maintain range improvements, plus agree to meet specific long-term multiple-use objectives spelled out in the agreement.

Nominations will be accepted until November 30, 1983 from any interested party.

Dated: October 24, 1983.

Hugh Riecken,

Associate District Manager.

[FR Doc. 83-29800 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[C-36840 (Parcels 1 through 5, 7 through 12)]

Realty Action; Sale of Public Lands, Saguache County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value of each parcel.

NEW MEXICO PRINCIPAL MERIDIAN

Parcel no.	Legal description	Acreage
1	T.44 N., R.8 E., Sec. 6, SW¼NE¼, SE¼NW¼, NE¼SW¼	120.00
2	T.44 N., R.9 E., Sec. 14, NW¼	160.00
3	T.43 N., R.11 E., Sec. 11, NW¼SW¼	40.00
4	T.43 N., R.10 E., Sec. 12	
	Lot 1	0.97
	Lot 2	4.41
5	T.43 N., R.10 E., Sec. 14, SE¼NW¼	40.00
7	T.43 N., R.9 E., Sec. 12, NW¼SE¼	40.00
8	T.45 N., R.9 E., Sec. 13, E½NE¼	80.00
9	T.45 N., R.10 E., Sec. 18, E½NE¼	80.00
10	T.45 N., R.10 E., Sec. 21, W½SW¼	80.00
11	T.44 N., R.7 E., Sec. 30, Lot 2	40.96
12	T.44 N., R.7 E., Sec. 30, NE¼SE¼	40.00

The land has not been used for and is not required for any Federal purpose. The location and physical characteristics of each parcel make it difficult and uneconomical to manage as public lands. Disposal would not have any significant effect on resource values and would best serve the public interest.

The proposed sale will be consistent with the Bureau of Land Management land use plans. Disposal would not conflict with local planning and zoning. Each patent issued as the result of the proposed sale will be subject to all valid existing rights and reservations of record; and will contain a reservation to the United States for right-of-way for ditches and canals constructed by the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945); and all minerals will be reserved to the United States as required by Section 209(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Any patent issued for Parcel No. 1 will also be subject to those rights for an underground cable as have been granted to Mountain Bell under Right-of-Way Colorado 26395.

As a condition of sale of parcel No. 2, the successful bidder will be required to enter into an agreement with the existing grazing user which will preserve the grazing user's right to use the land for a two year period from the date of notification. The successful

bidder for Parcel No. 2 must enter into an agreement with Richard Weaver, Moffatt, CO 81143, the terms and conditions of which must be comparable to those contained in grazing lease No. CO-054-5127.

Parcel No. 10 will be offered at public auction by competitive bidding, and Parcels No. 1, 2, 3, 4, 7, 8, 9, and 11 will be offered by competitive bidding to contiguous land owners only.

Parcel No. 5 will be offered by direct sale to Youngblood and Curtis Ranches, Inc., and Parcel No. 12 will be offered by direct sale to Elk Mountain Springs Subdivision, Colatex Land Co., at the appraised fair market value. The public sale will be held at the Bureau of Land Management, San Luis Resource Area Office, 1921 State Avenue, Alamosa, Colorado 81101, at 1 PM, on December 21, 1983. Sealed bids will be accepted until 12 noon on the day of the sale. The sealed bids will be opened at 1 PM, followed by oral auction.

For further Information Contact: Detailed information concerning this sale, including bidding procedures and payment requirements as well as the planning documents and environmental assessment, is available for review in the San Luis Resource Area Office, BLM at 1921 State Avenue in Alamosa, Colorado 81101.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Canon City District Office, Bureau of Land Management, P.O. Box 311, Canon City, Colorado 81212. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 83-29802 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[I-18951]

Exchange of Public and Private Lands; Custer County, Idaho

October 25, 1983.

The United States has issued an exchange conveyance document to Frank and Christine Unquera, San Jose, California, for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 14 N., R. 23 E.,
Sec. 22, SW¼NW¼NW¼

T. 14 N., R. 21 E.,
Sec. 2, SE¼SE¼, N½SW¼SE¼,SE¼SW¼SE¼;
Sec. 11, N½NE¼NE¼, SE¼NE¼NE¼;
Sec. 12, N½SW¼NW¼, NE¼SW¼SW¼NW¼, SE¼SW¼NW¼, E½NE¼NW¼SW¼, NW¼NE¼NW¼SW¼, NW¼SW¼, NE¼SE¼SW¼, E½NW¼SE¼SW¼, E½SE¼SE¼SW¼, NW¼SE¼SE¼SW¼.

Comprising 212.5 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian, Idaho

T. 14 N., R. 21 E.,
Sec. 15, N½SW¼, SW¼SW¼, SE¼NW¼.

Comprising 160.00 acres of private land.

The purpose of this exchange was to acquire the non-Federal lands which have high value for recreation, wildlife and access to other Federal lands. The public interest was well served through completion of the exchange.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 83-29803 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[M 57738]

Montana; Notice of Conveyance of Public Land

October 27, 1983.

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of conveyance of public land in Phillips County, Montana.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976 (43 U.S.C. 1713 (1976)), the following described land was conveyed to Square Butte Grazing Association.

Principal Meridian, Montana

T. 24 N., R. 24 E.,
Sec. 26, NW¼NW¼;
Sec. 27, E½NE¼, NE¼SE¼, and N½SE¼NE¼.

Containing 180.00 acres.

The purpose of this notice is to inform State and local governmental officials and other interested parties of the conveyance of the land to Square Butte Grazing Association.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 83-29801 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[M59165]

Realty Action, Exchange of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands in Beaverhead County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T9S, R12W,
Sec. 9: SW¼SW¼, E½SE¼—120 acres;
Sec. 10: NE¼SW¼, W½SW¼—120 acres.
T10S, R12W,
Sec. 17: N½NE¼, E½NW¼—160 acres;
Sec. 18: Lot 1, NE¼NW¼—80 acres;
Sec. 19: Lot 1—38.37 acres.

Total acres—518.37.

In exchange for these lands, the Federal Government will acquire private land in Beaverhead County from Beaverhead Partnership, described as follows:

Principal Meridian Montana

T9S, R12W,
Sec. 9: W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼—240 acres.
T10S, R12W,
Sec. 4: Lots 3, 4, S½NW¼, N½SW¼—241.63 acres;
Sec. 5: Lot 1, SE¼NE¼—80.55 acres.
T10S, R13W,
Sec. 2: E½SW¼, SW¼SW¼—120 acres;
Sec. 11: NE¼NW¼—40 acres.

Total acres—722.18.

DATE: For a period of 45 days from the date of first publication of this Notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana, 59702. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of this department. Comments and other documentation concerning this action will be available at the above address during regular business hours.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to create a more manageable land pattern for public use and private ranching operations.

The exchange is consistent with the Bureau's planning system and has been discussed with Beaverhead County Commissioners. The public interest will

be well served by completing this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the final appraisal of the lands.

The terms and conditions applicable to the public lands to be exchanged are:

1. The reservation to the United States for ditches or canals.
2. The reservation to the United States of all minerals.
3. A perpetual, 20' wide buried telephone line right-of-way issued to Southern Montana Telephone Company under serial number M54589.
4. A perpetual, 100' wide road right-of-way issued to the Bureau of Land Management under serial number M15346.
5. A perpetual, 40' wide powerline right-of-way issued to the Vigilante Electric Cooperative, Inc. under serial number MO60078.
6. Three oil and gas leases under serial numbers M37309, M41526 and M37312.
7. An agricultural lease beginning November 1, 1981 and expiring October 31, 1984, issued to Beaverhead Partnership. This lease will be cancelled at such date the land are exchanged.

The terms and conditions applicable to the privately owned lands to be exchanged are:

1. A reservation of all minerals to Beaverhead Partnership and other parties of interest.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

The non-Federal lands described above are subject to prior Federal reserve minerals. The prior Federal interests are hereby segregated to the extent that such interest will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Detailed information concerning the exchange is available for review at the Butte District Office, 106 North Parkmont, Butte, Montana.

For a period of 45 days, interested parties may submit comments to the Butte Office, Bureau of Land Management, P.O. Box 3388, Butte, Montana, 59702.

Dated: October 25, 1983.

Jack A. McIntosh,

District Manager.

[FR Doc. 83-29825 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[F-14838-A]

Alaska Native Claims Selection

In accordance with departmental regulation 43 CFR 2650.7(d) notice is hereby given that the decision to issue conveyance to Bethel Native Corporation published in the **Federal Register** on September 20, 1983 is modified as to page 42871.

The time limits for filing an appeal is extended to December 5, 1983.

Copies can be obtained by contacting the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513.

Except as modified by this decision, the decision published September 20, 1983, stands as written.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-29683 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Wilderness Intensive Inventory; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision of the Interior Board of Land Appeals on appeals relating to four Wilderness Intensive Inventory Units in Colorado.

SUMMARY: In a decision announced on August 23, 1983, the Interior Board of Land Appeals (IBLA) affirmed the Colorado State Director's wilderness inventory decisions declaring that the Hells Canyon (CO-010-00N4B), Bangs Canyon (CO-070-130) and Gunnison River (CO-070-150A) inventory units were unsuitable as wilderness study areas. Accordingly, as of August 23, 1983, these three units are released from further wilderness review.

In the same decision, an appeal from the State Director's decision to eliminate lands on the western end of South Shale Ridge (CO-070-130) in the Initial Inventory was vacated and remanded.

In its decision on South Shale Ridge, IBLA directed that the Bureau of Land Management conduct an Intensive Inventory of approximately 3,200 acres on the unit's western end. This portion is then to be included with the remainder of the South Shale Ridge inventory unit and the entire area re-evaluated to determine its qualifications as a wilderness study area. A new decision will be released by the Colorado State Director in January 1984. During the course of this re-evaluation and until a final decision is reached, this unit will continue to be subject to the Bureau's interim wilderness management policy.

DATE: Public comments on the Intensive Inventory and re-evaluation of the South Shale Ridge unit are being solicited and should be submitted no later than December 2, 1983.

ADDRESS: Comments should be addressed to: District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Barry Tollefson, Wilderness Coordinator, Colorado State Office, (303) 837-3393.

Dated: October 26, 1983.

George C. Francis,

Colorado State Director.

[FR Doc. 83-29801 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Las Cruces District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Las Cruces District, Interior.

ACTION: Notice of meeting.

SUMMARY: Agenda.

DATE: December 7, 1983, 9:30 a.m.

ADDRESS: Media Center, New Mexico School for the Visually Handicapped, 1900 North White Sands Boulevard, Alamogordo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Daniel C. B. Rathbun, District Manager, Las Cruces District, Bureau of Land Management, P.O. Box 1420, Las Cruces, New Mexico 88004, Phone: (505) 524-8551.

SUPPLEMENTARY INFORMATION:

Agenda

1. Approval of minutes
2. Update on Wilderness Program
3. White Sands Resource Management Plan Issues and Objectives
4. Public Comment Period
5. Adjourn

The meeting will be open to the public and interested persons may make oral statements to the Council during an allotted time period beginning at 2 p.m. and lasting for at least one-half hour. The District Manager may establish a time for oral statements depending on the number of persons wishing to make statements. Anyone wishing to make an oral statement must notify the District

Manager, Bureau of Land Management, 317 North Main Street (P.O. Box 1420), Las Cruces, New Mexico 88004, by November 30, 1983.

Daniel C. B. Rathbun,

District Manager.

[FR Doc. 83-29892 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[N-1005, N-1005A]

Nevada; Classification Vacated; Correction

In the **Federal Register** Doc. 83-27548, published on pages 45105-06, on Tuesday, October 11, 1983, the following corrections are made:

On page 46105, column 3, under Goshute Canyon Natural Area T. 25 N., R. 63 E:

Change land description for sec. 9 to read: N½, SW¼, W½SE¼, NE¼SE¼;

On page 46105, column 3, under Blue Mass Canyon Scenic Area, T. 22 N., R. 69 E, sec. 31:

Omit duplication of E½SW¼.

On page 46106, column 1, at top, add:

Baker Archaeological Site

T. 14 N., R. 70 E.
Sec. 33, S½SE¼.

On page 46106, column 1, line 5:

Change "8,728 acres" to read "9,336.25 acres".

On page 46106, column 2, under T. 14 N., R. 70 E., sec. 33, S½SE¼ add the following:

T. 15 N., R. 67 E.
Sec. 21, All;
Sec. 22, All;
Sec. 23, NW¼, N½SW¼;
Sec. 27, N½, NW¼SE¼, N½SW¼, SW¼ SW¼;
Sec. 28, All;
Sec. 33, NE¼NE¼, W½E½, W½;
Sec. 34, NW¼NW¼.

On page 46106, column 2, delete lines 9 and 10.

On page 46106, column 2, paragraph beginning with "This area", change "1,360 acres" to read "4,480 acres."

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-29897 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[I-19668, A, B, C, D, and E]

Realty Action; Modification; Sale of Public Lands in Oneida County, Idaho, Known as the Malad Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document corrects a Notice of Realty Action (NORA) that appeared on page 45852 in the **Federal Register** of Friday, October 7, 1983 (48 FR 45852). The NORA is corrected as follows:

(1) The type of bidding listed in the table for Parcel E is changed from "Competitive" to "Modified."

(2) In the second paragraph of the Summary (column two), parcel "E" is added to the sentence allowing designated bidders to meet the high bid.

(3) At the end of the same paragraph is added, "The *designated bidder on parcel E is Andrew Chad Bybee* of Pleasantview, Idaho."

Dated: October 26, 1983.

Nick James Cozakos,

District Manager.

[FR Doc. 83-29894 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[M-58031(SD); M-58032(SD); M-58033(SD); M-58034(SD); M-58035(SD)]

Realty Action—Competitive Sale of Five Parcels of Public Land in Lyman County, South Dakota; Correction

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resources Area Office, Interior.

ACTION: Notice.

SUMMARY: The date set for competitive bid sale of public lands in Lyman County described below should be December 21, 1983. This corrects the date shown in the **Federal Register**, Volume 48, Page No. 48715, published October 20, 1983.

All other details of the sale were correct as published.

5th Principal Meridian

M-58031(SD)
T. 103 N., R. 75 W.,
Sec. 22, Lot 4. Containing 28.70 acres
M-58032(SD)
T. 103 N., R. 73 W.,
Sec. 5, S½NE¼. Containing 80.00 acres
M-58033(SD)
T. 103 N., R. 73 W.,
Sec. 5, NE¼NE¼
T. 104 N., R. 73 W.,
Sec. 32, SE¼SE¼. Containing 80.00 acres
M-58034(SD)
T. 103 N., R. 78 W.,
Sec. 29, Lot 1. Containing 2.60 acres
M-58035(SD)
T. 103 N., R., 74 W.,
Sec. 2, Lot 1. Containing 1.05 acres

Dated: October 27, 1983.

Donald E. Nelson,

Acting District Manager for State Director.

[FR Doc. 83-29888 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[W-78796]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, Section 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-78796 for lands in Crook County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the respective date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessee having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-78796 effective September 1, 1983, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Richard L Hopkins,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 83-29893 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial Nos. I-013404, et al.]

Proposed Withdrawal Continuation; Idaho

October 26, 1983.

The Federal Aviation Administration proposes to continue the existing withdrawals for the following-described public lands for a 30-year period pursuant to Section 204 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2751; 43 U.S.C. 1714):

Boise Meridian, Idaho

Malad Navigation Site (I-013404)

T. 14 S., R. 34 E.,
Sec. 14, S½NE¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½NE¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼SW¼, S½SE¼SW¼, S½NW¼NW¼SE¼, SW¼NW¼SE¼, SW¼NW¼SE¼, NW¼SW¼SE¼, N½SW¼SW¼SE¼.

The area described contains 140 acres in Oneida County.

Emmett Navigation Site (I-08362)

T. 8 N., R. 1 W.,
Sec. 24, S½S½NE¼SW¼, E½E½SW¼ SW¼, SE¼SW¼, W½W½SW¼SE¼;
Sec. 25, NW¼NW¼NW¼NE¼, N½NE¼ NW¼, NE¼NE¼NW¼NW¼.

The area described contains 95 acres in Gem County.

Burley Navigation Site (I-013544)

T. 10 S., R. 22 E.,
Sec. 3, tract M.

The area described contains 4.45 acres in Minidoka County.

The purpose of the withdrawals is for the protection, operation and maintenance of air navigation facilities on the lands. The withdrawals closed the described lands to all forms of appropriation under the public land laws, including the mining laws, except for that portion of the Malad Navigation site withdrawal described as the S½ NE¼SW¼, N½SE¼SW¼ of Sec. 14, T. 14 S., R. 34 E., which remains open to the mining laws. No change in the segregative effect or use of the lands is proposed by this action.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposal must submit a written request for a meeting to the undersigned officer within 90 days of the date of publication of this notice. Upon determination by the State Director, Bureau of Land Management that a public meeting will be held, a notice will be published in the Federal Register giving the time and place of such meeting. In lieu of or in addition to attendance at a scheduled public meeting, written comments or objections to the proposed continuation may be filed with the undersigned officer within 90 days of date of publication of this notice.

All communications in connection with the proposed withdrawal continuations should be addressed to the Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

William E. Ireland,

Chief, Land Services.

[FR Doc. 83-29801 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Ukiah District, California; District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ukiah District Advisory Council will be held on Tuesday and Wednesday, December 6 and 7, 1983.

The meeting will begin at 1:00 p.m. on December 6 and at 8:00 a.m. on December 7 in the Bureau of Land Management Conference Room, 355 Hemsted Drive, Redding, California.

The agenda will include (1) Unauthorized use, (2) Red Mountain Wilderness Study Area draft environmental impact statement, (3) Ukiah District FY 1984 budget outlook, and (4) program updates by the three resource area managers (Clear Lake, Arcata, and Redding resources areas).

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Opportunity for public comment will be provided Tuesday, December 6 at 3:30 p.m. Oral statements will be limited to 10 minutes each, and written statements may be filed with the District Manager prior to December 6, 1983.

Stanley R. Whitmarsh,

Acting District Manager.

[FR Doc. 83-29889 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

[4-19952-I-CA-LM-CA 13601]

Conveyance of Public Land; Riverside County, California

Notice is heregy given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), Michael Tirpak and Anna Marie Tirpak, Space 134, Lake Tamarisk, Desert Center, California 92239, have purchased by competitive sale public land in Riverside County, California, described as:

San Bernardino Meridian, California

T. 5 S., R. 15 E.,
Sec. 10, N½NW¼SE¼SE¼;
Containing 5.00 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. and Mrs. Tirpak.

Dated: October 27, 1983.

Viola Andrade,

Acting Chief, Lands & Locatable Minerals Section, Branch of Lands and Minerals Operations.

[FR Doc. 83-29870 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 2078, Block 228, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 26, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 83-29900 Filed 11-2-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

President's Task Force on International Private Enterprise, Agency for International Development; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the President's Task Force on International Private Enterprise which will be held December 5-6, 1983 at the U.S. State Department.

This will be the fifth meeting of the Task Force.

The meeting will be open to the public. The agenda includes an update on Task Force activities and a discussion of key issues. Outside experts will make presentations on subjects of interest to the Task Force. Any interested person may attend, request to appear before, or file

statements with the Task Force in accordance with procedures established by the Task Force. Written statements should be filed prior to the meeting and should be available in twenty-five copies.

There will be an AID representative at the meeting. It is suggested that those desiring further information contact Birge Watkins, Assistant Director, on (202) 944-3350 or by mail c/o The President's Task Force on International Private Enterprise, Agency for International Development, Washington, D.C. 20523.

Dated: October 25, 1983.

Elise R. W. du Pont,

Assistant Administrator, Bureau for Private Enterprise.

[FR Doc. 83-29834 Filed 11-2-83; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30257]

Rail Carriers; Seaboard System Railroad, Inc. and Southern Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under (1) 49 U.S.C. 11343 *et seq.* the sale by Seaboard System Railroad, Inc. (SBD) of its 1.51-mile line of railroad in Colbert County, AL, to Southern Railway Company (Southern); and (2) 49 U.S.C. 10903 *et seq.* the discontinuance of trackage rights by SBD over Southern's 2.85-mile line between Florence and the Muscle Shoals-Sheffield area, AL, both subject to standard labor protection.

DATES: This exemption will be effective on December 5, 1983. Petitions to stay must be filed by November 14, 1983. Petitions for reconsideration must be filed by November 23, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30257 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Nancy S. Fleischman, Southern Railway Company, P.O. Box 1808, Washington, DC 20013, or R. Lyle Key, Jr., Seaboard System Railroad, Inc., 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC, 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 27, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29811 Filed 11-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30202; Docket No. AB-28 (Sub-5) and AB-43 (Sub-101)]

Seaboard System Railroad, Inc. and Southern Railway Co.—Purchase and Trackage Rights—Between Maplesville and Montgomery, AL; Central of Georgia Railroad Co.—Abandonment—Between Union Springs and Montgomery, AL; and Illinois Central Gulf Railroad Co.—Abandonment—Between Tuscaloosa and Maplesville, AL; Applications

AGENCY: Interstate Commerce Commission.

ACTION: Applications accepted for consideration.

SUMMARY: The Commission is accepting for consideration the joint application of Seaboard System Railroad, Inc. (Seaboard), and Southern Railway Company (Southern) seeking authority: (1) Each to purchase and operate one of two segments of railroad line now owned by Illinois Central Gulf Railroad Company (ICG), and; (2) for Southern to acquire trackage rights over the segment of line to be acquired by Seaboard. The Commission is also accepting related abandonment applications by ICG and Central of Georgia Railroad Company. These proceedings are being consolidated under the lead proceeding, Finance Docket No. 30202. A schedule is set for the consolidated proceeding under the applicable time limits of 49 U.S.C. 11345(d).

DATES: Written comments must be filed no later than December 5, 1983. Comments already filed in the abandonment proceedings will be accepted and considered.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

ADDRESS: An original and 10 copies of all comments referring to Finance Docket No. 30202 should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

John W. Adames, Jr., P.O. Box. 8271, Mobile, AL 36608;

Nancy S. Fleischman, P.O. Box 1808, Washington, DC 20013; and

R. Lyle Key, Jr., 500 Water Street, Jacksonville, FL 32202.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275/7428.

Decided: October 31, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29994 Filed 11-2-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Notice of Proposed Consent Decree in Clean Water Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *City of New Martinsville*, Civil Action No. 83-0070 has been lodged with the United States District Court for the Northern District of West Virginia. The consent decree requires New Martinsville to complete remedial measures at its North Sewage Treatment Plant in accordance with a compliance schedule, comply with effluent limitations in its NPDES permit, properly operate the plant and file quarterly reports. The decree provides for stipulated penalties for noncompliance.

The consent decree may be examined at (1) the Office of the United States Attorney, Northern District of West Virginia, P.O. Box 591, Wheeling, West Virginia 26003, (2) the Office of the Environmental Protection Agency, Region III, Office of Regional Counsel, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, and (3) the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy may be obtained in person or by mail for $1.50 from the Environmental Enforcement Section. The Department of Justice will receive comments relating to this consent decree for a period of thirty (30)

days from the date of this notice. Comments should be directed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 and should refer to *United States* v. *City of New Martinsville*, DOJ Ref. #90-5-1-1-1797.

F. Henry Habicht, II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-29831 Filed 11-2-83; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amendment To Decree Pursuant to the Clean Air Act; West Penn Power Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to Decree in *United States of America* v. *West Penn Power Company*, Civil Action No. 77-1142, has been lodged with the United States District Court for the Western District of Pennsylvania. The proposed Amendment to Decree concerns certain changes in the original Consent Decree pertaining to reporting and operating requirements of West Penn Power Company.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amendment to Decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *West Penn Power Company*, DJ Ref. No. 90-5-2-1-58.

The proposed Amendment to Decree may be examined in the office of the United States Attorney for the Western District of Pennsylvania, U.S. Post Office and Courthouse, Suite 633, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and at the office of Region III of the U.S. Environmental Protection Agency, Curtis Building, 6th and Walnut Street, Philadelphia, Pennsylvania 19106.

A copy of the Amendment to Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1517 and 1644(B), 9th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Amendment to Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cent per page reproduction costs) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-29832 Filed 11-2-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 10, 1983, Mallinckrodt, Inc., Dept. CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Hydromorphone (9150)	II.
Levorphanol (9220)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than December 5, 1983.

Dated: October 27, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug, Enforcement Administration.

[FR Doc. 83-29882 Filed 11-2-83; 8:45 am]

BILLING CODE 4410-09-M

LEGAL SERVICES CORPORATION

Recipient Fund Balances; Instruction

Correction

In FR Doc. 83-29183 beginning on page 49710 in the issue of Thursday, October 27, 1983, make the following correction:

On page 49711, first column, under the heading, "II. Definitions" fourth line "investment of" should read "investment or".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers/Services for New Music) to the National Council on the Arts will be held on November 22, 1983, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Ave., NW., Washington, D.C.

A portion of this meeting will be open to the public on November 22, from 5:00-5:30 p.m. to discuss guidelines.

The remaining sessions of this meeting on November 22, from 9:00 a.m.-5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: October 27, 1983.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-29827 Filed 11-2-83; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Artists Organizations Section) to the National Council on the Arts will be held on November 14-19, 1983, from 9:00 a.m.-6:00 p.m., in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b to Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506 or call (202) 682–5433.

Dated: October 27, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-29829 Filed 11-2-83; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–24 and DPR–60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 located in Goodhue County, Minnesota, in response to the licensee's application dated June 24, 1983.

These proposed amendments would increase the peak fuel pellet exposure from 51 to 55 GWD/MTU. These amendment requests also contained a request for a change to the limit of the core local heat flux ratio F^n_Q from 2.21 to 2.32 allowing a localized linear heat generation rate increase from 14.31 to 15.02 kW/ft. The Commission, by letter dated October 3, 1983 issued amendment Nos. 66 and 60 related to the F^n_Q ratio. This FRN applies to the consideration of the issuance of amendments that would pertain only to the increase in the peak fuel pellet exposure.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has given examples (48 FR 14870) to types of amendments not likely to involve significant hazards considerations. One example of this type is (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of a change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method. These proposed changes fall into this type because an analysis performed by the fuel vendor (Exxon Nuclear Company Report No. XN–NF719(P)) for the licensee shows that the peak pellet exposure to 55 GWD/MTU will not result in an increase in the consequences of a previously analyzed accident. Under accident conditions the analyses show that extended exposure to 55 GWD/MTU will not result in higher doses from those previously analyzed nor will doses exceed the dose guidelines of 10 CFR 100.11.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By December 6, 1983, the licensee may file a request for a hearing with respect to issuance of these amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition to leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how the interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interst. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the preceeding, a petitioner shall file supplement to petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that these amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance for the amendments.

If the final determination is the amendments involve a significnat hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20555, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factores specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d). For further details with respect to this action, see the application for amendments dated June 25, 1983 which is 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, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland this 28th day of October, 1983.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-29906 Filed 11-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania.

The amendments would delete all Appendix B nonradiological environmental Technical Specifications relating to chemical monitoring, thermal limits, noise monitoring and aquatic related ecological surveillance programs in accordance with the licensees' application for amendment dated February 14, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request invloves no significant hazards consideration. Under the commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind or accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The amendment application requests the deletion of all nonradiological chemical and aquatic monitoring programs in response to a Commission position that permits removal of water quality related conditions in existing reactor operating licenses where the licensee holds, as does Philadelphia Electric, and effective National Pollutant Discharge Elimination system (NPDES) Permit. The licensees also requested the deletion of specific thermal discharge; limits in Appendix B. This request will be the subject of a future NRC determination because of the dependency upon the completion of a Section 316(a) proceeding in accordance with the Federal Water Pollution control Act as referenced in a Commission decision (ALAB–532). The current Technical Specifications require that noise measurements be made four times a year for the first year of one-unit commercial operation and twice a year for the first year of two-unit commercial operation. The licensees state that this requirement has been satisfied and, therefore, requests deletion of this program. The Commission's staff considered the noise measurement results and the criteria used by the licensees to conform to this Technical Specification and determined that the requirements of this Technical Specification have been fulfilled. The proposed deletion of chemical, aquatic and noise monitoring programs would not change any current safety limitations related to the operation of the facility, since no safety operational limits are being changed and the licensees have an effective NPDES

Permit and have provided satisfactory evidence to the Commission's staff of completion of the noise monitoring program, the staff proposes to determine that these deletions would not significantly increase the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different accident from any accident previously evaluated, and would not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the proposed amendments would not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comment received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By December 6, 1983, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr. 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, attorney for Philadelphia Electric Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 27th day of October 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-29907 Filed 11-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272-OLA; ASLBP No. 84-494-02 LA]

Public Service Electric and Gas Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Public Service Electric and Gas Company

Salem Nuclear Generating Station, Unit 1, Facility Operating License No. DPR-70

This Board is being established pursuant to a notice published by the Commission on September 21, 1983, in the **Federal Register** (48 FR 43113 ff) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed licensing amendment would, on a one-time basis, extend the 40 ± 10 month interval of Technical Specification 4.6 = 1.2a during the first 10 year service period to permit the second inservice integrated leak rate test to be performed during the fifth refueling outage.

The Board is comprised of the following administrative judges:

Marshall E. Miller, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C 20555

Dr. Emmeth A. Luebke, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C 20555

Dr. Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C 20555

Issued at Bethesda, Maryland, this 28th day of October, 1983.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-29908 Filed 11-2-83; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A84-1; Order No.530]

Oakley, South Carolina 29466; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: October 31, 1983.

Docket Number: A84-1.

Name of Affected Post Office: Oakley, South Carolina 29466.

Name(s) of Petitioner(s): P. O. Mead, Jr., *et al.*

Type of Determination: Closing.

Date of Filing of Appeal Papers: October 26, 1983.

Categories of issues aparently raised:

1. Effect on Community Served by Office (39 U.S.C. 404(b)(2)(A)).

2. Effective on Regular Postal Services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule (39 U.S.C. 404(b)(5)) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner(s). In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 10, 1983.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

October 26, 1983—Filing of Petition

October 31, 1983—Notice and Order of Filing Appeal

November 10, 1983—Filing of Record by Postal Service [*see* 39 CFR 3001.113(a)]

November 21, 1983—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

November 30, 1983—Petitioners' Initial Brief [*see* 39 CFR 3001.115(a)]

December 27, 1983—Postal Service Answering Brief [*see* 39 CFR 3001.115(b)]

January 11, 1984—(1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(c)]

January 18, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116]

February 23, 1984—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]]

[FR Doc. 83-29904 Filed 11-2-83; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23100; 70-6914]

The Columbia Gas System, Inc.; Proposed Sale of All Securities of Wholly Owned Subsidiary

October 28, 1983.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a declaration with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(5) thereunder.

Columbia proposes to sell to Allegheny and Western Energy Corporation ("A&W"), a nonaffiliated Delaware corporation, all of the common stock and installment promissory notes of Columbia's wholly owned subsidiary company, Columbia Gas of West Virginia, Inc. ("West Virginia"), West Virginia, a natural gas distribution company in the State of West Virginia, is one of eight public-utility distribution subsidiaries of Columbia. A&W is engaged in the exploration, development, and production of oil and natural gas specializing in the extraction of gas from the Devonian Shale sands in the Appalachian Basin. A&W is to be reincorporated in West Virginia and will be headquartered in Charleston. Columbia will sell the West Virginia common stock and installment promissory notes which it holds to A&W for cash equal to $1 million plus 50% of the book value of the common stock plus 100% of the unpaid principal amount of the notes both valued as of closing, provided, however, that the total consideration shall not exceed $65 million. As of June 30, 1983, West Virginia had 1,831,687 shares of common stock outstanding, additional paid in capital of $38,575,000, and negative

retained earnings of $54,921,139, for a book value net common stock equity of $29,446,036. As of October 21, 1983, the notes totaled approximately $42.4 million. Columbia has agreed that West Virginia will have a capitalization on the closing date for the transaction of 50% equity and 50% long-term debt. Columbia's intent to dispose of West Virginia was announced in a press release which was given wide distribution. There were four interested parties, and Columbia received two offers for the common stock and notes. The consideration to be received was negotiated at arm's length. Columbia believes that the purchase price is appropriate. West Virginia has recorded substantial earnings deficits over the last thirteen years. The proceeds from the sale will be utilized by Columbia for the acquisition of securities of, or for capital advances to, companies in the Columbia Gas System engaged in the production, purchase, transmission, sale, or distribution of natural or manufactured gas.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 29, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29823 Filed 11-2-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Gay International, Inc.; Order of Trading Suspension

It appears to the Securities and Exchange Commission that there is a lack of current and accurate financial information relating to the securities of Gay International, Inc. and that questions have been raised about the adequacy and accuracy of information publicly-disseminated information concerning its financial condition, assets, business operations, securities transactions, and the applicability of the registration provisions of the federal securities laws to the company's securities, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Gay International, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Gay International, Inc. is suspended, for the period from 9:45 A.M. EST on October 31, 1983 through midnight November 9, 1983.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29822 Filed 11-2-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 83-059]

Rules of the Road Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) notice is hereby given of a meeting of the Rules of the Road Advisory Council. The meeting will be held on Thursday and Friday, December 1 and 2, 1983 at the Seattle Sheraton Hotel, Sixth and Pike Streets, Seattle, Washington. On both days the meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. The agenda for the meeting consists of the following items:

1. Rule 9—Narrow Channels: Guidance for towboat opertors and others on what constitutes a narrow channel.

2. Proposal by U.S. Coast Guard to lessen required size of diver flag under certain conditions.

3. Rule 34(e)—Application of the bend signal.

4. Possible re-wording of Rule 24.

5. Coast Guard Status Reports and Information Items:

(a) Use of masthead lights on towing vessels below the the Huey P. Long Bridge, Lower Mississippi River.

(b) Interpretative Rule for composite unit.

(c) Extension of applicability of special rules for Western Rivers to certain other waters.

(d) Vessel Bridge-to-Bridge Radiotelephone communications.

(e) Alternative frequencies to Channel 22A in U.S. ports for Coast Guard navigational safety information.

(f) Lighting of groups of vessels being towed astern.

(g) Deletion of 33 CFR 163.10—Hawser lengths for all tows on Inland Waters.

Attendance is open to the public. With advanced notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time.

Additional information may be obtained from Commander Galen R. Siddall, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR-3), Washington, D.C. 20593, telephone (202) 426-9566.

Dated: October 27, 1983.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 83-29858 Filed 11-2-83; 8:45]

BILLING CODE 4910-14-M

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-6 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: An evaluation of the aeronautical charting and associated aeronautical information publications regarding SIDs, STARs, and Profile Descents; and a comprehensive review of statistical data to determine the effectiveness of the Airport/Facility Directory chart supplement publication.

DATE: Beginning Tuesday, November 29, 1983, at 9 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks. The task group is beginning on Tuesday to accommodate travel and schedule arrangements.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room, 7 A/B, 800

Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, Room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by November 21, 1983. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on October 27, 1983.

John Watterson,

Acting Manager, Special Projects Staff, Air Traffic Service.

[FR Doc. 83-29666 Filed 11-2-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Clatsop County, Oregon

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway project in Clatsop County.

FOR FURTHER INFORMATION CONTACT: Richard R. Arnold, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE Salem, Oregon 97301, Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to widen the Camp Rilea to Dellmore Loop Road Section of the Oregon Coast Highway (U.S. Route 101, Clatsop County) from two lanes to four, with a continuous left-turn median and eight-foot shoulders signed for bicycles. The project is 4.2 miles long, beginning at Mile Point 12.1, and ending at Mile Point 16.3. It would reconstruct the highway within the project limits to the same configuration as the section reconstructed northerly of Camp Rilea Road, and would improve highway capacity and safety, as well as reduce maintenance costs.

Two build alternatives will be considered: one would be reconstruction of the existing facility and the other would introduce a new alignment utilizing an abandoned railroad right-of-way.

The project would require right-of-way from single family homesites and from farmland and undeveloped areas. It would displace a number of single family dwellings. Wetlands areas would be affected by highway construction. A pioneer farm home which may be eligible for inclusion in the National Register of Historic Places may be affected by the project. Noise impacts would result to residences along the route. Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who express interest in this proposal. Public meetings will be held, as may be necessary, and a public hearing will be held. No formal scoping meeting is planned at this time. Comments or questions concerning this proposed action, and the EIS, 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 Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on October 27, 1983.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, OR.

[FR Doc. 83-29637 Filed 11-2-83; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Livingston, California

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 Merced County, California.

FOR FURTHER INFORMATION CONTACT: D. L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-3541.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct State Route 99 as a multilane freeway through or bypassing the City of Livingston.

The proposed improvement will have an overall length of approximately six miles and will include construction of three interchanges, a railroad crossing structure and a new bridge over the Merced River.

There is a need to improve the safety conditions and relieve traffic congestion on existing Route 99 through Livingston. The proposed project will satisfy this need. One alternative alignment will be along or near the existing Route 99 and the other will be a northerly bypass. There will be design variations of elevated, ground level, and depressed roadway sections. A "do nothing" alternative will also be considered.

The alternative along existing Route 99 would impact various businesses while the northerly bypass would require the purchase of agricultural land

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. Public notice will be given of the time and place of meetings and a public hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

Considerable interest has already been generated in this project. A number of well attended meetings have been held in Livingston, with various individuals and groups presenting arguments for their preferred build alternative.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on October 27, 1983.

D. L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 83-29639 Filed 11-2-83; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Program Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in September 1983. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2587-P	DOT-E 2587	Welders Supply Inc., Dallas, TX	49 CFR 173.315(a)(1)	To become a party to Exemption 2587. (Mode 1.)
2587-P	DOT-E 2587	Mid-West Gases, Inc., Kansas City, KS	49 CFR 173.315(a)(1)	To become a party to Exemption 2587. (Mode 1.)
3415-X	DOT-E 3415	U.S. Department of Defense, Washington, DC.	49 CFR 173.79, 173.92	To authorize shipment of rocket motors, containing certain Class A or Class B explosives, without overpacking. (Mode 1.)
3630-P	DOT-E 3630	J.T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 177.839(a), 177.839(b)	To become a party to Exemption 36304108. (Mode 1.)
X-4108	DOT-E 4108	C & C Oxygen Company, Chattanooga, TN	49 CFR 173.315(a)	To authorize shipment of liquefied argon, nitrogen and oxygen in non-DOT specification insulated cargo tanks. (Mode 1.)
4453-P	DOT-E 4453	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	E.D.C. Incorporated, Tulsa, OK	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4575-X	DOT-E 4575	Union Carbide Corporation, Danbury, CT	49 CFR 173.314(c), 173.315(a)	To reinstate provision for shipment of a nonflammable compressed gas mixture containing ethylene oxide in MC-330 and MC-331 tank motor vehicles. (Modes 1, 2, 3.)
5206-X	DOT-E 5206	Mesabi Power Company, Hibbing, MN	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5485-X	DOT-E 5485	Union Carbide Corporation, Danbury, CT	49 CFR 172.101, 173.315(a)	To authorize shipment of liquid helium in non-DOT specification insulated cargo tanks. (Mode 1.)
5778-X	DOT-E 5778	Allied Healthcare Products, Inc., St. Louis, MO.	49 CFR 173.302(a)(4), 173.304(a)(1)(i)	To authorize use of a DOT Specification 39 steel cylinder, for shipment of certain flammable gases. (Modes 1, 2.)
5778-X	DOT-E 5778	Liquid Air Corporation, Cambridge, MD	49 CFR 173.302(a)(4), 173.304(a)(1)(i)	To authorize use of a DOT Specification 39 steel cylinder, for shipment of certain flammable gases. (Modes 1, 2.)
5945-X	DOT-E 5945	Cardox Corporation, Countryside, IL	49 CFR 173.315, 178.245	To authorize use of a small capacity DOT Specification 51 portable tank, for shipment of a nonflammable compressed gas. (Mode 1.)
6122-X	DOT-E 6122	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16.	To authorize use of a full telescope half-slotted fiberboard box meeting the requirements of DOT Specification 12B fiberboard box, for shipment of certain dry organic peroxides. (Modes 1, 2.)
6267-P	DOT-E 6267	Utility Chemical Company, Patterson, NJ	49 CFR 173.217(a)	To become a party to Exemption 6267. (Mode 1, 2, 3.)
6305-P	DOT-E 6305	E.D.C. Incorporated, Tulsa, OK	49 CFR 173,113(a)(1)	To become a party to Exemption 6305. (Modes 1, 2.)
6397-X	DOT-E 6397	Allied Corporation, Morristown, NJ	49 CFR 173.346(a)	To authorize shipment of certain Class B poison, liquids in DOT Specification 34 polyethylene containers. (Modes 1, 2.)
6397-X	DOT-E 6397	Foote Mineral Company, Exton, PA	49 CFR 173.346(a)	To authorize shipment of certain Class B poison, liquids in DOT Specification 34 polyethylene containers. (Modes 1, 2.)
6397-X	DOT-E 6397	Pennwalt Corporation, Philadelphia, PA	49 CFR 173.346(a)	To authorize shipment of certain Class B poison, liquids in DOT Specification 34 polyethylene containers. (Modes 1, 2.)
6416-X	DOT-E 6416	Allied Corporation, Morristown, NJ	49 CFR 179.101-1(a)	To authorize shipment of monochloro-difluoromethane, in DOT Specificaton 105A300W tanks. (Mode 2.)
6452-X	DOT-E 6452	Penntwalt Corporation, Buffalo, NY	49 CFR 173.154	To authorize shipment of certain organic peroxides in one pound bags, overpacked in a DOT Specification 12B65 fiberboard box. (Modes 1, 2.)
6466-P	DOT-E 6466	E.D.C. Incorporated, Tulsa, OK	49 CFR 173.68(a)(1), 173.87	To become a party to Exemption 6466. (Mode 1.)
6468-X	DOT-E 6468	Sodyeco, Inc., Charlotte, NC	49 CFR 173.365	To authorize use of insulated DOT Specification MC-304 cargo tanks, for shipment of certain Class B poison. (Mode 1.)
6530-X	DOT-E 6530	Liquid Air Corporation, San Francisco, CA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6536-X	DOT-E 6536	The Southern Connecticut Gas Company, Bridgeport, CT.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1.)
6536-X	DOT-E 6536	New Jersy Natural Gas Company, Wall, NJ	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1.)
6536-X	DOT-E 6536	Public Service Electric and Gas Company, Newark, NJ.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1).
6536-X	DOT-E 6536	South Jersey Gas Company, Folsom, NJ	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1).
6536-X	DOT-E 6536	SunOlin Chemical Company, Claymont, DE	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1).
6536-X	DOT-E 6536	L. P. Transportation, Inc., Chester, NY	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1).
6536-X	DOT-E 6536	Philadelphia Gas Works, Philadelphia, PA	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6543-P	DOT-E 6543	Union Carbide Corporation, Danbury, CT	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247, 175.3.	To become a party to Exemption 6543. (Modes 1, 2, 3, 4.)
6543-P	DOT-E 6543	Corning Glass Works, Corning, NY	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247, 175.3.	To become a party to Exemption 6543. (Modes 1, 2, 3, 4.)
6611-P	DOT-E 6611	L'Air Liquide Corporation, Paris, France	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6611. (Modes 1, 3.)
6614-X	DOT-E 6614	Steelcrete Company, Novi, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	FMC Corporation, Livonia, MI	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Russel B. Mason Co., Inc., Webster, NY	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-P	DOT-E 6614	Benson Pump Company, Rockford, IL	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to Exemption 6614. (Mode 1.)
6614-X	DOT-E 6614	Mid-State Chemical & Supply Corp., Indianapolis, IN.	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Continental Chemical Company, Sacramento, CA.	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Jones Chemicals, Incorporated, Caledonia, NY.	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Esbro Chemical, Redwood City, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6657-X	DOT-E 6657	Liquid Air Corporation, San Francisco, CA	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders having an age over 35 years for the transportation of certain non-liquefied compressed gases. (Modes 1, 2, 3, 4, 5.)
6762-P	DOT-E 6762	Continental Products of Texas, Odessa, TX	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, 4.)
6765-P	DOT-E 6765	L'Air Liquide Corporation, Paris, France	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6765. (Modes 1, 3.)
6802-X	DOT-E 6802	Monroe Welding Supply Co., Sioux City, IA	49 CFR 173.315(a)	To authorize transport, of liquefied argon, nitrogen and oxgen in non-DOT specification truck mountable cargo tanks. (Mode 1.)
6902-X	DOT-E 6902	Halocarbon Products Corporation, Hackensack, NJ.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6902-X	DOT-E 6902	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
6922-P	DOT-E 6922	Henley Overseas Sales, Inc. New York, NY	49 CFR 173.314(c), 179.300-15	To become a party to Exemption 6922. (Modes 1, 2, 3.)
6974-X	DOT-E 6974	U.S. Department of Defense, Washington, DC.	49 CFR 173.302(a)(1), 175.3, 178.42	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2 4.)
6974-X	DOT-E 6974	Tavco, Inc., Chatsworth, CA	49 CFR 173.302(a)(1), 175.3, 178.42	To authorize use of non-DOT specification cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
7007-X	DOT-E 7007	Allied Universal, Corporation, Miami, FL	49 CFR 173.314(c), 179.3	To authorize shipment of chlorine in non-DOT specification multi-unit tank car tanks patterned after DOT Specification 110A500W. (Modes 1, 3.)
7023-X	DOT-E 7023	Western Electric Company Greensboro, NC.	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24).	To renew and to authorize modification to the portable tanks protective collar to facilitate maintenance. (Mode 1.)
7023-P	DOT-E 7023	HiPure Chemicals, Inc., Nazareth, PA	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24).	To become a party to Exemption 7023. (Mode 1.)
7023-X	DOT-E 7023	Texas Instruments, Incorporated, Dallas, TX.	49 CFR 173.245, 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material. (Mode 1.)
7052-P	DOT-E 7052	U.S. Department of Commerce, NSTL Station, MS.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	DME Corporation, Pompano Beach, FL	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Cubic Corporation, San Diego, CA	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Powell Process Systems, Inc., Houston, TX	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	NL Industries, Houston, TX	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Northrop Electrics, Hawthorne, CA	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	SAFT America Inc., Cockeysville, MD	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7060-X	DOT-E 7060	Las Vegas Airlines, Incorporated, Las Vegas, NV.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceed 50.0 and/or the separation criteria cannot be met. (Mode 4.)
7060-X	DOT-E 7060	Empire Aero Services, Inc. d.b.a. SAIR Aviation, Syracuse, NY.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (Mode 4.)
7071-X	DOT-E 7071	Clayton Chemical, Los Angeles, CA	49 CFR 172.101, 173.245, 175.3	To authorize polyethylene packagings in a quantity not provided for in the regulations, for the transportation of a certain corrosive liquid. (Modes 1, 2, 3.)
7274-X	DOT-E 7274	Union Carbide Corporation, Danbury, CT	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification portable tanks, for shipment of certain nonflammable gases. (Mode 3.)
7491-X	DOT-E 7491	Process Engineering, Incorporated, Plaistow, NH.	49 CFR 172.101, 173.314(c)	To authorize manufacture, marking, and sale of non-DOT specification vacuum insulated tank cars, for transportation of liquefied natural gas. (Mode 2.)
7502-X	DOT-E 7502	Snyder Industries, Incorporated, Lincoln, NE	49 CFR 173.119, 173.125, 178.19, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification reusable, rotationally molded polyethylene container, for transportation of certain corrosive or flammable liquids and an oxidizer. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7555-X	DOT-E 7555	Provost Cartage, Incorporated, Ville d'Anjou, Quebec.	49 CFR Part 173, Subpart F	To renew and to provide for additional corrosive liquids. (Mode 1.)
7605-X	DOT-E 7605	General Dynamics, Fort Worth, TX	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To authorize the transportaion of certain explosives contained in a partially dis-assembled aircraft or canopy assembly. (Modes 1, 3, 4.)
7607-P	DOT-E 7607	Interscience, Inc., Tampa, FL	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5.)
7616-P	DOT-E 7616	Union Pacific Railroad Company, Omaha, NE.	49 CFR 172.204(a), 172.204(d)	To become a party to exemption 7616. (Mode 2.)
7716-P	DOT-E 7616	The Western Pacific Railroad Company, San Francisco, CA.	49 CFR 172.204(a), 172.204(d)	To become a party to Exemption 7616. (Mode 2.)
7730-X	DOT-E 7730	The Western Company of North America, Fort Worth, TX.	49 CFR 178.343-5(b)(2)(ii)	To authorize use of a DOT Specification MC-312 cargo tank, for transportation of certain corrosive materials. (Mode 1.)
7951-P	DOT-E 7951	Hunt-Wesson Foods, Inc., Fullerton, CA	49 CFR 173.306(b)(1), 175.3, 178.33	To become a party to Exemption 7951. (Modes 1, 2, 3, 4, 5.)
8009-X	DOT-E 8009	Production Services, Inc., Oklahoma City, OK.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specification plywood boxes, (Mode 1.)
8127-P	DOT-E 8127	Union Explosivos Rio Tinto, S.A., Madrid, Spain.	49 CFR 173.127, 173.184, 178.224	To become a party to Exemption 8127. (Modes 1, 2, 3.)
8129-X	DOT-E 8129	Multichem Corporation, Baltimore, MD	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums. (Mode 1.)
8129-P	DOT-E 8129	Mansanto Company, St. Louis, MO	49 CFR 177.834(k, Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Kansas State University, Manhattan, KS	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Henkel Corporation, Minneapolis, MN	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	The BF Goodrich Company, Cleveland, OH	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Virginia Polytechnic, Institute & State University, Blacksburg, VA.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Hallmark Cards, INc., Kansas City, KS	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	RCA Corporation, Cherry Hill, NJ	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Environmental Cleaning Specialists, Kingston, PA.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Union Carbide Agricultural Products Company, Danbury, CT.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-X	DOT-E 8129	IT Corporation, Wilmington, CA	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums. (Mode 1.)
8129-P	DOT-E 8129	S & W Waste, Inc., South Kearny, NJ	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L.M.O.	To become a party to Exemption 8129. (Mode 1.)
8134-X	DOT-E 8134	J.T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 173.266(g)(1), 173.269(d)(2)	To authorize shipment of nitric acid or perchloric acid in DOT Specification 12R boxes having inside glass bottles closed with liner-less polypropylene caps. (Modes 1, 2, 3.)
8137-X	DOT-E 8137	Ensign Bickford Company, Simsbury, CT	49 CFR 173.66(c)	To authorize transport of blasting caps without the inside containers required in 173.66(c). (Mode 1.)
8141-P	DOT-E 8141	The Boeing Company, Seattle, WA	49 CFR 172.101, 173.206, 173.247	To become a party to Exemption 8141. (MODE 1, 3.)
8196-X	DOT-E 8196	Eurotainer S.A., Paris, France	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, 3.)
8196-X	DOT-E 8196	ANF-Indusrie, Paris, France	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, 3.)
8196-X	DOT-E 8196	Allied Chemical Company, Morristown, NJ	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, 3.)
8196-X	DOT-E 8196	Societe Auxiliarie de Transports et d Industries, Paris, France.	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, 3.)
8196-X	DOT-E 8196	Freon Products (Middle East) S.A.L, Beirut, Lebanon.	49 CFR 173.119, 173.315(a)	To authorize use of a non-DOT specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, 3.)
8197-X	DOT-E 8197	Container Corporation of America, Wilmington, DE.	49 CFR 173, Part 173, Subpart D, Subpart E.	To authorize use of non-DOT specification 35-gallon polyethylene Specification 34 type container, for shipment of certain corrosive, flammable and poison B liquids and liquid organic peroxides. (Modes 1, 2, 3.)
8209-X	DOT-E 8209	Coastal Planes Airways, Incorporated, Warner Robins, GA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
8213-X	DOT-E 8213	Trailmaster Tanks, Incorporated, Fort Worth, TX.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8230-X	DOT-E 8230	G. Fredrick Smith Chemical Company, Columbus, OH.	49 CFR 173.286(b)(6), 173.269(a)(4)	To authorize shipment of certain oxidizers, in non-DOT specification containers. (Modes 1, 2, 3, 4.)
8247-X	DOT-E 8247	Container Corporation of America, Wilmington, DE.	49 CFR 173.272(g)	To authorize manufacture, marking and sale of DOT specification 34 polyethylene containers, for shipment of sulfuric acid of 95%-98% concentration. (Modes 1, 2, 3.)
8248-X	DOT-E 8248	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8248-X	DOT-E 8248	Western Electric Company Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8256-X	DOT-E 8256	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102-16, 179.202-13.	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device. (Mode 2.)
8269-X	DOT-E 8269	M-D Trailer Company, Fort Worth, TX	49 CFR 173.119(a), 173.119(M), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.345-5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosives, poison waste liquid or semi-solids.
8308-P	DOT-E 8308	Tradewind Enterprises Inc., Hillsboro, OR	49 CFR 177.842(a), 177.842(b)	To become a party to Exemption 8308. (Mode 1.)
8314-X	DOT-E 8314	Barber Steamship Lines, Inc., New York, NY.	49 CFR 176.905(L)	To authorize stowage of refrigerating machinery and motor vehicles in the same hold or compartment. (Mode 3.)
8391-X	DOT-E 8391	Acurex Corporation, Mountain View, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	Request for modification of the design qualification tests criteria. (Modes 1, 2, 3, 4, 5.)
8445-P	DOT-E 8445	RCA Corporation, Cherry Hill, NJ	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8451-P	DOT-E 8451	U.S. Department of Defense, Washington, DC.	49 CFR 173.65, 173.66(a), 175.3	To become a party to Exemption 8451. (Modes 1, 2, 4.)
8554-P	DOT-E 8554	Mesabi Powder Company, Hibbing, MN	49 CFR 173.114a, 173.154, 173.93	To become a party to Exemption 8554. (Mode 1.)
8595-X	DOT-E 8595	American Pyrotechnics Corporation, Llano, CA.	49 CFR 172.101, 173.100	To authorize shipment of a explosive pest control device, in inside fiberboard boxes overpacked in a DOT Specification 12B fiberboard box. (Modes 1, 2, 3.)
8651-X	DOT-E 8651	Rockwell International Corporation, Canoga Park, CA.	49 CFR 173.119, 173.302(a), 173.328(a), 173.336(a).	To authorize transport of waste nitrogen tetroxide, waste methylhydrazine and nitrogen, in non-DOT specification cylinders and stainless steel tanks. (Mode 1.)
8667-X	DOT-E 8667	Federal Emergency Management Agency, Washington, DC.	49 CFR 173.395(b)	To authorize use of CDV-794 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials. (Modes 1, 3, 4.)
8668-X	DOT-E 8668	Argyle, Division of Sherwood Medical, St. Joseph, MO.	49 CFR 173.119, 175.3	To authorize shipment of proxylin solution or hexane solution, classed as a flammable liquid, in non-DOT specification stainless steel drums. (Modes 1, 2, 4.)
8688-X	DOT-E 8688	Sajon Air, Inc., Manchester, NH	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix B.	To authorize carriage of Class A, B and C explosives not permitted for air shipment, or in quantities greater than those prescribed for air shipment. (Mode 4.)
8689-X	DOT-E 8689	Schlumberger Technology Corporation, Houston TX.	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, 4.)
8692-X	DOT-E 8692	Mitsubishi International Corporation, New York, NY.	49 CFR 173.154	To authorize shipment of sodium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity not to exceed 2,200 pounds each. (Modes 1, 2, 3.)
8692-X	DOT-E 8692	Dow Chemical U.S.A., Midland, MI	49 CFR 173.154	To authorize shipment of sodium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity not to exceed 2,200 pounds each. (Modes 1, 2, 3.)
8693-X	DOT-E 8693	Matheson Gas Products, Secaucus, NJ	49 CFR 173.230	To authorize shipment of sodium, metal dispersion in organic solvent, in DOT Specification 4BW240 cylinders. (Mode 1.)
8726-X	DOT-E 8726	Whitehall Laboratories, Inc., New York, NY	49 CFR Parts 100-199	To authorize shipment of safety book matches packed with a non-hazardous material in a rigid five-sided fiber tray and paper overwrapped. (Modes 1, 2.)
8730-X	DOT-E 8730	Allied Chemical, Morristown, NJ	49 CFR 173.154(a)(4)	To authorize transport of an aqueous solution of potassium nitrite, in DOT Specification MC-311 or MC-312 cargo tanks. (Mode 1.)
8742-X	DOT-E 8742	Cusco Fabricators Ltd., Richmond Hill, Ont., Can.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of compressed gases. (Modes 1, 4.)
8786-P	DOT-E 8786	Stabilus, gmbh, Koblenz, West Germany, PA.	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To become a party to Exemption 8786. (Modes 1, 2, 3, 4, 5.)
8877-P	DOT-E 8877	KTI Chemicals, Incorporated, Danbury, CT	49 CFR 173.119(m)(3), 173.245, 175.3	To become a party to Exemption 8877. (Modes 1, 2, 3.)
8877-P	DOT-E 8877	Union Carbide Corporation, Danbury, CT	49 CFR 173.119(m)(3), 173.245, 175.3	To become a party to Exemption 8877. (Modes 1, 2, 3.)
8877-P	DOT-E 8877	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(m)(3), 173.245, 175.3	To become a party to Exemption 8877. (Modes 1, 2, 3.)
8888-X	DOT-E 8888	Nalco Chemical Company, Oak Brook, IL	49 CFR 172.101 column 6(b), 173.119, 173.245(a)(17), 175.30.	To reissue exemption to a shipper instead of a carrier authorizing shipment of corrosive and/or flammable (compound cleaning) liquids in various DOT Specification drums. (Mode 4.)
8897-X	DOT-E 8897	Kerrco, Incorporated, Hastings, NE	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize water as an additional mode, to add ethyl alcohol and methyl alcohol, classed as flammable liquids and hydrogen peroxide, classed as an oxidizer. (Modes 1, 2, 3.)
8908-P	DOT-E 8908	M&T Chemicals Inc., Baltimore, MD	49 CFR 173.164	To become a party to Exemption 8908. (Mode 1.)
8988-P	DOT-E 8988	Dresser Industries Inc., Houston, TX	49 CFR 172.101, 173.110, 173.80	To become a party to Exemption 8988. (Modes 1, 3.)
8988-X	DOT-E 8988	Schlumberger Well Services, Houston, TX	49 CFR 172.101, 173.110, 173.80	To authorize water as an additional mode of transportation. (Modes 1, 3.)
9001-X	DOT-E 9001	Chesterfield Cylinder Company, Inc., Enid, OK.	49 CFR 173.301, 173.302, 173.304, 178.45.	To authorize an increase in cylinder water capacity, from 100 pounds to 120 pounds. (Modes 1, 2, 3, 4.)
9024-P	DOT-E 9024	Logemater S.A., Paris, France	49 CFR 173.315	To become a party to Exemption 9024. (Modes 1, 2, 3.)
9064-P	DOT-E 9064	Amalgamet Canada, Toronto, Ontario, Canada.	49 CFR 173.245	To become a party to Exemption 9064. (Mode 1.)
9064-P	DOT-E 9064	Apache Chemicals, Inc., Seward, IL	49 CFR 173.245	To become a party to Exemption 9064. (Mode 1.)
9064-P	DOT-E 9064	J. T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 173.245	To become a party to Exemption 9064. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9064-P	DOT-E 9064	KBI Division of Cabot Corporation, Reading, PA.	49 CFR 173.245	To become a party to Exemption 9064. Mode 1.)
9064-P	DOT-E 9064	Preussag AG Metall, Goslar, West Germany.	49 CFR 173.245	To become a party to Exemption 9064. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8966-N	DOT-E 8966	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.277(a)(1), 178.205	To authorize shipment of sodium hypochlorite solution in four one-gallon polyethylene bottles enclosed in a bag of polyethylene film, packed in a corrugated fiberboard box complying with DOT Specification 12B except for hand holes authorized in side panels of box. (mode 1.)
8968-N	DOT-E 8968	Schlumberger Well Services, Houston, TX	49 CFR 172.101, 173.110, 173.80	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds., (Modes 1, 3.)
9025-N	DOT-E 9025	American Greetings Corporation, Cleveland, OH.	49 CFR 173.28(m)	To authorize reuse of DOT Specification 17H drums of 55-gallon capacity, having inside liners of polyethylene film and which deviate from retest requirements, for shipment of ink, classed as a flammable liquid. (Mode 1.)
9026-N	DOT-E 9026	Continental Group, Inc., Lombard, IL	49 CFR 178.24	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3.)
9040-N	DOT-E 9040	The Continental Group, Inc., Lombard, IL	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corrosive liquids. (Modes 1, 2, 3.)
9045-N	DOT-E 9045	International Paper Company, New York, NY.	49 CFR 173.154, 173.245b, 173.365	To authorize manufacture, marking and sale of a non-DOT specification, six-sided corrugated fiberboard box of 30-gallon maximum capacity, for shipment of various flammables, oxidizers and Class C poisons (solids) for which DOT Specification 21C fibre drums is prescribed. (Modes 1, 2.)
9054-N	DOT-E 9054	Florida Drum Company, Inc., Pine Bluff, AR.	49 CFR 173.119, 173.125, 173.256, 173.266(b), 178.19, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification 55-gallon polyethylene Specification 34 type container, for transportation of certain corrosive liquids, flammable gases and a oxidizer. (Modes 1, 2, 3.)
9064-N	DOT-E 9064	Corning Glass Works, Corning, NY	49 CFR 173.245	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is than packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box. (Mode 1.)
9081-N	DOT-E 9081	Diamond Shamrock Corporation, Irving, TX	49 CFR 173.164(a)(6)	To authorize shipment of chromic acid dry, classed as an oxidizer, in DOT Specification 21C fiber drum lined with plastic materials other than saran material. (Modes 1, 2.)
9086-N	DOT-E 9086	The Embassy of Switzerland, Washington, DC.	49 CFR 172.101(6)(b), 175.3	To authorize transport of Class A explosive by cargo only aircraft. (Mode 4.)
9010-N	DOT-E 9101	RCA Corporation, Princeton, NJ	49 CFR 172.101 column 6(b)	To authorize shipment of two rocket motors having excess gross weight by cargo-only aircraft. (Mode 4.)
9107-N	DOT-E 9107	Ark Distributing Company, Inc., Martinez, CA.	49 CFR 178.24a-6(a)(1)	To authorize shipment of methyl ethyl ketone peroxide (47-49% MEK peroxide in a dimethyl phthalate solution with 8.9-9.0% by weight available oxygen) in a DOT Specification 12B fiberboard box with DOT specification 2E inside polyethylene bottles. (Mode 1.)
9117-N	DOT-E 9117	Kralcor Corporation, Houston, TX	49 CFR 173.163	To authorize manufacture, marking and sale of non-DOT specification semi-bulk bags of 22 cubic feet capacity, for transportation of an oxidizer. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9123-N	DOT-E 9123	K. A. Steel Chemicals Inc., Melrose Park, IL.	49 CFR 173.277(a)(9)	To authorize use of one non-DOT specification cargo tank placed in service subsequent to January 1, 1983, for transportation of a sodium hypochlorite solution. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8984-N	Wyman Pilot Service, Inc. Warren, MI	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175,320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9018-N	Schering Aktiengesellschaft, Bergkamen, West Germany.	49 CFR 173.134	To authorize shipment of pyrophoric liquids, n.o.s., classed as flammable liquid, in non-DOT specification IMO Type portable tanks comparable to DOT Specification 51. (Mode 1.)

Denials

7060–P Request by Airway Express, Inc., Mesa, AZ to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

7060–P Request by M. T. Associates, Inc., Warwick, RI to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

7060–P Request by Western States Express Airlines, Tarzana, CA to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

7060–X Request by Airlines, Inc., Philadelphia, PA to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

7060–X Request by Express Airways, Inc., Sanford, FL to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

7060–P Request by Continental, Inc., Elyria, OH to authorize carriage of radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied September 22, 1983.

9006–N Request by Infilco Degremont Inc., Richmond, VA to authorize shipment of not exceeding 70 percent nitric acid in minute quantities contained in glass anpules/polystyrene clam shell/fiberboard box configuration denied September 1, 1983.

9100–N Request by Fabricated Metals, Inc., San Leandro, CA to manufacture, mark and sell non-DOT specification steel jacketed polyethylene portable tanks, for shipment of various corrosive liquids, n.o.s. denied September 8, 1983.

Issued in Washington, DC, on October 21, 1983.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-29738 Filed 11-2-83; 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

On October 28, 1983 the Department of 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: None
Form Number: 6524
Type of Review: Existing Collection
Title: Office of Chief Counsel Application

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0320
Form Number: AFT REC 5130/3
Type of Review: Extension
Title: Brewer of Beer Racked or Bottled, or Consumed at Brewery
OMB Reviewer: Norman Frumkin, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: October 28, 1983.

Lois K. Holland,

Departmental Reports, Management Office.

[FR Doc. 83-29870 Filed 11-2-83; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Performance Review Board Members

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Boards.

DATE: Performance Review Boards effective October 1, 1983.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:P:X, Room 3213, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566–4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Boards for Assistant Commissioners and Regional Commissioners and for Inspection employees are as follows:

For Assistant Commissioners and Regional Commissioners: Phillip E. Coates, Associate Commissioner (Operations), Joel Gerber, Deputy Chief Counsel, Paul Trause, Inspector General, Department of the Treasury

For Inspection Employees: James I. Owens, Deputy Commissioner, Chairperson, Joel Gerber, Deputy Chief Counsel, Paul Trause, Inspector General, Department of the treasury

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 83-29857 Filed 11-2-83; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 214
Thursday, November 3, 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).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, November 7, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to exercise trust powers:

The Massachusetts Companies, Inc., Boston, Massachusetts, an operating noninsured trust company located at 99 High Street, Boston, Massachusetts.

Application for consent to establish a branch:

Peoples Bank of Bartow County, Taylorsville, Georgia, for consent to estabish a branch at 314 East Main Street, Carterville, Georgia.

Application for consent to merge and establish three branches:

Staten Island Savings Bank, New York (Stapleton), New York, for consent to merge, under its charter and title, with Richmond County Federal Savings and Loan Association, New York (Staten Island), New York, a non-FDIC-insured institution, and to establish the three offices of Richmond County Federal Savings and Loan Association as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,799: Farmers Bank of the State of Delaware, Dover, Delaware,
Case No. 45,800-L (Amended): Franklin National Bank, New York, New York
Case No. 45,801-L: United Southern Bank of Nashville, Nashville, Tennessee

Memorandum and Resolution re: Final amendment to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which would add a new section defining the amount of an insured deposit to include accrued or anticipated interest or dividends.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 31, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1537-83 Filed 11-1-83; 12:13 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 7, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandum re: Annual Review of Cost Estimates—Assisted Mutual Savings Bank Mergers.

Discussion Agenda:

Application for consent to establish a branch:

Onondaga Savings Bank, Syracuse, New York, for consent to establish a branch at 7320 East Genesse Street, Manlius, New York.

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13 of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions administrative pay increases,

reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsection (c)(2) and (c)(6) of the "Government in the the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 31, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1538-83 Filed 11-1-83; 12:13 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 9 a.m. on Monday, October 31, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and Resolution re: Proposed amendments to Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," with respect to asset maintenance by insured branches of foreign banks, which would require: (1) The maintenance on a daily basis of assets equal to 105% of liabilities; (2) the exclusion as eligible assets of direct or indirect claims from less than wholly-owned (in addition to wholly-owned as in the existing regulation) subsidiaries, organizations that control the parent bank, and the majority-owned or controlled subsidiaries of such organizations; and (3) specific additional asset maintenance as deemed necessary.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Columbus Bank and Trust Company, Columbus, Georgia, and insured State nonmember bank, for consent to merge, under its charter and title, with Buena Vista Loan & Savings Bank, Buena Vista, Georgia, and to establish the sole office of Buena Vista Loan & Savings Bank as a branch of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator,or liquidating agent of those assets:

Case No. 45,805-L (Amended): United American Bank in Hamilton County, Chattanooga, Tennessee

Case No. 45,807-L:

City and County Bank of Knox County, Knoxville, Tennessee

United Southern Bank of Nashville, Nashville, Tennessee

United American Bank in Hamilton County, Chattanooga, Tennessee

City and County Bank of Roane County, Kingston, Tennessee

City and County Bank of Anderson County, Lake City, Tennessee

First Peoples Bank of Washington County, Johnson City, Tennessee

Case No. 45,812-L: The First National Bank of Midland, Midland, Texas

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: October 31, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1539-83 Filed 11-1-83; 12:13 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeing held at 9:30 a.m. on Monday, October 31, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation, pursuant to section 10(b) of the Federal Deposit Insurance Act, that the Corporation make special examination of a certain national bank to determine the condition of such bank for insurance purposes: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 31, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1540-83 Filed 11-1-83; 12:14 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 8, 1983, 10 a.m.,

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance, Litigation, Audits, Personnel.

* * * * *

DATE AND TIME: Thursday, November 10, 1983, 10 a.m.,

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft Advisory Opinion 1983-31: Jim C. Curlett on behalf of Syntex Laboratories, Inc., Syva Co. & Syntex Chemical Inc.
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmon,

Secretary of the Commission.

[S-1542-83 Filed 11-1-83; 2:80 pm]

BILLING CODE 6715-01-M

6

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, November 9, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: November 1, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1543-83 Filed 11-1-83; 3:24 pm]

BILLING CODE 6210-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of November 7, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Tuesday, November 8:*

10:00 a.m.
Discussion/Vote on Hearing Requests and Whether to Lift Suspension at Diablo Canyon (Public Meeting)
2:00 p.m.
Discussion of Management Issues Regarding TMI-1 Restart (Closed—Exemption 5 and 10)

Wednesday, November 9:

9:30 a.m.
Briefing on BWR Pipe Crack Issues (Public Meeting)
2:00 p.m.
Discussion of Hydrogen Ignition System and Final Rule (Public Meeting)

Thursday, November 10:

9:30 a.m.
Discussion of Management Issues Regarding TMI-1 Restart (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting):
a. Amendments to 10 CFR 50 Related to Hydrogen Control
b. Proposed Final Rule—Deletion of Exception Filing Requirement for Appeal from Initial Decisions

To verify the status of meetings call (recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: John C. Hoyle (202) 634–1410.

October 31, 1983.

John C. Hoyle,

Office of the Secretary.

[S-1536-83 Filed 10-31-83; 4:54 pm]

BILLING CODE 7590-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 7, 1983, at 450 5th Street NW., Washington, D.C.

A closed meeting will be held on Tuesday, November 8, 1983, at 9:30 a.m. Open meetings will be held on Wednesday, November 9, 1983, at 2:30 p.m. and on Thursday, November 10, 1983, at 2:30 p.m. in Room 1C30.

The Comissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commisssion, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 8, 1983, at 9:30 a.m., will be:

Formal order of investigation.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive actions.

The subject matter of the open meeting scheduled for Wednesday, November 9, 1983, at 2:30 p.m., will be:

1. Consideration of whether to adopt a new rule that requires broker-dealers using predispute arbitration clauses in customer agreements that purport to bind customers to the arbitration of future federal securities law disputes to disclose that investors are not precluded by such clauses from recourse to the courts with respect to claims arising under those laws. For further information, please contact Robert A. Love at (202) 272–2792.

2. Consideration of whether to grant the NASD an exemption from the Rule 11Aa2–1 requirement that securities be registered under Section 12(g) of the Securities Exchange Act before initial designation as National Market System securities. For further information, please contact Bob Colby at (202) 272–2413.

3. Consideration of a request by the Board of Governors of the Federal Reserve System for the views of the Commmission regarding the exclusion of money market funds shares from the definition of "margin stock" under the Board's Regulations U and G. For further information, please contact Susan P. Hart at (202) 272–2098.

4. Consideration of whether to adopt amendments to Rule 24f–2 under the Investment Company Act of 1940 to improve the ability of the Commission, and issuers relying on Rule 24f–2, to monitor the timeliness of Rule 24f–2 notices while making less harsh the consequences of failure to file such notices on time. For further information, please contact Jane A. Kanter at (202) 272–2115.

5. Consideration of whether to permanently adopt, with certain modifications, temporary amendments to Rule 482 and Form N–1 to: (i) Permit investment companies to advertise their securities by direct mail through the use of "omitting" prospectuses; and (ii) permit money market funds to advertise their effective yield. In this connection, the Commission will also consider whether to adopt certain corresponding amendments to newly adopted Form N–1A. For further information, please contact Larry L. Greene at (202) 272–7320.

The subject matter of the open meeting scheduled for Thursday, November 10, 1983, at 2:30 p.m., will be:

Consideration of final action with respect to Rule 415 under the Securities Act of 1933. Rule 415 relates to the offering of securities to be sold on a delayed or continuous basis in the future. For further information, please contact Steven L. Molinari at (202) 272–2589.

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: Jerry Marlatt at (202) 272–2092.

October 31, 1983.

[S-5141-83 Filed 11-1-83; 12:14 pm]

BILLING CODE 8010-01-M

9

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, November 8, 1983.

PLACE: Commission Conference Room No. 200 on the 2nd floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20507

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote/s.
2. A Report on Commission Operations (Optional).

3. Freedom of Information Act Appeal No. 83-8-FOIA-056-IN, concerning a request for materials contained in Title VII and EPA charge files.

4. Freedom of Information Act Appeal No. 83-8-FOIA-172-MK, concerning a request for materials from a closed ADEA investigative file.

5. Freedom of Information Act Appeal No. 83-9-FOIA-142-SL, concerning a request for a 171 Form from a Federal EEO complaint file.

6. Freedom of Information Act Appeal No. 83-9-FOIA-87-DA, concerning a request for contents of an ADEA charge file.

7. Freedom of Information Act Appeal No. 83-8-FOIA-75-NO, concerning a request for documents from a closed Title VII charge file.

8. Recommendation for Certifying Austin Human Relations Commission and Corpus Human Relations Commission.

9. Proposed Amendment to the Procedure for Processing Conviction Cases.

10. Proposed Final Attorney's Fees Regulations.

Closed

1. *Litigation Authorization: General Counsel Recommendations.*

2. *Consideration of Certain ORA Decisions.*

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.

This notice issued November 1, 1983.

[FR Doc. S-1544-83 Filed 11-1-83; 3:41 pm]

BILLING CODE 6570-06-M

10

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—November 9, 1983.

PLACE: Hearing Room One—1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreements Nos. 5850-39, 7100-27, 7670-23, 7770-24, 8210-47, 9214-31 and 9982-18: Application for intermodal authority and independent action in the North Atlantic trades.

2. Sea-Land Service, Inc. and Lykes Bros. Steamship Co., Inc. application for special permission to waive the 30 day filing requirement for the purpose of publishing new or initial intermodal rates.

3. Self-Policing requirements for section 15 agreements—Notice of Proposed Rulemaking.

4. Docket No. 83-33: In the Matter of Rates Applicable to Ocean Shipment of Associated Factories, Inc.—Consideration of the record.

Portions closed to the public:

1. Petition for Investigation—East Coast Colombia Conference and Agropecuaria y Maritima Santo Rosa Ltda.

2. Pooling and Space Charter Agreements of Japanese Carriers—Petition for reconsideration filed by Proponents.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[FR Doc. S-1546-83 Filed 11-1-83; 3:43 pm]

BILLING CODE 6730-01-M

11

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:00 p.m., Thursday, November 10, 1983.

PLACE: Birmingham Hilton, 808 South 20th Street, Birmingham, AL 35205, (205) 933-9000.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

2. Review of Central Liquidity Facility Lending Rate.

3. Modification of CLF Credit Agreements with all Borrowers to Include a "Prepayment Penalty."

4. Central Liquidity Facility Reserving Policy For Fiscal Year 1984.

5. Central Liquidity Facility Agent Reimbursement Policy Modification.

6. Interpretive Ruling and Policy Statement, Federal Credit Unions Engaging in Leasing Programs.

7. Proposed Deregulation of Lending Regulation, Part 701.21, NCUA Rules and Regulations.

8. Consideration of the Operating Fee for Calendar Year 1984.

9. Report on Status of National Credit Union Share Insurance Funds.

10. Report on NCUA Amendments to Senate Banking Committee.

RECESS: 3:00 p.m.

TIME AND DATE: 4:00 p.m., Thursday, November 10, 1983.

PLACE: Birmingham Hilton, 808 South 20th Street, Birmingham, AL 35205, (205) 933-9000.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Personnel Actions. Closed pursuant to exemptions (2) and (6).

3. Report on Special Action Cases. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 3-1545-83 Filed 11-1-83; 3:41 am]

BILLING CODE 7535-01-M

federal register

Thursday
November 3, 1983

Part II

Department of Energy

Economic Regulatory Administration

January 1981 and Entitlements Adjustments Notices

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-83-01]

January 1981 and Entitlements Adjustments Notices

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of public proceeding and public hearing.

SUMMARY: The Department of Energy (DOE) is giving notice of a public proceeding and public hearing to obtain public comment from interested persons as to the legal, factual, and policy issues involved in its proposed determination not to publish any further entitlements notices.

DATES: Written comments must be received by December 5, 1983.

Public Hearing: December 6, 1983 in Washington, D.C.

Requests to Speak: By 4:30 p.m., November 29, 1983.

ADDRESSES: All comments and requests to speak at the public hearing should be identified by Docket No. ERA-R-83-01 and submitted to the Economic Regulatory Administration, Office or Management Services, Attn: Cindy Ford, Room GA-093, U.S. Department of Energy, 1100 Independence Avenue, SW., Washington, D.C. 20585.

Hearing Location: U.S. Department of Energy, Forrestal Building, DOE Auditorium, Room GE-086, 1000 Independence Avenue, SW., Washington, D.C. 20585. The hearing will start at 9:30 a.m. on the date indicated above.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Was or W. Mayo Lee, Office of General Counsel, Office of Regulatory Oversight, U.S. Department of Energy, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6744 (Was); (202) 252-6754 (Lee)

Jack Vandenberg, Office of the Administrator, Economic Regulatory Administration, U.S. Department of Energy, Room 5B-148, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2972

Cindy Ford [Hearing Procedures], Office of Management Services, Economic Regulatory Administration, U.S. Department of Energy, Room GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4222

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Entitlements Background
III. Issues Relating to the Publication of Further Entitlements Notices
A. The Purposes of the EPAA and Executive Order 12287 Are Best Achieved by Not Publishing the Notices
1. DOE Has the Discretion to Issue or Not to Issue Further Entitlements Notices
a. Executive Order 12287 Made DOE's Authority to Issue Further Entitlements Notices Discretionary
b. The Expiration of Certain Authorities Pursuant to Section 18 of the EPAA Did Not Limit DOE's Discretion
2. Publication Would Frustrate the Purposes of the EPAA
B. In the Alternative, Publication Would be Arbitrary and Capricious Because it Would be Inconsistent with the EPAA and Executive Order 12287
C. DOE's Response to Arguments Advanced in Favor of Publication
1. Reliance by Refiners That Would Have Received Entitlements Benefits
2. Refiners Would Not be Inequitably Burdened By the Failure to Account For Recertifications Reported for the January and Entitlements Adjustments Notices
D. The Unreliability of Reported Data
E. Non-publication Is Not Justified by the Alleged "Disappearance" of Price-Controlled Oil
1. Mobil's Claims
2. DOE's Position
F. Office of Hearings and Appeals Entitlements Decisions
IV. Comments Requested
V. Public Comment Procedures
A. Written Comment Procedures
B. Public Hearing
VI. Procedural Matters
Appendix

In the Notice, DOE concludes that it has discretion not to publish the January 1981 and Entitlements Adjustments Notices under the regulations as modified by Executive Order 12287. The authority to exercise that discretion was not impaired by the expiration of certain of DOE's authorities after September 30, 1981 pursuant to section 18 of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA).

The Notice describes DOE's proposed determination that issuance of the final entitlements notices would frustrate the purpose of the EPAA. Among the reasons why publication would be inconsistent with the EPAA are that the amount of price-controlled crude oil to be allocated by the notices is so small as to bear little relation to the fundamental purposes of the Entitlements Program; the notices would contradict one of the major purposes of the program by requiring the transfer of substantial sums of money from small and independent refiners, as a class, to major refiners; the notices would impose a severe financial burden on the already beleaguered small and independent segments of the refining industry, as a class; issurance of the notices would largely fail to narrow the crude cost differentials that existed among refiners in January 1981 and, in some instances, would exacerbate those crude cost differentials; and issuance of the notices would unnecessarily distort and interfere with the marketplace more than two and one-half years after decontrol, based on past transactions whose effects already have been reflected in the unregulated market, without achieving any of the objectives of the program or the President's Decontrol Order.

In response to arguments advanced in favor of publication of the notices, DOE believes as a matter of law that refiners that expected to receive entitlements benefits from issuance of the notices could not have justifiably relied on the continuation of the program after decontrol. Furthermore, the impact of recertification of price-controlled oil to uncontrolled status pursuant to the Tertiary Incentive Program is rejected as a reason to issue the notices, because such recertifications are largely concentrated in intergrated refiners and there is no indication that small and independent refiners received more than their proportionate share of recertifications.

The notice also points out that the reported data on which the notices would be calculated is unreliable and fails to reflect changed facts, such as the recertification of quantities of uncontrolled crude oil to price-controlled status.

The notice indicates, however, that non-publication of the notices is not justified by the alleged "disappearance" of price-controlled crude oil between the first purchaser and the Entitlements Program, a claim which has been advanced by the Mobil Oil Corporation in litigation with DOE to enjoin publication of the notices. The basis for this conclusion is twofold: (1) The factual premise of Mobil's claims is inaccurate; and (2) even if some amount of price-controlled crude oil was not accounted for by the Entitlements Program due to the causes alleged by Mobil, the regulatory objectives of the program were not thereby frustrated.

The notice proposes to give effect to adjudicated administrative and court decisions granting and adjusting entitlements exception relief and requests comments on alternative means to satisfy those firms granted relief.

Finally, the Notice requests comments on the issues raised generally, as well as comments responding to specific itemized questions, and on any other issue that any interested person deems

of consequence for the purposes of this proceeding.

Attached to this notice as Appendix A are updated drafts of the January 1981 and Entitlements Adjustments Notices. These drafts of the notices are published for information purposes only and are without any legal force or effect. They reflect developments affecting the notices through September 1, 1983.

I. Introduction

On January 28, 1981, President Reagan issued Executive Order 12287 to exempt immediately crude oil and refined petroleum products from price and allocation controls. In addition, that order authorized, but did not require, the Secretary of Energy to promulgate entitlements notices for periods prior to the Order. In addition, the Order provided that the Secretary of Energy might adopt a mechanism to provide for entitlements adjustments relating to periods prior to decontrol. *See* Section 3, E.O. 12287.

Thereafter, DOE issued the December 1980 Entitlements Notice, 46 FR 14151 (Feb. 26, 1981), and adopted a final rule (at 10 CFR 211.69) to provide a mechanism for giving effect to normal adjustments to crude oil receipts in the last four months of the Entitlements Program, and for giving effect to court, Federal Energy Regulatory Commission (FERC), and Office of Hearings and Appeals (OHA) entitlements determinations.[1] 46 FR 36092 (July 13, 1981). The January 1981 Entitlements Notice was not published as originally scheduled by the end of March because several short-term temporary restraining orders and preliminary injunctions were issued in favor of firms that anticipated entitlements sales obligations as a result of the notice. All of these restraining orders or preliminary injunctions forbidding publication of the January Notice ultimately were vacated. However, during the period these orders were in effect, the Mobil Oil Corporation received a preliminary injunction barring the issuance of any further entitlement notices. *Mobil Oil Corporation* v. *Department of Energy*, 520 F. Supp. 420 (N.D.N.Y., June 3, 1981). Mobil alleged that publication of the January Notice and/or termination of the Entitlements Program without accounting for so-called "disappearing" old oil would be arbitrary and capricious. This preliminary injunction was vacated by the Temporary Emergency Court of Appeals (TECA) on August 7, 1981. 659 F. 2d 150. TECA's judgment, however, was stayed by Justice Brennan pending Supreme Court consideration of Mobil's petition for *certiorari*. The Supreme Court denied *certiorari* and lifted the stay on December 7, 1981. Mobil's lawsuit on the merits remains pending before the district court.

During the pendency of the Mobil injunction, on September 30, 1981, the District Court for the Central District of California held that Ruling 1981–1, issued by DOE shortly after the President's Decontrol Order to respond to questions raised by the order, was invalid to the extent that it stated that expenses incurred or paid after January 27, 1981, with respect to the Tertiary Incentive Program (10 CFR 212.78) could be used as a basis for recertifying price-controlled crude oil sold prior to January 28, 1981 to uncontrolled status.[2] *Union Oil Co.* v. *DOE*, 530 F. Supp. 717 (C.D. Cal. 1981).[3]

On February 10, 1981, the District Court for the District of Nevada upheld the validity of Ruling 1981–1 but held that the so-called "in-house" expenses amendment to the tertiary incentive regulation was invalidly promulgated. *Tosco* v. *DOE*, 532 F. Supp. 686 (D. Nev. 1982).

Because these cases potentially affected the entitlements notices, DOE announced that in light of the tertiary litigation it would not issue the entitlements notices at that time and would give at least thirty days notice before issuing any notice. *See* 46 FR 60231 (Dec. 9, 1981); 47 FR 11549 (March 17, 1982).

The *Union* and *Tosco* cases were considered together on appeal, and on September 1, 1982, TECA ruled in favor of DOE both with respect to Ruling 1981–1 and the "in-house" expenses amendment. *Union Oil Co.* v. *DOE*, 688 F.2d 797 (TECA 1982). Union then petitioned for *certiorari* to the Supreme Court. On February 2, 1983, that petition was denied. 103 S. Ct. 1186.

At the present time there are a number of outstanding lawsuits challenging on various grounds DOE's authority to issue the January 1981 and Entitlements Adjustments Notices. Foremost among these cases are *Ashland Oil Co.* v. *DOE*, C.A. 81–0187–L(A) (W.D. Ky.); *Conoco Inc.* v. *DOE*, C.A. 81–125 (D. Del.); *Marathon Petroleum Co.* v. *DOE*, C.A. 81–634 (N.D. Ohio); *Mobil Oil Corp.* v. *DOE*, C.A. 81–CV–340 (N.D.N.Y.); and *Shell Oil Co.* v. *DOE*, C.A. 81–339 (D. Del.).

In light of the passage of time, further information, and the various lawsuits, DOE announced on July 13, 1982, that DOE would conduct a public proceeding to obtain the views of interested persons before making any final determination as to whether to publish any further entitlements notices. 47 FR 30279. This Notice initiates that public proceeding.

II. Entitlements Background

In assessing whether the issuance of the January 1981 and Entitlements Adjustments Notices would be appropriate, it is necessary to consider the potential impact that such action would likely have on the various types of firms that were participating in the Entitlements Program at the time of decontrol, and whether such impact would be consistent with the statutory objectives that led to their inclusion in the program in the first place. As a background to that discussion, a description of the basic Entitlements Program and its subprograms that were in effect on January 27, 1981, as well as the role of entitlements-related exception proceedings, is in order.

A. Origins of the Entitlements Program

Section 4(a) of the Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93–159, 15 U.S.C. 751 *et seq.*, (EPAA), required the President to promulgate regulations providing for the mandatory allocation and pricing of crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States. Those regulations were to implement, "to the maximum extent practicable," the objectives set forth in section 4(b)(1) of the Act.

[1] The Entitlements Adjustments Rule provided for a final entitlements notice to be published after the January Notice and after all entitlements participants had reported their adjustments and amendments relating to the October 1980 through January 1981 period.

[2] The ruling stated: Absent the Executive Order, a qualified producer that would have incurred, paid, and reported its allowed expenses prior to February 28 and March 31, 1981 respectively, could have recovered those expenses through the recertification of crude oil sold in the months of December 1980 and January 1981, respectively, as long as those recertifications were made within the consecutive two-month period within which such certification is permitted under 10 CFR § 212.131(a)(6). Executive Order 12287 is intended to provide for an immediate decontrol of crude oil and refined petroleum products. The Order does not abrogate the right that accrued to a firm to establish prices for crude oil prior to January 28, 1981. Thus, a firm may become a qualified producer as defined in 10 CFR § 212.78(c) on or after January 28, 1981. A qualified producer may also recover allowed expenses through the recertification of crude oil sold in the months of December 1980 and January 1981, respectively, as long as the producer has incurred, paid, and reported those expenses prior to February 28 and March 31, 1981, respectively. 46 FR 12945, 12947 (Feb. 19, 1981).

[3] Earlier, a different district court had denied a preliminary injunction against the continuation of the tertiary program after January 28, 1981, on the grounds that plaintiffs had failed to show irreparable injury or that they were likely to succeed on the merits. *Diamond Shamrock Inc.* v. *Edwards*, 510 F. Supp. 1378 (D. Del. 1981).

Under the Cost of Living Council (CLC), a two-tier pricing system for crude oil had been established in August 1973, as part of Phase IV of the Economic Stabilization Program. 6 CFR Part 150, Subpart L, 38 FR 22538 (Aug. 22, 1973). This system was continued under the EPAA. Generally stated, the first sale of crude oil produced from a given property at or below the level of production from the same property in 1972 ("old" or "lower tier" oil) was subject to a wellhead ceiling price. The first sale of imported crude oil, crude oil produced in excess of 1972 production levels from the same property ("new" or "upper tier" oil), and crude oil produced from "stripper" wells was not subject to a ceiling price.

By mid-1974, the price of imported and uncontrolled domestic crude oil had increased dramatically in comparison with the price of price-controlled old oil. The substantial price disparity that existed between price-controlled and uncontrolled crude oils, which was a direct result of the two-tier pricing system, did not have an equal impact upon all refiners, marketers, and consumers. Instead, there existed uneven access to price-controlled old oil, with the access of most major integrated oil companies to old oil being far greater than that of small and independent refiners, as a class. Refiners, including some majors, that were forced to rely more heavily on uncontrolled domestic or imported crude oil incurred higher composite costs for crude oil than those refiners that had relatively greater access to price-controlled old oil. The differences in crude oil acquisition costs translated into significant differentials in the prices that refiners could charge for their refined petroleum products under applicable price regulations. The end result was that marketers and consumers were paying widely varying prices for the same refined product. After the end of the Arab oil embargo and the reemergence of adequate supplies, many of those refiners with higher crude oil acquisition costs because of their lack of access to price-controlled old oil, as well as the marketers to whom they sold, endured a severe cost-price squeeze in order to remain competitive.

In response to the inequities and distortions in the marketplace resulting from the two-tier system of price controls, the Federla Energy Administration (FEA), CLC's successor to petroleum regulatory authority, proposed to allocate price-controlled crude oil through an Entitlements Program. In the Notice of Proposed Rulemaking, FEA noted that "[s]ince many of the small and independent refiners belong to the independent sector fo the industry, the proposal to allocate old oil is viewed as consistent with FEA's obligation under the Allocation Act to preserve the competitive viability of small and independent refiners and the marketers of their products." 39 FR 31650 (August 30, 1974). However, FEA also noted that "[t]he objective of the entitlements program proposed is to achieve the equitable distribution of the low priced old oil among all sectors of the petroleum industry, including independent and small refiners, and therefore to assure that domestically refined petroleum products are sold at equitable prices by all distributors of petroleum products, including branded and non-branded independent marketers, in all regions of the United States." *Id.* The final rule establishing the Entitlements Program was adopted November 29, 1974. 39 FR 42246 (Dec. 4, 1974).

B. Operation of the Entitlements Program

Instead of requiring the transfer among refiners of the actual physical barrels of price-controlled crude oil, the Entitlements Program established a mechanism for money transfers among refiners based on their proportionate access to price-controlled crude oil in comparison to the national average. In general, entitlements were issued to a refiner on the basis of the national average of all refiners' access to price-controlled crude oil, multiplied by the individual refiner's runs to stills for a given month. If the number of entitlements issued to a refiner in a month was less than its adjusted receipts of deemed old oil (as defined in 10 CFR 211.62), the refiner was required to purchase entitlements in order that it share the benefits associated with its greater-than-average access to price-controlled oil. Conversely, if the number of entitlements issued was greater than its adjusted deemed old oil receipts, a refiner was able to sell entitlements to compensate for its less-than-average access to price-controlled oil. 10 CFR 211.67(b)(1) and 211.67(c).

The data used to calculate firms' entitlements obligations under the regulations were based upon refiners' monthly reports of their crude oil receipts and runs to stills.[4] Refiners' reports were required to be filed by the fifth day of the second month after the report month. Refiners' reports were then processed by DOE, resulting in the issuance some 10–20 days later of the monthly Entitlements Notice, specifying refiners' entitlements obligations for the report month.

C. Major Provisions of the Entitlements Program In Effect at Decontrol

During the period of price controls, the Entitlements Program was amended to serve other regulatory objectives in addition to the allocation of price-controlled crude oil among refiners. For example, the scope of the program was expanded to include many non-refiners, including importers of residual fuel, Puerto Rican petrochemical producers, and producers of petroleum substitute fuels.

1. *California Heavy Oil*

Beginning in December 1977, the regulations included provisions to enhance the production and marketability of heavy California crude oil. 42 FR 62897 (Dec. 14, 1977). The regulations provided that the entitlements obligations of refiners purchasing price-controlled crude oil produced in California would be reduced by a specified amount that decreased for each degree that the weighted average gravity of the crude oil exceeded 18 degrees.

2. *Alaska North Slope Crude Oil*

At the time of decontrol, the regulations provided for the treatment of price-controlled Alaska North Slope (ANS) crude oil as a separate category for purposes of the Entitlements Program.[5] Under § 211.67(b)(2)(iii), each barrel of ANS upper tier crude oil was treated as a fractional barrel of deemed old oil. As a result, price-controlled ANS crude oil bore less of an entitlements obligation than other price-controlled tiers in order to take into account the high costs of transporting that oil from the North Slope to domestic refiners.

3. *Crude Oil for the Strategic Petroleum Reserve*

The Entitlements Program contained special provisions with respect to crude oil purchased for the Strategic Petroleum Reserve (SPR) from April 1977 until

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[4] The reported data was also used to calculate the price of an entitlement, defined as the difference between refiners' reported weighted average cost per barrel for *all* uncontrolled domestic and imported oils, and their weighted average cost per barrel of old (lower tier) oil.

[5] On July 3, 1980, DOE adopted a final rule imposing entitlement obligations on price-controlled ANS crude oil. 45 FR 45752 (July 10, 1980). Prior to this rule, price-controlled ANS crude oil had been treated as imported crude oil for purposes of the Entitlement Program and thus incurred no entitlements obligation.

decontrol on January 28, 1981. The provisions in effect on January 28, 1981, reflected the requirements of the Energy Security Act to amend the Entitlements Program regulations to allocate lower tier crude oil to the Federal Government for storage in the SPR. *See* 45 FR 56788 (Aug. 25, 1980). Accordingly, the regulations provided for the issuance of entitlements to the United States Government for upper tier and uncontrolled domestic oil and imported crude oil acquired for the SPR, so that the Government in effect would be paying lower tier prices for such oil. Because this program operated with only a one month lag, it was concluded with the issuance of the December 1980 entitlements Notice in February 1981.

4. *The Small Refiner Bias*

The 1974 final rule establishing the Entitlements Program provided for the issuance of a greater number of entitlements to small refiners under 10 CFR 211.67(e) than would be otherwise issuable to those firms under the general rule of 10 CFR 211.67(a). This provision was included in the final rule in order to meet those section 4(b)(1) objectives under the EPAA requiring the special needs of small refiners to be taken into account.

During the life of the Entitlements Program, relief for small refiners from the full brunt of their entitlements obligations was the object of several legislative and regulatory provisions. The last of these was a final rule adopted by DOE effective June 1, 1979 that reduced the level of benefits under the small refiner bias. 44 FR 25621 (May 22, 1979). Under the regulations in effect at decontrol, the per barrel value of the additional bias entitlements issued to small refiners decreased as the level of runs increased.

5. *Residual Fuel Oil Imports*

The imposition of price controls on both domestic crude oil and residual fuel oil assured that in areas where access to domestic residual fuel oil supplies was relatively high, consumers would not be faced with dramatic surges in residual fuel oil prices because of the Arab oil embargo. However, as the result of limited local refining capacity and the expense of transporting fuel over land from other regions of the United States, consumers in the East Coast were heavily reliant on residual fuel processed by Caribbean refiners which, in turn, were generally dependent on foreign crude oil sources. When the Entitlements Program was first implemented, FEA included provisions for the issuance of entitlements with respect to residual fuel imports. *See* 39 FR 42246 (Dec. 4, 1974). Under these provisions, the entitlements benefit accorded residual fuel imported into the East Coast market by a firm other than a domestic refiner was 30 percent of a runs credit.[6] By the time of decontrol this level had been increased to 50 percent of a runs credit and the eligible East Coast market had been expanded to include Michigan.

6. *Naphtha Imported into Puerto Rico*

In adopting the Puerto Rican naphtha entitlements provisions in 1976, FEA sought to alleviate a competitive disadvantage suffered by Puerto Rican petrochemical producers in relation to petrochemical producers located on the United States mainland. *See* 41 FR 30321 (July 23, 1976). The competitive disadvantage resulted from the combined effects of rapidly increasing prices for imported crude oil and naphtha on the world market and the imposition of price controls on the production and refining of domestic crude oil. Because the Puerto Rican petrochemical industry relied on imports of naphtha feedstocks, the feedstock costs of the Puerto Rican firms increased as prices on the world market rose. In contrast, however, the naphtha feedstock costs of mainland petrochemical producers remained lower than those of the Puerto Rican firms due to price controls on domestic crude oil and the operation of the Entitlements Program. To the extent that the cost of naphtha feedstocks imported by Puerto Rican petrochemical producers exceeded the feedstock costs of mainland petrochemical producers, the Puerto Rican petrochemical producers were placed at a disadvantage with respect to the marketing of their products in competition with mainland petrochemical producers.

Under the regulations in effect at the time of decontrol, Puerto Rican firms were eligible to receive an entitlement benefit for each barrel of naphtha imported for use as a petrochemical feedstock.

7. *Petroleum Substitute Entitlements Program*

In order to eliminate any economic disincentive to the production and use of petroleum substitute fuels resulting from the operation of price controls on competing petroleum fuels, DOE adopted a series of amendments to the Entitlements Program. The amendments were designed to allocate a portion of the economic advantage of access to price-controlled domestic crude oil, in the form of entitlements, to users and producers of certain petroleum substitute fuels.

On January 28, 1981, when President Reagan issued his Decontrol Order, the petroleum substitute entitlements provisions (10 CFR 211.67(a)(5)) provided for the automatic inclusion in the Entitlements Program of any shale oil used by refiners and non-refiners; ethyl alcohol derived from biomass for use in gasohol; solid municipal waste and solid derivatives thereof used as fuel; and methane gas derived from municipal sewage or landfills.

Inclusion in the Entitlements Program was also available on a case-by-case basis to liquid fuels derived from domestic sources of coal, biomass, and tar sands, solid fuels derived from non-municipal solid waste and gaseous fuels derived from any domestic solid waste sources.

Following the issuance of Executive Order 12287 by President Reagan on January 28, 1981, DOE issued a final rule that terminated the petroluem substitutes program effective January 28, 1981. 46 FR 36080 (July 13, 1981). The final rule limited the issuance of entitlements for petroleum substitutes to firms that prior to January 28, 1981 had fulfilled all filing requirements under the automatic provisions, or had been designated as an eligible entitlements recipient by an order issued by ERA under the case-by-case procedures.

D. Exception Relief

Pursuant to section 504(a) of the Department of Energy Organization Act (DOEOA), DOE is required to provide for the making of adjustments (including exceptions) to rules issued under the EPAA, "* * * as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens * * *." 42 U.S.C. 7194. *See also* 10 CFR 205.50(a)(1). Over the life of the program, exception relief was granted to relieve financial hardship or gross inequity experienced by firms resulting from the regulations. Following decontrol the Office of Hearings and Appeals (OHA) continued to issue orders relating to exception relief for periods prior to decontrol.

Approximately 50 final orders issued by the OHA requiring participants to purchase or sell entitlements have not been implemented. Several of the OHA orders relate to year-end reviews of exception relief granted to small refiners under the criteria set forth in *Delta Refining Co.*, 2 FEA ¶ 83,275 (1975) and

[6] The "runs credit" for a month is that fraction of an entitlement derived by multiplying that month's National Domestic Crude Oil Supply Ratio (DOSR), as defined at 10 CFR § 211.67, by the price of an entitlement for that month.

Beacon Oil Co., 3 FEA ¶ 83,209 (1976).[7] These supplemental orders may require refiners to refund excessive exception relief granted in the past, or may grant additional relief because of insufficient relief granted in the past. Other orders result in the issuance of entitlements to firms reflecting those that they were unable to sell on earlier notices due to the default of certain Entitlements Program participants in satisfying their entitlements purchase obligations. Some orders have granted firms additional entitlements to sell on a future notice to correct their past reporting errors or mistakes by ERA in previous notices.

In addition to these outstanding orders, there remain a number of unresolved cases involving both year-end *Delta/Beacon* reviews as well as other claims for entitlements relief.

Finally, several decisions rendered by the Federal Energy Regulatory Commission (FERC) upon review of denials of exception relief require additional entitlements to be issued to refiners on any future notices. There are also a number of court orders affecting firms' entitlements obligations that remain in effect pending the conclusion of administrative proceedings on requests for exception relief filed by the firms involved.

III. Issues Relating to the Publication of Further Entitlements Notices

A. The Purposes of the EPAA and Executive Order 12287 Are Best Achieved by Not Publishing the Notices.

1. *DOE Has the Discretion to Issue or Not To Issue Further Entitlements Notices*

a. *Executive Order 12287 Made DOE's Authority To Issue Further Entitlements Notices Discretionary.* Executive Order 12287 authorized the Secretary of Energy to exercise his discretion with respect to publication of further entitlements notices relating to periods prior to decontrol. This conclusion is based upon the manner in which the President exercised the statutory authority granted by the EPAA in the Decontrol Order.

The authority to regulate the allocation and pricing of crude oil and petroleum products originally granted by section 4(a) of EPAA was mandatory. The 1975 amendments to the EPAA continued mandatory controls for 40 months until May 31, 1979, but also provided that after that date "the President's authority to promulgate, make effective, and amend" the regulations would "become discretionary rather than mandatory." Section 18 of the EPAA, 15 U.S.C. 760g, *added by* Section 461 of the Energy Policy and Conservation Act, Pub. L. No. 94-163.

The entitlements regulations promulgated under Section 4(a) provided in mandatory terms that "[t]he DOE shall issue entitlements for each month * * *." 10 CFR 211.67(i)(1). However, as noted above, after May 31, 1979, the President had the discretion to end the Entitlements Program without further notices either by "amend[ing]" the regulations or by declaring that the agency should no longer "make effective" provisions regarding issuance of entitlements notices. *See* Section 18 of EPAA, 15 U.S.C. 760g.

When the President issued Executive Order 12287, he exempted on a prospective basis all petroleum and petroleum products from price and allocation controls. However, the President did not end the Entitlements Program with regard to transactions occurring before the Decontrol Order. Rather, he delegated his discretion to continue (or end) the program as to those transactions to the Secretary and rendered discretionary the Secretary's obligation under the regulations to issue further notices, as follows:

> Sec. 3. The Secretary of Energy *may* * * * adopt such regulations and take such actions *as he deems necessary* to implement this Order, *including the promulgation of entitlements notices for periods* prior to this Order * * * [Emphasis added]

Accordingly, the Secretary "may" (but need not) issue further entitlements notices to the extent "he deems necessary to implement" decontrol.[8]

Promulgation of the Entitlements Adjustments Rule pursuant to section 3 of the Decontrol Order [9] does not affect the Secretary's discretion with respect to publication of the notices. While the Entitlements Adjustment Rule establishes a "mechanism" for calculating entitlements adjustments, prior issuance of the January Notice is an express condition precedent to publication of the Entitlements Adjustments Notice pursuant to the rule adopted.[10] Thus, if DOE utlimately decides not to issue the January Notice, publication of the Entitlements Adjustments Notice would not be required.

b. *The Expiration of Certain Authorities Pursuant to Section 18 of the EPAA Did Not Limit DOE's Discretion.* This authority to publish (or not to publish) further entitlements notices was continued, after expiration of general price control and allocation authority, by section 18 of the EPAA, which provides in relevant part:

> The authority to promulgate and amend any regulation or to issue any order under this Act shall expire at midnight September 30, 1981, but such expiration shall not affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or criminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

Inasmuch as the notices relate to firms' crude oil purchases for periods prior to decontrol (which, of course, were prior to the EPAA expiration date),

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[7] *See also Lunday-Thagard Oil Co.*, 2 DOE ¶81,009 (1978); *Sabre Refining, Inc.*, 2 DOE ¶81,128 (1978); *Warrior Asphalt Co. of Alabama, Inc.*, 3 DOE ¶82,549 (1979); and *Navajo Refining Co.*, 3 DOE ¶81,141 (1979). *Delta/Beacon* exception relief was granted by means of a two-step process. Initially, relief was granted prospectively in six month increments and implemented on entitlements notices for the period involved on the basis of firms' projected financial data. At the close of each fiscal year, a "year-end review" was conducted based on firms' actual financial data, and adjustments to the level of relief granted were made by OHA in a subsequent order.

[8] We recognize that some past agency statements are inconsistent with the Department's position that issuance of the entitlements notices is discretionary. *See* 47 FR 33435 (Aug. 2, 1982). These statements were made, however, without extensive analysis at the time, because the question of whether the Executive Order rendered the regulation discretionary rather than mandatory was of little consequence. At the time the statements were made, for instance, no factual predicate was known to exist that would have allowed DOE not to publish the notices, thus making the question purely hypothetical.

Moreover, the position that publication of the post-decontrol notices was rendered discretionary by section 3 of the President's Decontrol Order was recognized by the Office of Hearings and Appeals, the quasi-adjudicatory entity within DOE that considered appeals from the issuance after decontrol of the December Notice:

> In addition, Section 3 of the Executive Order No. 12287 authorized but did not require the Secretary to issue entitlements notices. Thus, it is at least arguable that ERA may have had the discretion to delay issuance of the Entitlements Notice pending investigation of the decline in the DOSR and consideration of possible amendments.

Mobil Oil Corporation, 8 DOE ¶ 80,1153, at 80,1749 (July 8, 1981). OHA did not reach a conclusion on that issue, however, because it determined that publication of the December Notice was proper.

[9] Section 3 of the Decontrol Order authorized promulgation of a " * * * mechanism for entitlements adjustments for periods prior to this Order." Accordingly, DOE adopted the Entitlements Adjustments Rule at 10 CFR 211.69, 46 FR 36092 (July 13, 1981).

[10] Prior issuance of the January Notice is necessary before publication of the Entitlements Adjustments Notice because firms' originally reported January crude oil receipts and runs, which would be affected by amendments and adjustments reported under the rule for that month, would not have been given effect in the absence of a January Notice. *See also*, 10 CFR 211.69(a), and the definitions of "claim," "crude oil runs-to-stills," and "reporting period" in 10 CFR 211.69(c).

publication of the notices was contemplated by the express language of section 18 which preserved:

> any administrative * * * action or proceeding, whether or not pending, based upon any act committed * * * prior to such expiration date.

Moreover, publication (or non-publication) of the entitlements notices pursuant to the discretionary authority in effect on the date of expiration, based on transactions reported by firms for periods prior to the expiration date, is encompassed within the language of the savings clause as a "* * * pending [administrative] proceeding * * * not finally determined on such date."

Some refiners, however, have contended in pending litigation that under section 18 the DOE's discretionary authority to publish further entitlements notices lapsed on September 30, 1981. To support this contention, they cite cases decided by the Temporary Emergency Court of Appeals (TECA) construing prior termination provisions under section 218 of the Economic Stabilization Act (ESA) [11] and former section 4(g)(1) of the EPAA.[12] Those cases interpreted these other similarly worded savings provisions as preserving only pending enforcement proceedings and proceedings based on voilations occurring prior to the termination of those acts.[13] The argument is made that the entitlements notices are not encompassed by the savings clause, because they are not pending enforcement proceedings, and they do not involve enforcement actions based on violations of the regulations prior to the expiration of the status.

This argument is unpersuasive for several reasons. First, the only judicial decision that has specifically addressed the question of whether the authority is retained to publish entitlements notices relating to periods prior to the expiration of the EPAA supports the DOE's position. The decision, which denied a preliminary injunction against publication of an entitlement notice after the EPAA expired temporarily in 1975, construed the terms of former section 4(g)(1) of the EPAA to authorize publication of a notice relating to a prior month after the expiration date, on the basis that the notice related to acts committed prior to the expiration date.[14] That this was the intent of Congress was, in fact, expressly recognized during the floor debates leading to reenactment of section 4(g)(1), where Senator Jackson agreed with Senator Bumpers' statement that the "FEA's authority [would continue] after the act expires to issue entitlements and to order transfers of entitlements under its crude cost equalization program for crude oil that was purchased and refined while the program was in effect." 121 Cong. Rec. S15900 (daily ed. Sept. 11, 1975).

Second, none of the cases construing section 218 of the ESA addressed the implications of either (1) The normal "lagged" operation of the Entitlements Program, or (2) the unique circumstances surrounding DOE's efforts to conclude the Entitlements Program while the EPAA was in effect. The normal operation of the Entitlements Program involved the issuance of a notice establishing firms' entitlements obligations some 45–50 days after the close of the month in which the acts took place that were reflected on the notice. The retention of authority by DOE to deal with the publication of notices based on transactions in periods prior to the expiration of authority under the statute is consistent with the historical operation of the program.

Third, and most importantly, the savings clauses under section 218 of the ESA and former section 4(g)(1) of the EPAA were written more narrowly than is EPAA section 18. After the cited cases construed the former savings provisions, the Congress amended the EPAA by adding the word "administrative" to describe the type of actions and proceedings to be "saved" and thus, as explained above, expressly preserved DOE's authority with respect to administrative actions such as the publication of entitlements notices for prior periods.[15]

DOE's authority with respect to publication of post-decontrol notices, made discretionary by Executive Order 12287 for periods prior to expiration, was not transformed into anything other than discretionary authority to publish (or not publish) by the expiration of the EPAA. Inasmuch as the savings clause preserves DOE's authority to publish the notices after expiration of the EPAA, the Secretary's discretion not to publish notices is preserved as well.[16]

2. *Publication Would Frustrate the Purposes of EPAA*

DOE has tentatively determined that publication of the January and Entitlements Adjustments Notices would frustrate, rather than further, the purposes of the EPAA. Our analysis indicates that publication of the notices would have financial impacts on the refining industry contrary to the purposes of the program and the statute. In addition, publication of the notices now or in the future would unnecessarily interfere with the marketplace more than two and one-half years after decontrol, based on past transactions whose effects already have been reflected in the unregulated market, without achieving the objectives of the program and Executive Order 12287. Accordingly, DOE proposes to exercise its discretion not to publish the notices.

The analysis set forth in this Notice is the product of our continuing study of the issues raised by publication of the January and Entitlements Adjustments Notices. DOE has previously stated that it would publish the notices in the absence of a determination that publication would be contrary to the purposes of the program and the statute. However, DOE also indicated in the preamble to the draft January and Entitlements Adjustments Notices prepared September 30, 1981 that it was continuing to study the issues, and recognized the responsibility to take appropriate action if publication of the notices "* * * did not * * * best further the purposes of the EPAA." 47 FR 33434, 33435 (Aug. 2, 1982). In the two years since the draft preamble was prepared, we have made an exhaustive analysis of the effects of the notices and concluded that, on balance, non-publication best furthers the regulatory and statutory purposes.

Our analysis has revealed that the January Notice would be an historical anomaly because of the small amount of price-controlled crude oil to be allocated proportionally among refiners. Under the draft January Notice updated through September 1, 1983, only 5.3 million barrels of deemed old oil would

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[11] 12 U.S.C. 1904n., section 218.

[12] section 4(g)(1), Pub. L. No. 93–159, 87 Stat. 627 *repealed effective* February 1, 1976 by Pub. L. No. 94–163.

[13] Section 218 of the ESA was construed by TECA in *United States* v. *California*, 504 F. 2d 750 (TECA 1974), *cert. denied*, 412 U.S. 1015 (1975); *Carpenters 46 County Conference Board* v. *Construction Industry Stabilizations Committee*, 522 F. 2d 637 (TECA 1975); *State Trial Attorneys Ass'n* v. *Flournoy*, 522 F.2d 1406 (TECA 1975). Those precedents were applied by TECA to former section 4(g)(1) of the EPAA in *Pasco, Inc.* v. *FEA*, 525 F.2d 1391 (TECA 1975).

[14] *Marathon Oil Co.* v. *Levi*, No. 75–1571 (D.D.C., filed Sept. 26, 1975). Marathon sought a temporary restraining order on the basis that the FEA lost its power to issue the July 1975 Entitlements Notice in September 1975 as a result of the expiration of the EPAA on August 31, 1975. The district court denied Marathon's motion. Because of the extension of the EPAA, this case was later dismissed without any final decision being rendered on this issue.

[15] Section 18, EPAA, 15 U.S.C. 760g, *added by* section 461 of the Energy Policy and Conservation Act, Pub. L. No. 94–163.

[16] In the exercise of that discretion, to the extent that a decision not to issue further notices would be subject to informal rulemaking requirements, this Notice should be deemed a notice of proposed rulemaking for purposes of compliance with the requirements applicable to DOE rulemakings.

be allocated among refiners on the basis of their proportionate access to price-controlled oil during the month of January 1981.[17] *This is less than 1.4 percent of the oil received by refiners during the first 27 days of January.* The financial impact of allocating this crude oil is equally small—$150 million industry-wide of the approximately $12.3 billion in crude oil costs for the first 27 days of January, or less than 1.2 percent.[18] Because only a relatively small amount of price-controlled crude oil would be allocated among refiners for the purpose of providing proportionate access to price-controlled oil received by refiners in January, the primary purpose of the Entitlements Program, the amount of money that would be transferred for that purpose would be so small that it would have no impact on the competitive viability of the industry or any segment thereof.[19]

Publication of the January Notice would also generally fail to reduce, and in many instances would increase, disparities in refiners' crude oil acquisition costs. This further demonstrates that publication of the notice would not serve the original purposes of the Entitlements Program.

By equalizing access to price-controlled crude oil, the program was intended to have an equalizing effect on firms' average crude oil costs. Thus, the crude oil costs of refiners with below-average access to price-controlled crude oil supplies (and who were disproportionately reliant on high-priced imported or uncontrolled domestic crude oil) were reduced by the operation of the program; and the crude oil costs of refiners with above-average access to price-controlled crude supplies oil (and who were less reliant on high-priced imported or uncontrolled domestic crude oil) were increased. The premise of this aspect of the program's operation was that competitive imbalances among refiners and downstream marketers could be remedied to a sufficient degree by equalizing refiners' access to price-controlled crude oil.[20]

If the availability of price-controlled crude oil to be allocated under the program in January 1981 had a significant impact on firms' crude oil costs and their relative competitive positions, one would expect the operation of the program to have the same equalizing effect on firms' average crude oil costs as it had in the past. However, allocation of the relatively small amount of price-controlled crude oil available in January would fail to reduce the existing differences in refiners' crude oil costs. Set forth below is a table that reflects the average pre and post-entitlements crude oil costs, in relation to the national average per barrel crude oil cost of $33.40, of major, large independent and small refiners that would be the largest buyers or sellers of entitlements in each category under the January Notice.

EFFECT OF THE JANUARY 1981 ENTITLEMENTS NOTICE ON FIRMS' AVERAGE CRUDE OIL COSTS [1]

Firm	Pre-entitlements average cost	Δ from national average ($33.40)	Entitlements position [2]	Post-entitlements average cost	Δ from national average ($33.40)
Majors:					
A	35.46	2.06	P	36.30	2.90
B	33.90	.50	S	31.14	(2.26)
C	32.17	(1.23)	S	26.75	(6.65)
D	33.49	.09	S	29.99	(3.41)
E	33.67	.27	P	36.26	2.86
F	31.20	(2.20)	P	34.85	1.45
G	33.88	.48	S	31.35	(2.05)
H	31.74	(1.66)	P	34.57	1.71
Large independents:					
I	32.17	(1.23)	P	35.40	2.00
J	37.21	3.81	P	37.83	4.43
K	36.80	3.40	S	35.14	1.74
L	34.34	.94	P	37.70	4.30
M	29.76	(3.64)	P	33.06	(.34)
N	31.22	(2.18)	S	29.52	(3.88)
Small refiners:					
O	30.61	(2.79)	S	26.57	(6.83)
P	36.68	3.28	S	31.59	(1.81)
Q	33.17	(.23)	S	23.07	(10.33)
R	26.65	(6.75)	P	34.83	1.43
S	42.16	8.76	S	40.34	6.94
T	39.94	6.54	S	31.88	(1.52)
U	33.24	(.16)	S	17.97	(15.43)
V	35.83	2.43	S	31.15	(2.25)
W	36.63	3.23	S	32.03	(1.37)

[1] By presenting the data as set forth in the table, we have attempted to maintain the anonymity of the firms selected. However, even if the pre- and post-entitlements crude oil costs of particular firms for January 1981 can be identified from the data, we do not believe that such data is entitled to be protected as confidential or proprietary information at this late date. The crude cost data is over two and one-half years old, and thus the competitive position of the firms involved is unlikely to be affected by such stale data, reflected as a firm-wide average cost without any further detail.

[2] "P" denotes purchase obligation, increasing crude oil costs; "S" denotes sales obligation, reducing crude oil costs. The dollar amount of firms' entitlements obligations have been deleted.

The data reflect that the disparity in crude oil costs from the national average for thirteen of the refiners, or over half of those listed, would be exacerbated rather than reduced. Eight refiners with nearly average or below-average pre-entitlements crude oil costs would have their crude oil cost further reduced by publication of the notice, so that their post-entitlements crude oil costs would be significantly below the national average. Other refiners with above-average pre-entitlements crude oil costs would have their crude oil costs increased by publication of the notices. Moreover, among the remaining largest buyers and sellers of entitlements under the notice, only *one* would be left with post-entitlements crude costs approximately equal to the national average.

It would appear that firms' relative access to the small volumes of price-controlled crude oil available in January 1981 had little effect on the crude oil cost differentials that did exist.[21] The data indicate that publication of the January Notice would frustrate the purposes of the program by significantly exacerbating, rather than reducing, the differentials that existed. Thus, allocating price-controlled oil for January 1981 through publication of the January Notice would largely fail to achieve the original purposes of the program, both at the refiner level and downstream from the refinery.

The combined impact of the January and Entitlements Adjustments Notices would impose substantial financial burdens on small and independent refiners, contrary to the EPAA objective to preserve their competitive viability. Approximately $80 million would be transferred to the major refiners and non-refiners from small and independent refiners, as a class, by the combined notices. The 164 smallest refiners, as a class, would owe some $28.9 million to major refiners and non-refiners.[22] For the first time in the

[17] Negative adjustments for prior months reported in January exceed 30 million barrels. The Small Refiner Bias and other special entitlements benefits would account for almost 1.5 million barrels.

[18] Even less deemed old oil would have been allocated if earlier drafts of the January Notice had been issued. Under the January Notice that was ready for publication in September 1981, only about 300,000 barrels of deemed old oil would have been allocated among refiners on a proportionate basis, or less than .1 percent of the oil received by refiners in January 1981. Thus, earlier drafts of the January Notice would have produced even more anomalous results.

[19] The month of January 1981 in this regard is unique. In January 1980, in comparison, after subtracting for adjustments and the Small Refiner Bias, approximately 110 million barrels of deemed old oil (or over 23 percent of all crude oil received in that month) was available to be allocated proportionally among refiners. This was equal to $2.59 *billion* in financial impact, or 22 percent of total refiner acquisition costs in January 1980. Even in December 1980, after subtracting for adjustments and the Small Refiner Bias, more than 6 times as much crude oil remained to be allocated proportionally among refiners as in January 1981.

[20] The program was never intended, however, to equalize refiners' crude oil costs exactly. This would have eliminated any incentive for refiners to purchase crude oil at the lowest possible prices.

[21] DOE believes that crude oil cost differentials were primarily a function of the significant price differentials based on quality paid for *uncontrolled* imported and domestic crude oils acquired in January 1981, a differential not intended to be addressed by the Entitlements Program, rather than access to the relatively small volumes of price-controlled crude oil available.

[22] The class of "non-refiners" consists of all other firms on the entitlements notices, including importers and firms receiving petroleum substitutes

Continued

history of the Entitlements Program, major refiners as a class would have been net beneficiaries at the expense of the small and independent refiner sectors.[23]

The impact of publication of the notices on small and independent refiners would be more severe than even indicated by the large sums of money noted above. While sellers outnumber buyers in the Class of small refiners on the combined notices, the average amount owed by small refiner buyers is approximately $1.8 million and exceeds the average amount that would be received by small refiner sellers. Moreover, the average amount owed by those small refiner buyers included in the 164 smallest refiners is almost $1.7 million, while the average amount that would be received by small refiner sellers in the class is less than half that amount, or $0.8 million. The large independent refiners, as a class, would owe $98 million, and independent refiner buyers would owe an average of $18.4 million.

After decontrol, DOE believes the profitability of small and independent refiners generally declined compared to earlier periods; for the first time in many years (and for many small refiners for the first time ever) they were compelled to adjust and to operate in a totally decontrolled market. In this environment, a requirement for many firms that had historically been *sellers* of entitlements to purchase millions of dollars in entitlements—obligations which they may not be in a position to fulfill—could have a devastating impact on large numbers of small or independent refiners, contrary to the original purposes of the program and the EPAA.

In analyzing the impact of the combined notices, it should be noted that the Entitlements Adjustments Notice exacerbated the adverse effect of the January Notice on small and independent refiners.[24] As such, we have tentatively determined that it would fail to achieve the program and statutory objectives that the rule was intended to achieve.

Unlike other entitlements notices, the Entitlements Adjustments Notice by definition was limited to adjustments for prior months and giving effect to administrative and court orders issued after the January Notice.[25] In the preamble to the final rule, DOE asserted that the Entitlements Adjustments Rule was necessary to provide for "an orderly and proper termination of the entitlements program" and to further the EPAA objectives of "preservation of an economically sound and competitive petroleum industry, equitable distribution of crude oil and minimization of economic distortion." 46 FR 36092, 36097 (July 13, 1981). However, at the time that assertion was made, DOE could not have known what the financial impact of Entitlements Adjustments Notice would be on the industry generally or its sectors.[26] After analyzing the impact of the Entitlements Adjustments Rule in combination with the January Notice, as discussed above, it is evident that it would not achieve its original objectives, particularly with respect to the adverse impact it would have on the competitive viability of small and independent refiners.

Because the January and Entitlements Adjustments Notices were not issued, it is possible to observe whether their publication was necessary to achieve the EPAA objectives. Neither the industry as a whole nor any segment of it has suffered demonstrably as a direct consequence of non-publication of the notices,[27] thus indicating that publication was unnecessary to further the objective of the program and the EPAA. The absence of any negative impact from non-publication further evidences the lack of need to transfer sums of money among refiners to minimize economic distortion. To the contrary, it indicates that the transfers of money would have unnecessarily interfered with market mechanisms and actually created distortions, frustrating the EPAA objectives.[28]

In addition to the reasons for non-publication discussed above, there are other reasons why publication today would be inconsistent with the purposes of the EPAA and the Executive Order. The Entitlements Program was intended not only to equalize access to supplies of price-controlled crude oil at the refiner level, but also to minimize competitive imbalances among marketers downstream from the refiner, and to reduce significant disparities in price paid by consumers for refined petroleum products among all regions of the nation. Furtherance of these objectives, however, depended on the entitlements financial transactions offsetting at about the same time the financial benefits of unequal access to price-controlled oil.[29] If, however, there is *no* coincidence in time between the entitlements transactions and the benefits of unequal access to price-controlled oil, none of the EPAA objectives are furthered. This is so because the effects of unequal access years ago have already been fully absorbed by the market. Even if the dollars exchanged by publication of further entitlements notices exactly offset the benefit or detriment of unequal access incurred earlier, this

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entitlements benefits. While this class of 160 firms would be net recipients of approximately $2.5 million on the combined notices, that is so only because of an OHA order granting $5.3 million in entitlements benefits to Consumers Powers relating to the firm's operations in 1976. Otherwise, this class of "other" firms would also be net payors under the combined notices to the class of major refiners.

[23] In comparison, in December 1980 the class of major refiners was a net purchaser of approximately $235 million in entitlements.

[24] Under the January Notice standing alone, approximately $17.8 million would be shifted to major refiners from other participants in the program, as compared with approximately $80 million under the combined notices.

[25] In this Notice, DOE proposes to give effect to administrative and court decisions affecting firms' entitlements obligations, notwithstanding the proposed determination not to publish further entitlements notices. *See*, discussion at section III (F), *infra*.

[26] Reports submitted by refiners pursuant to the Entitlements Adjustments Rule were not required to be filed until August 15, 1981, and only after that date was the data processed by DOE.

[27] Of the 46 refiners that have ceased refining operations since decontrol, 15 would actually have had to purchase entitlements totalling approximately $5.2 million. Thirty-one of the refiners would have been able to sell entitlements worth a total of approximately $5 million. None of these latter refiners, however, is on record as claiming that had the entitlements notices been issued they would not have ceased refining operations.

[28] In this regard, firms have registered compliants and filed requests for exception relief with DOE from the anticipated publication of the January and Entitlements Adjustments Notices. These firms assert that publication would substantially harm a number of firms, raise some consumer's prices, and generally thwart the purposes of the EPAA.

[29] The Entitlements Program operated on a lagged basis for administrative reasons. However, publication of each monthly notice, while delayed for two months, propsectively furthered the purposes of the EPAA. This was so because entitlements revenues or costs were reflected as adjustments to crude oil costs in the refiner's maximum allowable price *in the following month*. *See* 10 CFR § 211.67(m). That is, entitlements transactions in the subsequent month cancelled the effects of unequal access in the earlier month, and these effects were then reflected in refiners' pricing of refined petroleum products. In this way, although relating to past crude oil receipts and runs, each notice *prospectively* furthered the EPAA's purposes of fostering competition in the petroleum industry, preserving the competitive viability of the small and independent refining sectors, furthering economic efficiency, and minimizing economic distortion, inflexibility, and unnecessary interference with market mechanisms.

To the extent that post-decontrol entitlements notices equitable allocated the benefits of access to price-controlled oil received by refiners in a controlled month on a delayed but generally coincident basis, they continued to further the purposes of the EPAA even after decontrol. *See*, *Diamond Shamrock Corp. v. Edwards*, 510 F. Supp. 1376, 1389–1390 (D. Del. 1981). DOE believes that the December 1980 Notice, published in February 1981, indeed furthered these purposes.

would not further the purposes of the EPAA. Rather than minimizing economic distortion, furthering economic efficiency, or equitable distribution of refined petroleum products at equitable prices among all regions of the country and among all users, it would create a new economic distortion that would reduce economic efficiency and tend to distort equitable pricing.

This is particularly true in the present case, because currently the free market achieves an equitable distribution of crude oil and petroleum products at equitable prices throughout the United States. When President Reagan decontrolled crude oil and petroleum products, he established that the policy of the United States was to allow the forces of the marketplace to operate freely in the petroleum industry. Issuance of the January and Entitlements Adjustments Notices now, some two and one-half years later, would interfere with the competitive equilibrium that the market has established, without furthering any of the EPAA objectives, and would be contrary to the purposes of the Executive Order.

Finally, future publication of the notices and enforcement of the resulting entitlements obligations would be complicated by the fact that at least 46 refiners have gone out of business since decontrol. Any payments made to firms no longer in the refining business would not seem to further the EPAA purposes. Moreover, the chances of obtaining the over $5 million owned by refiners that have gone out of business, many of which are in bankruptcy, seem remote at best, and necessarily would involve protracted and expensive litigtion whose costs might even exceed the amounts in question.

In sum, DOE believes that publication of the January and Entitlements Adjustments Notices would not further any of the purposes of the EPAA or of the President's Decontrol Order. Rather, it would directly frustrate several of those purposes by unnecessarily interfering with the market and creating economic distortion. Given the shift in funds from small and independent refiners, as a class, to major refiners, issuing the notices now might also frustrate the EPAA purposes of preserving the competitive viability of independent refiners, small refiners, and the independent marketers that rely upon them. Finally, the imposition of large financial burdens on some refiners and grant of large financial windfalls to other refiners would interfere with the unregulated marketplace, without contributing to the equitable distribution of refined petroleum products at equitable prices.

B. In the Alternative, Publication Would be Arbitrary and Capricious Because It Would be Inconsistent with the EPAA and Executive Order 12287

Even if the Executive Order had not rendered discretionary that which theretofore was mandatory, publication of the notices still would not be required and would, in fact, be prohibited. Assuming for the sake of argument that the entitlements regulations were unaffected by the Executive Order and that the EPAA had not expired, the ordinary method of proceeding would be to amend the regulations to preclude issuance of the final notices because, as discussed *supra*, the notices would produce an arbitrary and capricious result and frustrate the purposes of the EPAA and the Executive Order. *See Geller* v. *FCC*, 610 F.2d 973 (D.C. Cir. 1979) (*per curiam*). *Cf., United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1293 (D.C. Cir. 1980).

However, section 18 of the EPAA appears to state that DOE's statutory authority to amend the entitlements regulations lapsed after September 30, 1981, in the absence of a rulemaking initiated prior to that date. If this were so, DOE would seem to be unable to amend the regulations notwithstanding the fact that they no longer served their purpose or furthered the objectives of the EPAA.

But even were DOE precluded from amending its regulations to revoke the entitlements regulations after finding that those regulations frustrated the very statutory purpose they were intended to further, it appears clear for the reasons discussed above that any entitlements notices published thereafter would likely be declared invalid under 5 U.S.C. 706(2)(C), as "* * * in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." We do not believe that the law would require an agency to take an action pursuant to regulations found by the agency no longer to be valid, which the agency would revoke if it had the authority to do so, and the implementation of which would surely be declared unlawful by the courts. In these unique circumstances (and assuming that the Executive Order did not make the entitlements regulations discretionary), where DOE's statutory authority to amend the regulations appears to have expired, if the record in this proceeding supports our tentative determination that publication of the entitlements notices frustrates rather than furthers the EPAA and the Executive Order, DOE's only lawful course of action would be not to publish the notices. It cannot be otherwise, for the law does not sanction, much less require, the commission of unlawful, arbitrary and capricious acts by the government. The absense of express statutory authority to revoke or disregard the entitlements regulations would not change this result. *See In re Neagle*, 135 U.S. 1, 59 (1889); *United States* v. *McDaniel*, 32 U.S. (7 Peters) 1, 15 (1833).

While DOE has tentatively determined that publication of the notices would frustrate the regulatory and statutory purposes intended to be achieved by the program, it may not be necessary for DOE to meet that burden not to publish the notices. Rather, a finding by DOE of the existence of "substantial uncertainty" that publication of the notices would achieve the intended purposes of the program and EPAA may be sufficient to support a determination not to publish. *Motor Vehicle Manufacturers Association of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856 (1983). "We agree with petitioners that * * * an agency may also revoke a standard on the basis of serious uncertainties if supported by the record and reasonably explained." *Id.* at 2871. We believe that the analysis set forth in this Notice, if supported by the record in this proceeding, demonstrates at the least such "serious uncertainties" as to whether publication of the notices would achieve the purposes of the program and the statute.[30]

C. DOE's Response to Arguments Advanced in Favor of Publication

1. *Reliance by Refiners That Would Have Recieved Entitlements Benefits*

Firms which would be net recipients of money on the notices in the appendix may object to non-publication of the January and Entitlements Adjustments Notices. These firms may indicate that they relied on reimbursement through the January Notice when they made crude oil purchasing decisions during the first 27 days of January. They may also claim that they relied on reimbursement on the Entitlements Adjustments Notice in making payments for recertifications after decontrol.

DOE has tentatively determined, however, that firms could not have justifiably relied on the publication of the January and Entitlements Adjustments Notices for several

[30] To the extent such a determination would be subject to procedural rulemaking requirements, this Notice should be deemed a notice of proposed rulemaking. *See*, n. 16, *supra*.

reasons. First, with respect to the January Notice, DOE believes it is clear that the President *could* have ended the Entitlements Program on January 28, 1981, so that DOE would not have had authority to issue further notices. Instead, he authorized the Secretary to exercise his discretion with respect to the publication of further entitlements notices. Thus, firms could not reasonably rely upon those notices being published, because all crude oil purchases that would be reflected on those notices should have already occurred by the date of decontrol, i.e., refiners' crude oil receipts and runs-to-stills for the month of December and the first 27 days of January would have been fixed by the date of decontrol.[31]

Second, with respect to the Entitlements Adjustments Notice, the final Entitlements Adjustments Rule was not promulgated until July 13, 1981. Thus, not until this date could anyone have relied in a legal sense on the existence of that rule, much less on publication of an Entitlements Adjustments Notice. Virtually all obligations for crude oil recertified as uncontrolled were incurred by refiners before these dates. To the extent refiners made payments before its adoption, they could not have legally relied on the rule.

Third, firms never could have justifiably relied on receiving any sum of money under a January Notice, much less any particular sum of money, even if the Decontrol Order had never been issued. Until publication of the notice, a firm could not have known the number and value of entitlements that would be issued to it, and thus a firm could not have known it would receive a specific sum of money under the Entitlements Program. Of course, judging from past months, firms would project the number and value of entitlements they anticipated receiving and, if the present reflected past trends, the projections could be quite close. January 1981, however, as indicated above, was an historical anomaly. Thus, firms' projections of their January entitlements position based on past experience were probably inaccurate because the deemed old oil available for allocation was less than anyone was likely to have projected.

Indeed the amount of deemed old oil available in January was almost so small as to result in a negative National Domestic Crude Oil Supply Ratio (DOSR). Had this occurred, DOE would have been unable to publish the January Notice under the regulations. The industry was well aware of this possibility. *See*, 46 FR 8646 (Jan. 27, 1981); 46 FR 15112 (March 2, 1981). In fact, if the negative adjustments filed for the Entitlements Adjustments Notice that relate to crude oil received in January were subtracted from the January Notice, the DOSR for January *would* be a *negative* number. In short, refiners could never have relied on receiving any money from a January Notice because they could not rely on the DOSR remaining positive, and they certainly could not have relied on receiving any particular sum of money because sums to be received (or owed) by refiners depended on variables that could not be known until after the month of January.

Even if firms projected, accurately or *not*, the amount of money they expected to receive under a January Notice for internal purposes, that would not necessarily establish that they legally relied on publication. In the first place, as noted above, DOE does not believe that reliance would have been justified given the circumstances at the time. Furthermore, given the high probability those projections were inaccurate, there is no evidence that refiners would have acted differently based on their expectations under the notice.

Fourth, DOE has reviewed the annual reports for refiners filed with the Securities and Exchange Commission to determine whether firms have indicated any reliance, or even any expectation, of receipt of additional funds from the Entitlements Program. Only a small number of firms, which have pending exception cases before OHA or appeals to FERC therefrom, indicated any possibility, much less any expectation or reliance, that they might receive additional funds from the Entitlements Program. Most firms that addressed the Entitlements Program at all, including firms that might receive funds under the January and Entitlements Adjustments Notices, indicated the belief that the program ended on January 28, 1981. DOE believes the failure of firms to indicate expectation or reliance on receipt of entitlements funds, at least where the sums are not *de minimis*, is strong evidence of the absence of any reliance in fact, much less a justifiable reliance as a matter of law.

Fifth, the argument that refiners made payments for recertifications after decontrol in reliance on reimbursement through the Entitlements Program is flawed.[32] There is no basis in the regulations to assume that a refiner's duty to make payments for recertifications rests in any way upon the ability of the refiner to report such recertifications to the Entitlements Program, or even upon the existence of the Entitlements Program. Nothing in the DOE regulations ever required a purchaser of crude oil to pay more to the seller upon a lawful recertification. As a matter of practice, most firms had contracts that required the purchaser to pay the highest lawful price. Thus, for example, if a refiner received a lawful and timely recertification from a seller changing the category of oil from controlled to uncontrolled, the obligation of the refiner to pay more money to the seller arose from the contract between them, not from the DOE regulations, and certainly not from anything in the Entitlements Program. The fact that the program provided a mechanism for adjustments based on recertifications certainly benefited refiners who received such recertifications, but any obligation the refiner may have incurred to pay the highest lawful price to the firm that sold it the crude oil did not derive from the existence of such mechanism.

2. Refiners Would Not Be Inequitably Burdened by the Failure To Account for Recertifications Reported for the January and Entitlements Adjustments Notices

A decision not to publish further entitlements notices necessarily means that negative adjustments reflecting recertifications of price-controlled oil to uncontrolled status reported for the January and Entitlements Adjustments Notices will not be accounted for by the Entitlements Program. Refiners that reported such negative adjustments to their price-controlled crude oil receipts would realize entitlements benefits if the notices were published. These refiners assert that if the notices are not published, they will suffer an inequitable burden to the extent they are not compensated by the Entitlements Program for such upward recertifications.

DOE has tentatively determined that non-publication of the notices will not impose an inequitable burden on refiners by failing to account for such recertifications. The bases for this determination are that: (1) Such recertifications are largely concentrated

[31] DOE believes that some refiners unlawfully included in their January entitlements report adjustments received after January, rather than waiting for a possible Entitlements Adjustments Notice. They could not have legally relied on publication of the January Notice to reimburse them for having made payments for recertifications received after January.

[32] It might be noted here, as explained in more detail *infra*, that it appears that many refiners filed adjustments based upon the receipt of recertifications in circumstances not authorized by the regulations.

in intergrated refiners, whose producing entities realized as additional revenues the increased costs borne by their refining entities when the crude oil was recertified; and (2) there is no indication that small and independent refiners received more than their proportionate share of recertifications.

The argument that the notices should be published to account for recertifications relates primarily to the large volumes of crude oil that were apparently recertified under the Tertiary Incentive Program and reported as negative adjustments for the January and Enitlements Adjustments Notices. Accordingly, an understanding of the relationship of the incentive program to the Entitlements Program is important.

The incentive program was conceived entirely as a production incentive and operated only with respect to the producer level (that is, first sales of crude oil) by permitting producers to convert controlled oil into uncontrolled incentive oil. Fulfillment of the incentive program's purposes was not dependent on the operation of the Entitlements Program. However, as was the case with all production incentives (for example, newly discovered crude oil or heavy crude oil) that permitted producers to sell otherwise controlled oil as uncontrolled oil, the incentive program did affect the Entitlements Program indirectly by reducing the total amount of crude oil production subject to price controls each month. Since the Entitlements Program was designed to distribute the benefits of access to price-controlled oil (and in effect, to lower crude oil acquisition costs) among refiners, any reduction in the amount of controlled oil had the effect of reducing the total benefits distributed under the Entitlements Program.

Because of this indirect effect of the incentive program on the Entitlements Program, publication of the notices was delayed pending the outcome of litigation challenging the validity of Ruling 1981–1. If the Ruling had been declared invalid, large amounts of uncontrolled tertiary incentive oil (re)certified by producers and reported by refiners to the Entitlements Program would have been converted back into controlled oil, and refiners' entitlements reports would have been inaccurate to that extent.

The decisions by TECA in the *Union* case that Ruling 1981–1 was valid, however, does not mean that the publication of the January and Entitlements Adjustments Notices is required. At the same time that the court upheld the validity of the incentive program with respect to in-house expenses and post-decontrol (re)certifications, it found that the operation of the incentive program did not impose burdens on refiners. Any burden on refiners in the form of higher prices for uncontrolled incentive oil was the result of market forces and not the incentive program. Thus, the *Union* case should be viewed as rejecting any notion that the equalization of crude oil costs among refiners is an intergral part of the incentive program.

DOE believes that it is most likely that (re)certifications on the basis of the incentive program were concentrated in major intergrated refiners whose producting entities participated in the incentive program as a qualified producer.[33] As the producing entities incurred and paid these allowed expenses, they recovered them by (re)certifying controlled oil as incentive oil. Since in most instances a producing entity of an integrated oil company sells its production to an affiliated refining entity, it is reasonable to assume that these (re)certifications are reflected to a large extent in the data reported by integrated refiners for the January and Entitlements Adjustments Notices. The (re)certifications reported by integrated refiners would reduce their entitlements purchase obligations or even, in some cases, turn a traditional entitlements purchaser into an entitlements seller for the January 1981 and Entitlements Adjustments Notices.

A decision not to publish further entitlements notices would not be inequitable with respect to these integrated refiners. This conclusion is reached by analyzing the effects of the Tertiary Incentive and Entitlements Programs on the producing and refining entities of these firms, respectively. While the refining entity of a firm whose producing entity had large tertiary incentive expenses may be disadvantaged by the failure to publish further notices, that disadvantage is equal to the advantage realized by the producing entity under the Tertiary Incentive Program. By participating in the incentive program, the producing entity was able to decontrol and thereby receive higher prices for its crude oil sold to the refining entity. The inability by the refining entity to pass those higher prices along to other refiners under the Entitlements Program is the disadvantage suffered by the refining entity.[34] However, as a whole, the firm is neither disadvantaged nor advantaged from the perspective of the Mandatory Petroleum Price and Allocation regulations by the continuation of the incentive program and the non-publication of further notices. Rather, viewed on a firm-wide basis, these integrated refiners have merely accelerated the expenses that they would have otherwise incurred with respect to their tertiary projects, and these projects will likely result in increased future production for them.

It has been suggested, however, that such firms may have incurred additional Windfall Profits Tax liabilities because of these transactions and that the issuance of the final entitlements notices would permit integrated refiners to recoup some of those Windfall Profits Tax payments from other refiners through the entitlements program. But, DOE does not believe that it would be appropriate to issue the final entitlements notices for this purpose, especially in the fact of DOE's conclusion that issuance of the final entitlements notices would frustrate the purposes of the EPAA.

DOE is not aware of any evidence that the indirect effects of the incentive program have not been spread among all refiners, except for those integrated refiners which have benefited directly from the incentive program. Some small and independent refiners, however, have argued for the issuance of the January 1981 and Entitlements Adjustments Notices primarily on the basis of these indirect effects, but not necessarily on the basis of the inequitable distribution of these effects.[35]

TOSCO, for example, states that, with respect to the November and December 1980 Notices, it reported a large volume of controlled oil that subsequently was recertified to it as incentive oil. TOSCO has calculated that reporting the oil as controlled oil resulted in TOSCO's entitlements sales being several million dollars less with respect to the November and December Notices than they would have been if the oil had been

[33] During the period following decontrol the producing entities of thirteen integrated refiners reported $84.4 million of allowed expenses, which is 82% of the total allowed expenses reported by all qualified producers in that period.

[34] In the previous section, we determined that refiners could not have reasonably relied on the publication of further entitlements notices. This disposes of the argument that the publication of the notices is warranted because the producing entities of integrated firms made investments in tertiary projects with the expectation that the refining entities of the firms would be reimbursed by the Entitlements Program, because they could not have legally relied on publication of further entitlements notices.

[35] The argument that the entitlements notices should be published to account for tertiary incentive recertifications suffers from the fact that the Entitlements Program was intended only to distribute the price-controlled oil available in a given month among all refiners on a roughly equitable basis and not to shield refiners from the effects of the free market.

reported as decontrolled. TOSCO alleges that, assuming it pays the market price for the recertified volumes, and further entitlements notices are not published, it will experience a double "cost" for these volumes (that is, it will have paid the market price after previously incurring entitlements obligations on the November and December Notices).[36]

However, only a refiner that received more than its proportionate share of recertifications would have reason to complain that they were not accounted for by the Entitlements Program. TOSCO's argument ignores that it was not alone in receiving such certifications. Except to the extent the recertifications received by TOSCO were greater than its proportionate share of all recertifications, the commensurate reduction in entitlements benefits to be distributed under the program, resulting from the reduction in deemed old oil, cancels the advantage to be gained by an individual refiner from substituting decontrolled oil for controlled oil. Indeed, any firm with less than its proportionate share of recertifications would suffer a detriment by accounting for all tertiary recertifications.[37]

DOE is not aware of any evidence demonstrating that small and independent refiners received more than their proportionate share of recertifications, and therefore publication of the notices is not warranted to account for recertifications. In the event some small and independent refiners were able to demonstrate that they received more than their proportionate share of recertifications, one option would be to permit them to seek exception relief on the basis of recertifications that were not accounted for by the program. While our preliminary view is that such exception relief is unnecessary, DOE solicits comments on utilization of the OHA exceptions process for this purpose, and the sources of funds to satisfy any ensuing grants of exception relief.

D. The Unreliability of Reported Data

Publication of the January and Entitlements Adjustments Notices would require large transfers of money based upon reports filed by refiners. To the extent that those reports do not contain accurate data, the notices would not equitably allocate price—controlled oil, and transfers of monies pursuant to the notices would be inappropriate. DOE believes that the data reported by refiners for purposes of the two notices is unreliable, for two principal reasons. First, it has come to DOE's attention that some crude oil that was reported to the Entitlements Program as uncontrolled was reclassified as price—controlled oil by producers and resellers after the cut-off dates for recertifications and filing or reports with DOE. Second, DOE has determined that reports some refiners filed were incorrect even at the time they were filed, and suggest that data problems may be more widespread than the errors identified to date.

a. *Change in Facts.* DOE has been informed by some refiners that some producers or resellers have re-recertified crude oil after August 1, 1981, the date on which the certification regulations were revoked. The effect of these re-recertifications, DOE has been told, has been to reclassify tertiary incentive uncontrolled oil as controlled oil. Because those refiners receiving such re-recertifications filed their Forms ERA–49 reflecting the oil as uncontrolled, those reports would be invalid, and those refiners would receive entitlements benefits that were not appropriate. Inasmuch as it would not be in the financial interests of refiners to inform DOE voluntarily of the receipt of such re-recertifications, DOE is concerned that the problem may be more widespread than the episodic reports that DOE has received. Nevertheless, DOE is not able to determine the magnitude of the problem and requests information from persons on this issue.

2. *Incorrect Reports*

Shortly after the receipt of reports for the Entitlements Adjustments Notice, DOE ran a computer check of the reports to compare the volume of price-controlled oil that a firm reported as being adjusted with the volume of that price-controlled crude oil originally reported as being received in the subject month. The computer identified 21 refiners as claiming more barrels of a type of price-controlled oil being adjusted for a given month than the firm originally reported as having received in that month. Because this did not appear possible under the regulations, and because DOE could not immediately determine what the correct numbers should be, DOE calculated the Entitlements Adjustments Notice by disallowing for each of those firms the volume adjusted that was in excess of the volume reported as being received in the report month. *See* footnote 2 to Entitlements Adjustments Notice, 47 FR 33434, 33463 (Aug. 2, 1982). Subsequently, DOE sent letters to the firms requesting explanations.

Seven general categories of reporting errors have been identified from reviewing firms' entitlements reports and their responses to DOE's requests for additional information. The nature of each type of reporting error and its implications with respect to the reliability of the data is discussed below:

1. It appears that some firms did not, in fact, identify the month in which the crude oil being adjusted was first reported as a crude oil receipt to the Entitlements Program. Rather, they merely assigned the adjustment to a particular month in the reporting period. As a result, the adjustments reported under the Entitlements Adjustments Rule may relate to price-controlled crude oil receipts originally reported in months *prior* to the four month reporting period, which is not permitted.

2. Some firms indicated that they normally "rolled-in" corrections for reporting errors in prior months to their unadjusted crude oil receipts on their next regular monthly entitlements report. The correct practice would have been to file amended reports for the month in error. Other firms normally "rolled-in" invoice adjustments to their unadjusted crude oil receipts. This is contrary to the entitlements report form, which instructs firms to report adjustments separately. Both of these reporting errors on the regular monthly reports could have the effect of decreasing firms' unadjusted crude oil receipts in the months of the reporting period below the actual number of crude oil receipts booked into inventory in a given month. The firms claim that the negative adjustments on their Entitlements Adjustments reports in fact apply to crude oil receipts booked into inventory in a given month, notwithstanding the fact that subtracting their negative adjustments reported under section 211.69 from unadjusted crude oil receipts yielded a negative number. However, because these firms incorrectly reported amendments and adjustments in their regular monthly entitlements reports by "rolling" them in with unadjusted crude oil receipts, DOE has been unable to verify their claims that their negative adjustments reported under section 211.69 apply to crude oil receipts booked into inventory during the reporting period (and do not apply to

[36] DOE believes that it is probable that the concentration of the incentive program in integrated refiners would suggest that these refiners have greater than proportionate shares of recertifications from their own affiliated production. This is to a large extent responsible for the drastic shifts from refiners' historic entitlement positions that would occur on the January 1981 and Entitlements Adjustments Notices.

[37] Motion for Injunctive Relief, filed March 12, 1982 (No. 9–64), *Union Oil Co* v. *DOE*, 688 F.2d 797 (TECA 1982).

crude oil received prior to the reporting period).

3. Some firms reported negative unadjusted price-controlled crude oil receipts on the regular monthly reports, and also reported negative adjustments under the Entitlements Adjustments Rule to these already negative volumes. As yet, DOE has not had a suitable explanation from any firm as to how it could under the regulations have had negative unadjusted receipts of crude oil in the month in question.

4. Several refiners claimed negative adjustments to their old oil receipts in order to offset losses incurred with respect to their crude oil resales activities. In these instances, the refiners' suppliers recertified crude oil from price-controlled to uncontrolled after the refiner had already resold the crude oil subject to the original price-controlled certifications. For one reason or another, however, the refiner was unable to pass on this increased cost to its purchaser. Thus, these refiners may have paid to their suppliers the higher uncontrolled prices for the recertified crude oil, but were unable to collect more than the lower tier price from their customers. Several of these refiners reported these barrels as adjustments so that they could be compensated by the Entitlements Program for the difference between the recertified uncontrolled prices the refiners eventually paid and the controlled prices that were paid to them by their customers.

The adjustments to entitlements obligations claimed by these refiners are not authorized. In effect, these refiners are attempting to be compensated by the Entitlements Program for losses incurred with respect to their crude oil resale activities. The entitlements Program, however, was never intended to reimburse refiners with respect to losses incurred as a result of their cruded oil resales activities.

5. Several firms apparently accepted recertifications after the period specified in former § 212.131, and some even apparently accepted recertifications after August 1, 1981 when § 212.131 was rescinded. These firms then reported these recertifications as adjustments to the Entitlements Program on their Entitlement Adjustments reports. These recertifications, however, because they were out-of-time, were not lawful recertifications and refiners could not have been under any obligation to pay the "recertified" price. If particular refiners chose to accept these recertifications or to pay the recertified price, it was not appropriate to report the recertification as an adjustment, because that would have the effect of requiring other refiners to subsidize the particular refiner's decision to pay a price higher than could lawfully be required.

6. Some firms reported negative adjustments based on recertifications they received for crude oil, even though they had previously sold that crude oil out of refinery inventory and deducted it from unadjusted crude oil receipts, as permitted by the regulations. *See* definition of "crude oil receipts" at 10 CFR 211.62. By claiming negative adjustments based on recertifications, without determinig whether the recertification applied to crude oil that had been resold and previously deducted from unadjusted receipts, these refiners in effect "double-counted" negative adjustments.

7. Some firms made clerical errors. Among the clerical errors found have been: (1) Failing to include a minus sign in front of the number of barrels being adjusted to reflect a negative adjustment, (2) counting barrels for adjustments that had already been adjusted in earlier reports, and (3) misplacing decimal points with the effect of increasing adjustments a hundred-fold.

In the informational Entitlements Adjustments Notice included as an Appendix to this notice, DOE has made corrections to the numbers reported by the 21 firms to the extent that DOE has been able to do so. For many of the firms, however, there still are outstanding questions. These firms are indicated by a footnote. Rather than deduct a number of barrels from these firms' reports as was done in the draft Entitlements Adjustments Notice published on August 2, 1982, 47 FR 33434, DOE is reflecting their total current claims until such time as DOE would be in a position to establish the unlawfulness or error of the report [38]

The above described reporting problems were found in small, medium, and large refiners, indicating they are not peculiar to any particular type or size of firm, or particular accounting procedure. Moreover, while with respect to these particular firms the methodology of the computer check selected them out for further investigation, there is no reason to believe that similar reporting errors are not also present in many, if not most, of the approximately 150 other refiners whose reports DOE has not investigated. Moreover, DOE has not even been able to explain all of the problems with respect to all of the 21 firms. It would appear totally impracticable to conduct similar reviews of large numbers of other refiners, even though their dollar impacts on the entitlements Adjustments Notice may be much larger than the 21 firms.

DOE requests comments and suggestions from interested parties as to the course of action that DOE should follow in light of the above reporting problems.

E. Non-publication Is Not Justified by the Alleged "Disappearance" of Price-Controlled Crude Oil

1. *Mobil's Claims*

In pending litigation, the Mobile Oil Corporation (Mobil) has asserted that the issuance of the final entitlements notices would be unlawful unless those notices take into account all price-controlled crude oil produced and sold between November 1, 1974 and January 28, 1981 that did not incur entitlements obligations. *Mobile Oil Corporation v. Department of Energy*, C.A. No. 81-CV-340 (N.D.N.Y.). The price-controlled crude oil that Mobil claims should have incurred entitlements obligations during the life of the entitlements Program has been referred to as "disappearing old oil," although it is not limited solely to the "disappearance" of *old* oil from the Entitlements Program, but rather relates to all tiers of price-controlled crude oil. To the extent that price-controlled crude oil has allegedly "disappeared" from the Entitlements Program, Mobil claims that it and similarly situated refiners have been denied entitlements benefits they would have otherwise realized if the price-controlled crude oil had been reported to the Program.

Mobil alleges that resellers and some refiners accumulated price-controlled crude oil that was never reported to the Entitlements Program. Mobil's claims relate to the entire period between November 1974 and January 1981, and to the use of time exchanges and other inventory practices that permitted price-controlled crude oil lawfully to be held outside of the Entitlements Program. Chief among these practices cited by Mobil was the use by some refiners of a method of accounting that deferred the reporting of price-controlled crude oil to the Entitlements Program until it was received at the refinery gate (the so-called "refinery gate" method of reporting).[39] When decontrol occurred.

[38] This should not be interpreted that DOE would allow firms' total claimed negative adjustments in those instances where negative adjustments exceed unadjusted receipts originally reported, if DOE were to decide to issue the notices.

[39] The regulations governing the entitlements Program did not impose a single industry-wide requirement relating to when a "crude oil receipt" was to be reported to the entitlements Program. *See* definition of "crude oil receipt" at 10 CFDR 211.62. In response to comments from the refining industry

Continued

refiners that owned price-controlled crude oil which had not incurred entitlements obligations would have had a financial benefit not available to their competitors whose only price-controlled oil had incurred entitlements obligations.[40]

Mobil asserts that it and other refiners were unable to realize such a benefit at decontrol because they utilized an accounting method that reported price-controlled crude oil to the Entitlements Program at the point of acquisition (the so-called "acquisition" method of reporting). As a result, all volumes of price-controlled crude oil acquired by these acquisition method refiners during the operation of the Entitlements Program incurred an entitlements obligation.

Mobil further asserts that the volume of price-controlled crude oil sheltered from entitlements obligations, resulting from practices such as refinery gate refiners adding to their out-of-refinery inventory, increased dramatically during the last months of the program in anticipation of decontrol. According to Mobil, to end the Entitlements Program without imposing entitlements obligations on the price-controlled crude oil held by resellers and refiners outside the Entitlements Program would be inequitable to Mobil and similarly situated refiners. Under Mobil's theory, it would be necessary to impose entitlements obligations on all price-controlled crude oil produced and sold since November 1, 1974 to refiners and resellers and to account for all such oil that has not yet incurred an emtitlements obligation for whatever reason.

The premise of Mobil's claim is that a comparison of DOE Domestic Crude Oil First Purchase Report (First Purchaser) data with DOE Domestic Crude Oil Entitlements Program (Entitlements) data indicates that fewer barrels of price-controlled crude oil were reported by refiners to the Entitlements Program than were reported by first purchasers to the First Purchaser Program. This difference in the volumes of price-controlled crude oil reported to the First Purchaser and Entitlements Program [41] represent the amount of price-controlled crude oil that has been characterized as having "disappeared" between the lease and the refinery.[42]

By taking the difference between the volume of deemed old oil reported to the First Purchase Program and the volume of deemed old oil receipts reported to the Entitlements Program in each month from Janaury 1979 through December 1980, Mobil calculated that 249 million barrels of deemed old oil have been withheld from the Entitlements Program.[43] Mobil estimates that this volume represents $5.6 billion worth of entitlements obligations evaded, derived from the sum of each monthly difference multiplied by the entitlements price for that month.

2. *DOE's Position*

DOE does not dispute that, if one subtracts the volumes of price-controlled oil reported to the Entitlements Program from the volumes of price-controlled oil reported to the First Purchase system over the period January 1979 through December 1980, the numbers derived are those cited by Mobil. What DOE has consistently maintained is that these numbers bear no relation whatever to volumes of price-controlled oil that were in out-of-refinery inventory or on time exchanges at the time of decontrol. That is, these numbers bear no relation to possible advantages gained by some refiners at the expense of Mobil or similarly situated refiners. Moreover, DOE believes that Mobil's claims are without merit as an analytical matter insofar as they bear on the decision whether or not to publish the final entitlements notices.

There are three principal reasons why DOE disagrees with Mobil that a comparison of First Purchaser data with Entitlements data accurately measures crude oil that has allegedly "disappeared," because it was not reported to the Entitlements Program. The first reason concerns the fact that the two data systems were fundamentally different, conceived and designed to measure different events in order to achieve different regulatory objectives. The data for each system was reported to different DOE program offices that utilized different methods for processing the data. In addition, definitional differences between the two data systems and non-refining uses of domestic crude oil (sales for which would have been reflected in First Purchaser data, but not reported to the Entitlements Program) account for some portion of the disparities in the numbers between the two systems. These differences in the data systems have been described extensively elsewhere and will not be discussed in detail here.[44] The other two reasons, which

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when the program was proposed, the FEA provided generally that refiners could use whatever system they chose *so long as* it was a generally accepted accounting system historically and consistently applied by the refiner. 39 FR 31650 (Aug. 30, 1974). Consequently, some refiners chose to report crude oil receipts only when they were actually received at the refinery (i.e., "refinery gate" method), others choose to report oil as receipts as soon as it was purchased, still others have systems that report some oil at one point and other oil at another point (e.g., reporting domestic crude oil at one point but imported oil at another point). By allowing refiners this flexibility to choose among those generally accepted and consistently and historically applied accounting systems used by the refiner, the FEA furthered the EPAA objective of minimizing unnecessary interference in the marketplace and minimizing regulatory inflexibility.

[40] The difference between controlled prices and market level prices with respect to price-controlled crude oil held by *resellers* on the date of decontrol would have been realized by those resellers, and would not have resulted in an unfair advantage at the refiner level. Whether price-controlled crude oil held by resellers on the date of decontrol should be taken into account to increase the entitlements benefits distributed to all refiners is discussed *infra*.

[41] The Entitlements Program became effective in November 1974, and refiners commenced filing entitlements reports in January 1975. *See* 39 FR 42246 (Dec. 4, 1974). The First Purchaser reporting system was not established until February 1978. Thus, there is no First Purchase data for purposes of comparison with Entitlements data for the period November 1974–January 1976.

[42] While the term "disappearing old oil" is a misnomer, it has been generally adopted as the shorthand method of referring to the differences in volumes of price-controlled crude oil reported on Form ERA–182 (the First Purchaser data system) and the Form ERA–49 (the Entitlements Program data system). It will be so used herein.

[43] "Deemed old oil" refers to barrels of old oil, on a barrel-for-barrel basis, plus fractional old oil barrels representing upper tier and ANS upper tier crude oil, calculated by taking the ratio of refiners' reported weighted average cost of uncontrolled crude oil less the reported weighted average of the respective price-controlled tier, divided by the entitlements price for the month. *See* 10 CFR 211.67(b)(2).

[44] *See* June 12, 1981 Comments on Behalf of ERA, filed in *Mobil Oil Corporation*, Case No. BEA–0630 before the Office of Hearings and Appeals of Department of Energy; briefs and responses to interrogatories filed on behalf of the DOE in *Mobil Oil Corporation* v. *Department of Energy*, C.A. No. 81–CV–340 (N.D.N.Y.). DOE's filings in those proceedings discussed the backgrounds and purposes of the two data systems, and identified causes for the differences in the data reported to the two systems. Those causes include: (1) The lack of any explicit requirement prior to September 1979 (or that was enforced by the First Purchaser Program Office thereafter) for respondents to the First Purchaser System to file revised reports to correct for respondent reporting errors; (2) the fact that the First Purchaser Program Office has never processed revised First Purchase Reports received more than 90 days after the report month, or revised *its* program data for a report month following the issuance of its "final" report 90 days after the report month; (3) in contrast, under the Entitlements Program, the fact that refiners were required to revise their reported price-controlled crude oil receipts for a previous month, by either making adjustments to receipts on the report for the current month or amending the report for the month in error, and there was no time limitation on the submission of such adjustments or amendments; (4) revisions to a refiner's price-controlled crude oil receipts, which could relate back as far as the beginning of the Entitlements Program, were processed and incorporated into the data by the Entitlements Program Office on a continuing basis; and (5) the fact that domestic crude oil sold for non-refining uses (e.g., crude oil purchased by utilities, refinery fuel use and losses, crude oil purchased by pipelines, facilities located near gas processing plants that processed lease condensate, shipping companies purchasing crude oil to be burned

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account for enormous volumes of price-controlled crude oil that were reported to the First Purchaser Program but thereafter not reported to the Entitlements Program, are dealt with at greater length, as follows.

(a) *The Unreliability of First Purchaser Data Because of Unreported or Unprocessed Revisions.* The published First Purchaser data are unreliable as a point of reference to fix the volume of price-controlled crude oil that should have been reported to the Entitlements Program because of (1) the failure to some firms to revise their First Purchaser reports to reflect corrections or adjustments, and (2) if revisions were filed more than 90 days after the report month, they are not processed by DOE. In order to determine the extent of the failure of respondents to the First Purchaser Program to file revised reports reflecting, *e.g.*, corrections and recertifications, and the number of barrels of crude oil involved, it would be necessary to audit all of the monthly reports of the approximately 325 First Purchaser respondents against the certifications and recertifications they received from producers, a monumental audit task. The First Purchaser Program has never been audited, given the unique and limited purpose for which it was established—to monitor compliance with the maximum composite price requirements established by EPCA through May, 1979 (after which the requirement became discretionary). Little purpose would be served by auditing First Purchaser data now, because it serves no regulatory purpose and was never designed to be a precise measure of the volume of price-controlled oil sold by producers.

First purchasers lacked motivation to correct errors in their First Purchaser Reports primarily because their failure to do so has no direct programmatic financial impact upon them.[45] On the other hand, it is reasonable to assume that all corrections and recertifications that would have the effect of reducing a refiner's reported volume of price-controlled crude oil *were* reported as either amendments or adjustments to the Entitlements Program. Given the financial impact of reporting a barrel of price-controlled crude oil to the Entitlements Program, refiners obviously had a much greater economic incentive to correct overstated volumes of price-controlled crude oil receipts than did First Purchaser respondents, because if they did not, it cost them money. When a barrel of price-controlled crude oil was recertified to a market-level price, the refiner had to pay the seller the additional money. If the refiner has already incurred an entitlement obligation for that barrel, it would want to recover the cost of that obligation form the Entitlements Program. Reductions in price-controlled crude oil receipts reports by refiners to the Entitlements Program as a result of adjustments and amendments that were not also reflected by revisions to reported First Purchaser data would contribute to the apparent "disappearance" of price-controlled crude oil.

Given the fact that the First Purchaser data system has never been audited to determine its accuracy or validity, it is impossible to quantify the volumes of price-controlled crude oil that have seemingly "disappeared" as a result of inaccurate First Purchaser data that were never revised by respondents. However, it can be demonstrated that the First Purchaser data reflect significant inaccuracies in the final months of controls by analyzing available data concerning reported aggregate volume of tertiary incentive crude oil.

Based on a comparison of the volume of tertiary incentive crude oil reported to the Tertiary Incentive Program (reported on the form ERA–424B) and the First Purchaser Program, approximately 39.67 million more barrels of price-controlled crude oil were reported as tertiary incentive crude oil to the Tertiary Incentive Program than to the First Purchaser Program after September, 1980. The most plausible explanation for the difference is that it represents tertiary incentive recertifications for which first purchasers failed to file revised reports to the First Purchaser Program. If one also reasonably assumes that these tertiary recertifications were reported as adjustments to the Entitlements Program, resulting in downward adjustments of price-controlled crude oil, the failure of the First Purchaser Program to reflect tertiary incentive adjustments alone accounts for almost 40 million barrels of the "disappearance" price-controlled crude oil from the First Purchaser Program to the Entitlements Program in only the *last months of controls.*[46]

These discrepancies indicate that the numbers represented as "disappearing" old oil by comparing First Purchaser with Entitlements data do not necessarily reflect any deficiency in the Entitlements Program or its

directly as bunker fuel, and crude oil purchased for use as a lease fuel in the recovery of heavy crude oils) would be reflected in First Purchaser data, but would not be reported in Entitlements data.

[45] First purchasers would also lack incentive to correct their First Purchaser Reports because prior to September, 1979 they were not explicitly required to correct reporting errors, and revisions to First Purchaser data submitted more than 90 days after the report month were never processed.

[46] This conclusion is supported by a comparison of the First Purchaser and Entitlements data reported by the four firms (Amoco, Atlantic Richfield, Chevron and Texaco) that reported the largest downward adjustments to price-controlled crude oil receipts to the Entitlements Program for December 1980 and January 1981. Their First Purchaser Reports were reviewed from October 1980–January 1981. October 1980 was selected as a starting point because reductions in price-controlled crude oil receipts reported by the refining arm of an integrated firm to the Entitlements Program in December 1980 could relate to the crude oil produced by the production arm of the firm as far back as October 1980.

Of those firms, only Chevron attempted to file revised First Purchase Reports reflecting reduced first purchases of price-controlled crude oil and increased first purchases of tertiary incentive crude oil. However, Chevron's revised First Purchase Reports were not received by the First Purchaser Program Office until more than 90 days after the report month, and therefore the revisions were not processed or incorporated into published First Purchaser Program data. Amoco attempted to revise its reported First Purchaser data by "rolling-in" one enormous adjustment for the prior months in its January 1981 First Purchaser Report, contrary to the instructions to the form ERA–182, which require revised reports for material adjustments to be filed for the month to which the adjustment applies. Amoco was advised to file revised First Purchaser Reports for the relevant months, but it has not taken any such action. Neither Atlantic Richfield nor Texaco have filed any revisions to their First Purchaser Reports for any months in the October 1980–January 1981 period, although the firms reported enormous negative adjustments to price-controlled oil receipts to the Entitlements Program for December 1980 and January 1981.

These firms, which have reported large negative adjustments to their price-controlled crude oil receipts to the Entitlements Program (apparently based on recertifications of otherwise price-controlled crude oil under the tertiary incentive program), appear to have failed to file timely revisions to their First Purchaser Reports. In order to reach this conclusion, one must assume that downward adjustments to price-controlled crude oil receipts reported for Entitlements Program purposes (*e.g.*, based on recertifications of otherwise price-controlled crude oil as tertiary incentive crude oil) relate to crude oil first purchased from the firm's producing arm and ultimately booked as a crude oil receipt by the firm's refining arm (and thus the downward adjustments do not primarily reflect recertified crude oil purchased from other sellers). To conclude that a firm's First Purchaser Reports should be revised for particular months (*e.g.*, for the period October 1980–January 1981 based on data reported to the Entitlements Program for December 1980 and January 1981), one must also assume that no resellers were involved and that the crude oil was booked as a crude oil receipt for entitlements purposes within two months after it was produced and sold. We believe that those assumptions are reasonable in the case of these four firms, because they are integrated oil companies that controlled significant volumes of price-controlled crude oil production and reported large amounts of recoupable allowed expenses under the tertiary program to DOE.

Thus, the published First Purchaser data inaccurately reflects large positive volumes of price-controlled crude oil that were reported as being first purchased by these firms, and relatively small volumes of reported first purchases of tertiary incentive crude oil by them.

administration. Consequently, to the extent that the "disappearing" old oil is the result of the failure of firms to revise their First Purchaser reports or DOE's practice of not processing adjustments to First Purchase numbers received more than 90 days after the report month, the entitlements data is accurate and no refiner is disadvantaged.

(b) *Reseller Miscertifications.* Price-controlled crude oil that was miscertified between the lease and the refinery accounts for a significant portion of the "disappearing" old oil problem. In cases involving miscertification by resellers, price-controlled crude oil would have been reported as such to the First Purchaser Program, subsequently illegally miscertified by resellers, and eventually reported by refiners as uncontrolled crude oil receipts to the Entitlements Program. The financial motivation illegally to miscertify price-controlled crude oil as uncontrolled crude oil became even greater after 1979 as the disparity between controlled and uncontrolled prices increased with the doubling of world market prices.

Recent DOE enforcement actions indicate that enormous volumes of price-controlled crude oil were illegally miscertified by resellers. In one case involving a single reseller, DOE has filed suit alleging the false certification of more than 177 million barrels involving $1.1 billion, convering an audit period from May 1976 through January 1981. Reseller miscertification thus can be expected to explain much of the "disappearance" of old oil in 1979 and 1980.[47]

While these reseller miscertifications account for much of the "disappearing" old oil, these miscertifications, albeit violations of the reseller price regulations that raised the cost of crude oil to all refiners, do not affect the purpose of the Entitlements Program to allocate the price-controlled oil that was available to refiners equitably among them.[48]

(c) *Mobil's Claims As Affecting the Validity of the January and Entitlements Adjustments Notices.* The claims advanced by Mobil in the litigation raise several issues. The dispositive issues are: (1) Whether the Entitlements Program failed to achieve its purpose to the maximum extent practicable during the period of its operation; and (2) whether issuance of the January and Entitlements Adjustments Notices would be unlawful if they failed to account for the old oil that "disappeared" from November 1974 to December 1980. For the reasons set forth below, DOE believes that both questions can be answered in the negative.

Does a Sufficient Predicate Exist That Supports Mobil's Allegations That the Objectives of the Entitlements Program Have Been Frustrated?

The starting point in analyzing Mobil's claims is to attempt to determine whether the alleged problem in fact actually existed, and whether it was caused by the inventory practices and time exchanges as claimed by Mobil. At the same time, this initial inquiry must also be placed in respective against the six year life of the Entitlements Program.[49]

DOE's analysis of the "disappearing" old oil question indicates that a number of factors can cause a discrepancy between the First Purchaser Program and Entitlements Program data. Most of these factors, however, did not result in frustration of the purposes of the Entitlements Program, because on *refiner* benefitted from access to price-controlled crude oil at the expense of other *refiners*. As discussed above, they include program and definitional differences between the First Purchaser and Entitlements data systems, non-refining uses of crude oil, unreported and unprocessed revisions to First Purchaser data, and reseller miscertifications of price-controlled crude oil as uncontrolled oil. Accounting for crude oil produced and sold to refiners and resellers [50] over the life of

[47] *See* Statement of Mr. Milton Lower, Staff Economist, Subcommittee on Oversight and Investigations, before the House Committee on Interstate and Foreign Commerce, (Sept. 24, 1982), which attributed the major portion of the "disappearance" of price-controlled oil reflected by reported First Purchaser and Entitlements data to miscertification by resellers and first purchasers.

[48] DOE believes that the illegal miscertification of price-controlled crude oil as uncontrolled stripper crude oil will explain to a large degree why considerably more stripper crude oil was reported to the Entitlements Program than was reported to the First Purchaser Program. However, another possible explanation exists that could account for large volumes of so-called "disappearing" price-controlled crude oil that have migrated to the uncontrolled stripper crude oil tier.

Some 46 oil companies filed suits seeking to invalidate Ruling 1974-29, which prohibited producers from counting injection wells to determine the eligibility of crude oil production from a property for uncontrolled stripper status. *See, In Re Department of Energy Stripper Well Litigation*, 520 F. Supp 1232 (D. Kan. 1981), *rev'd* 690 F. 2d. 1375 (TECA July 29, 1982), *cert. denied* 103 S.Ct. 763 (1983). Collectively, these firms owned more than 50 percent of the nation's domestic crude oil production in 1979 and reported the greatest increases in stripper well crude oil to the Entitlements Program. *See* August 3, 1981 Memorandum entitled "Validation of the Domestic Crude Oil Entitlements System" from the Deputy Administrator, Energy Information Administration to the Administrator, Energy Information Administration (hereafter "EIA Memorandum"), at 7, n.4 and 5. In that litigation, many of the companies also challenged the validity of 10 CFR 212.181(a)(6), the two month rule pertaining to crude oil certifications and recertifications. Pursuant to injunctions entered by the district court before its decision was reversed on appeal, most of the companies were permitted to count injection wells to determine the eligibility of the production from the properties in dispute for stripper status. Most companies have been required to identify the crude producing properties at issue and to establish escrow accounts for the difference in revenues between the lower tier ceiling price and the uncontrolled stipper price. Some companies may also have recertified price-controlled crude oil as stripper crude oil for prior periods not covered by the escrow accounts.

The impact of counting injection wells is significant, and potentially could account for large volumes of otherwise lower tier crude oil being converted to uncontrolled stripper crude oil. If during the period 1978–1980, as companies joined the stripper well litigation and were granted injunctions by the district court, lower tier crude oil previously reported to the Entitlements Program was retroactively recertified as stripper well crude oil, that could result in the "appearance" of stripper crude oil in the Entitlements Program. If first purchasers failed to revise their First Purchaser Reports or to otherwise incorporate corresponding downward revisions in volumes of lower tier crude oil in their data reported to the First Purchaser Program, or if the revised First Purchase Reports were filed more than 90 days after the report month, a discrepancy in the data between the two Programs could exist that would make it appear as if price-contolled crude oil had "disappeared." EIA Memorandum at 6–10.

Many of the major oil companies are parties to the stripper well litigation. In the absence of complete data concerning the retroactive recertification by firms of crude oil production from properties involved in the injection well litigation from price-controlled to stripper well crude oil and the manner in which those volumes were reported to the Entitlements and First Purchaser Programs, we are unable to quantify this source of "disappearing" price-controlled crude oil.

[49] Although Mobil has alleged a "disappearance" of 249 million barrels of deemed old oil, worth $5.6 billion in entitlements, no one has been able to quantify what, if any, portion of that can be attributed to inventory practices and time exchanges. There have been a number of post-decontrol rulemaking proceedings and adjudications that have addressed directly or touched upon the "disappearing" old oil question. While a number of refiners generally agreed with Mobil's contentions, interestingly, *every* refiner that addressed the issue denied that it had used time exchanges or inventory practices to shelter price-controlled oil from entitlements obligations. This included both acquisition and refinerygate refiners. *See especially* Transcript of Proceedings, *Mobil Oil Corporation*, Case No. BEZ-0096, 8 DOE ¶82,574 (June 29, 1981).

DOE has not been able to establish what volume of deemed old oil "disappeared" as a result of inventory practices or time exchanges. Short of imposing new reporting requirements or conducting new comprehensive audits of all refiners, DOE knows of no reliable source of data to develop such information. However, on the basis of its study of the possible reasons for the discrepancies between the two data systems, DOE believes that the volumes not reported to the Entitlements Program due to the causes cited by Mobil are substantially less than the claimed 249 million barrels.

[50] Mobil also complains of price-controlled crude oil held in inventory by resellers at decontrol. However, crude oil resellers were never subject to the Entitlements Program. During the period of price controls, DOE issued proposals to impose

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the program would not "recapture" any barrels of price-controlled oil that "disappeared" due to these factors.

Even if it were conceded for argument's sake that some substantial portion of the alleged $5.6 billion worth of entitlements had not been received by refiners as a result of inventory practices and time exchanges, it is important to assess the significance of this number. The $5.6 billion represents a total of 249 million barrels of deemed old oil, according to Mobil, that have not been reported to the Entitlements Program. Yet, over the course of the Entitlements Program, this would represent *less than 3 percent* of the barrels of deemed old oil the program *has* distributed among refiners. The Energy Information Administration concluded that even if *all* the so-called "disappearing" old oil during the period 1977 through 1980 had been added to the Entitlements Program, the change in the post-entitlements cost of crude oil to refiners would have been *less than 2 percent*. "EIA Memorandum" at 6. Thus, while $5.6 billion is a lot of money in absolute terms, it is in fact but a very small percentage of the dollars and barrels of oil that *have* been accounted for by the Entitlements Program.

It is important to remember that the Emergency Petroleum Allocation Act only required furtherance of its purposes "to the maximum extent practicable." *See* section 4(b)(1). The Entitlements Program was promulgated because price-controlled crude oil was not proportionately available to all refiners. However, the regulatory objective of equitably allocating the financial benefit of access to price-controlled crude oil was difficult to achieve, given the vast size of the industry and the turbulent marketplace of the 1970s. The nature of the refining industry, the complexity of the marketplace, and the limitations of the regulatory process all made perfect equity impossible.

With respect to crude oil held on time exchange by refiners at decontrol, the regulations permitted the reporting of crude oil on exchange to be deferred for entitlements purposes. *See* 10 CFR 211.67(g)(2). That provision was adopted because it allowed the continuation of a long-standing and customary practice of the industry, unimpeded by the regulations. There is no reason why the use of time exchanges would be peculiar only to refinery gate refiners; Mobil and other acquisition method refiners could also have utilized time exchanges. The fact there may have been some volume of crude oil held on exchange at decontrol does not necessitate a regulatory response, where (1) refiners were not treated differently by reason of their method of reporting to the Entitlements Program, and (2) firms' actions were not illegal under the regulations.

As for the question of crude oil held in so-called "out-of-refinery" inventory by refinery gate refiners, when the Entitlements Program was orignially adopted, the FEA was convinced *by refiners* that a uniform system of accounting for "crude oil receipts" for the Entitlements Program would be unduly burdensome, unnecessary, and contrary to specifically enumerated objectives of the EPAA, including sections 4(b)((1) (H) and (I). Refiners supported, and the FEA adopted, a requirement that allowed refiners to use different accounting systems for purposes of reporting to the Entitlements Program, provided that they were historically and consistently applied by the refiner. As a result, refiners' entitlements obligations were dependent to some degree upon their particular accounting systems, and their entitlements positions might have varied somewhat from one another than if a uniform system of accounting for crude oil receipts had been adopted. Nevertheless, considering the competing EPAA objectives and the purpose of the Entitlements Program, the flexibility incorporated in such an approach, rather than the alternative of imposing a single method of accounting on all firms, was determined to further the statutory objectives to the maximum extent practicable.

An acquisition method of accounting such as that utilized by Mobil could have produced significant benefits in the early months of the Entitlements Program. Price-controlled crude oil that was in Mobil's refinery inventory prior to November 1974 did not incur an entitlements obligation. The benefit that acquisition method refiners realized at the beginning of the program did not frustrate the purposes of the EPAA, and likewise the benefit that would be realized by refinery gate refiners at the end of the program because crude oil held in out-of-refinery inventory would not incur an entitlements obligation would not frustrate the purposes of the program or the statute. *See also, Ashland Oil Inc.*, 8 DOE ¶80,202 at 80,986, (September 24, 1981).

Finally, Mobil seeks to redress not only whatever advantages some firms may have realized on decontrol, but also any advantage that may have accrued in each month of the program during its operation. If in a given month in 1975 or 1976 some refiners were slightly advantaged over some other refiners, the effect of that advantage was felt in that month or very shortly thereafter. Given the relatively small advantage involved, compared to the overall equitable effects of the Entitlements Program, the advantage in that month did not impair achievement of the purposes of the EPAA to the maximum extent practicable.

The lack of perfect equity did not justify the adoption of amendments to the program in the past to eliminate prospectively the possible inequity. To take action now, however, to try to quantify all those past "advantages" and transfer money to the "disadvantaged" firms would be to create a new disadvantage today in a decontrolled environment. It could involve the transfer of large sums of money from some refiners to other refiners without serving any existing regulatory purpose. Moreover, because the small advantages of many months over several years would be aggregated into one required payment, the financial impact of such an unanticipated retroactive burden on some refiners might be severe.

F. Entitlements and the Office of Hearings and Appeals

As described above, at the present time there are a number of final OHA exceptions orders related to entitlements that have been issued since the last entitlements notice, and there are a number of proceedings either before OHA, FERC, or the courts that in the future will result in final orders related to the Entitlements Program. Even if DOE determines that publication of the January and Entitlements Adjustments Notices would frustrate the purposes of the EPAA, this does not necessarily determine the proper

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entitlements obligations on firms upstream from the refinery, including crude oil resellers. *See* 43 FR 52104 (Nov. 8, 1978); 44 FR 5296 (Jan. 25, 1979). However, the records in those proceedings did not justify adoption of such a rule.

If crude oil resellers, by lawfully building physical inventories of price-controlled oil, deferred the ultimate receipt of that crude oil by a refiner so that that oil forever escaped an entitlements obligation, the purposes of the Entitlements Program were not frustrated in any manner, for no refiner was disadvantaged or advantaged vis-a-vis other refiners. The purpose of the Entitlements Program was to distribute equitably among all refiners the access that *some* refiners *had* to price-controlled oil. Although, concededly the imposition of entitlements obligations on resellers would retroactively increase the total amount of price-controlled crude oil available to all refiners, the program's purpose of reducing competitive imbalances *among refiners* would not be advanced whatsoever. Because refiners did not have access to the price-controlled crude oil held by resellers at decontrol, resellers' possession of price-controlled crude oil at the time of decontrol did not affect the purposes of the Entitlements Program.

resolution of these outstanding exceptions cases and year-end reviews involving entitlements. Unlike the entitlements regulations, which never purported to determine by their gross formulas the actual equitable or financial need for particular participants, acting instead in a macroeconomic manner to further the purposes of the EPAA on a sector and industry basis, the granting of exception relief and the process of year-end reviews focused on the actual financial or equitable need of particular firms.

Consequently, DOE does not believe that outstanding exception decisions or pending cases that may involve payments to or from the Entitlements Program would be mooted by a determination not to publish the January and Entitlements Adjustments Notices.

Indeed, many OHA decisions have provided that in the event no further notices are published, the firms are to return to OHA for an appropriate order.

A question arises, however, as to how entitlements exception relief could be implemented in the absence of entitlements notices. That is, from where would funds come to pay any relief granted? At the outset, it should be noted that the questions concerning the funding of exception relief do not justify the publication of further notices. Continuation of a regulatory program in order to provide a mechanism to grant relief to certain refiners from the program's requirements is not warranted. In any event, there are a number of available sources of funds for these purposes. First, as a result of some year-end reviews in *Delta/Beacon* cases, as well as some other cases, OHA has determined that certain firms owe money to the Entitlements Program. This could be one source of funds for those with entitlements exception relief. Another source could be restitutionary funds from price or entitlements violations, if the courts or DOE determine that Entitlements Program participants bore some of the ultimate economic harm from some of the violations and should be recompensed by means of some entitlements-based formula. *E.g.*, 10 CFR 211.69(h)(2)(ii). In this event, funds to pay amounts owing to firms as a result of OHA entitlements exception decisions could be paid first. Such a method of distribution would be the equivalent of distributing the funds among all refiners and then collecting from each the pro rata share of the amounts owed to recipients of exception relief. DOE requests comments on these or other sources of funds.

IV. Comments Requested

DOE requests comments on all of the issues raised in this Notice. DOE also seeks comments on any other issue that any interested person deems of consequence for the purposes of this proceeding. DOE urges commenters to file data, supporting documentation, and any other relevant materials to support the statements and claims made in their written comments, so that a final decision can be made on the basis of the record of this proceeding.

DOE solicits comments generally on its legal analysis of the various issues raised in this proceeding, as set forth in this Notice. Commenters are also invited to direct their attention to the following specific questions:

1. Whether publication of the January and Entitlements Adjustments Notices was rendered discretionary by Section 3 of Executive Order 12287 such that, provided an adequate basis is established in this proceeding, DOE may decide not to publish the notices?

2. Whether the differences in refiners' crude oil costs in January 1981 were principally the result of the significant price differentials based on quality paid for uncontrolled imported and domestic crude oils, rather than access to available supplies of price-controlled crude oil?

3. Whether publication of the notices would adversely affect small and independent refiners, an adverse effect that would be exacerbated by the decreased profitability for small and independent refiners in the period after decontrol so as to threaten their competitive viability? Specifically, what impact would publication of the notices have on the continued operations of small and independent refiners that would be entitlements purchasers?

4. Whether publication of the notices, requiring the transfer of monies among refiners, would distort and unnecessarily interfere with the competitive equilibrium established by the free market after decontrol? If so, specify why and how publication of the notices would have these impacts.

5. Whether non-publication of the notices would threaten the competitive viability of any particular segment of the refining industry?

6. Whether non-publication of the notices would cause any refiners that anticipated that they would be sellers of entitlements on the notices to go out of business? If so, specify the circumstances surrounding the firm's financial condition that would cause it to go out of business by reason of the failure to receive entitlements revenues reflected on the updated draft notices appended hereto.

7. Whether publication of the notices would affect the pricing of refined petroleum products sold to marketers or consumers downstream from the refinery, either so that refiners that would be sellers of entitlements would reduce their prices, or that purchasers of entitlements would be required to increase their prices? If so, specify how the receipt or expenditure of entitlements monies would affect the prices of refined petroleum products.

8. If the notices were published, what provision could be made to collect entitlements monies from refiners that would be purchasers on the notices, but have gone out of business?

9. Whether, to what extent, and how did refiners rely on issuance of the January 1981 Entitlements Notice when they purchased crude oil during the first 27 days of January 1981? If refiners did so rely, explain in detail how anticipated entitlements obligations on the January Notice affected product pricing decisions.

10. For refiners that claim they relied on the anticipated publication of January 1981 Entitlements Notice, how would their crude oil purchasing decisions in January 1981 have been changed, or what alternatives would they have pursued, if they had known the notice would not be published?

11. Whether, to what extent, and how did refiners rely on promulgation of the Entitlements Adjustments Rule and issuance of a Entitlements Adjustments Notice in making payments for crude oil recertifications?

12. Whether firms that would have been sellers on the January 1981 Notice projected anticipated entitlements revenues to be received pursuant to that notice, whether those projections were accurate, and whether they were relied on in making crude oil purchasing or refined product pricing decisions?

13. Whether and to what extent the negative adjustments to price-controlled crude oil receipts reported to refiners for purposes of the January and Entitlements Adjustments Notices are primarily due to recertifications under the Tertiary Incentive Program?

14. Whether and to what extent negative adjustments to price-controlled crude oil receipts reported by integrated firms represent crude oil recertifed under the Tertiary Incentive Program by an affiliated producing entity, that was sold to the refining entity.

15. Whether and to what extent independent refiners have received and paid for recertifications, including

tertiary recertifications, of price-controlled crude oil?

16. To what extent have refiners received "re-recertifications" from producers and resellers, reclassifying uncontrolled tertiary incentive crude oil as controlled oil, since they filed their entitlements reports for either the January or Entitlements Adjustments Notices.

17. Whether refiners should be permitted to seek exception relief from a decision not to publish on grounds that they received more than their proportionate share of recertifications under the Tertiary Incentive Program, causing them possible to experience serious hardship, gross inequity, or an unfair distribution of burdens?

18. To what extent did refiners, other than the twenty-one refiners identified by DOE, make reporting errors of the type identified in section III D(2) of this Notice?

19. Whether and to what extent first purchasers of crude oil failed to file revised First Purchaser reports or otherwise account for corrections and recertifications resulting in downward adjustments to price-controlled crude oil that was first-purchased?

20. Whether and to what extent refiners engaged in inventory practices to delay the receipt of price-controlled crude oil into refinery inventory, thereby avoiding reporting those volumes as price-controlled "crude oil receipts" to the Entitlements Program? If so, specify the amounts and categories of price-controlled crude oil held in out-of refinery inventory or on time exchange at decontrol that were not reported to the Entitlements Program.

21. Whether and to what extent at the time of decontrol refiners utilized time exchanges to delay the receipt of price-controlled crude oil into refinery inventory, and whether the volumes of price-controlled crude oil held on exchange at decontrol increased in a manner inconsistent with firms' historical accounting practices?

22. Whether outstanding OHA, FERC and court decisions should be implemented notwithstanding non-publication of the January and Entitlements Adjustments Notices and, if so, where should the funds come from to satisfy firms that have been granted relief?

V. Public Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this notice. All comments should be sumbitted by 4:30 p.m., d.s.t., of the day specified in the **"DATES"** section to the appropriate address indicated in the **"ADDRESSES"** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "January 1981 and Entitlements Adjustments Notices," Docket No. ERA–R–83–01. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the **"DATES"** and **"ADDRESSES"** sections of the preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. The requests should contain a telephone number where you may be contacted during the day prior to the hearing. If you are selected to be heard at the hearing, we will notify you before 4:30 p.m., November 30, 1983. You will be required to submit 50 copies of your statement to the Office of Management Services of ERA at the address indciated in the **"ADDRESSES"** section of the preamble by 4:30 p.m., December 5, 1983.

2. *Conduct of the hearing:* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

VI. Procedural Matters

To the extent that DOE's decision not to issue further notices would be subject to informal rulemaking requirements, DOE has complied with the procedural rulemaking requirements set forth below.

A. Executive Order 12291

Under Section 8(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981), the Director of the Office of Management and Budget ("Director") is authorized to exempt any class or category of regulations from any or all requirements of the Executive Order.

An exemption was requested of the Director for those regulations issued pursuant to Executive Order No. 12287. The request was granted.

B. Section 7 of the FEA Act

As required by section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. No. 93–275, as amended) a copy of this notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for comment concerning the impact of this proposal on the quality of the environment. The EPA does not foresee these actions as having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

C. NEPA Review

After reviewing today's proposal, it has been determined that it would not constitute a major federal action significantly affecting the quality of the

human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, because it merely revokes regulations that DOE has determined can no longer be given effect consistent with the underlying statute that authorized the promulgation. Therefore, the preparation of an Environmental Impact Statement for this proposal is not required under 10 CFR Part 208.

D. Section 404 of the DOE Act

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*, Pub. L. 95-91), we have referred this proposal, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether the proposal would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation and publication of an initial regulatory flexibility analysis at the time of publication of the notice of proposed rulemaking if the proposal, if promulgated, is likely to have a significant impact on a substantial number of small entities.

This proposal would remove a regulatory requirement that would otherwise apply only to participants in the Entitlements Program. For those Entitlements Program participants that could be classified as "small entities" by reason of being "small governmental jurisdictions" (e.g., governmental entities that were included pursuant to the petroleum substitutes provisions), the proposed revocation of the regulations generally removes a financial burden on them resulting from their net position as purchasers on the combined notices.

Small refiners may also be considered "small entities" under the statute. Non-publication of the notices will adversely affect small refiners that would have been net entitlements sellers on the combined lists, and will benefit small refiners that would have been net entitlements purchasers. A substantial number of small refiners would be so affected, and at least for some, the impact would be significant. The preceding discussion in this Notice, which analyzes the impacts of the proposal and describes the reasons therefor, satisfies the statutory requirements and constitutes the initial regulatory flexibility analysis required by section 603(b) of the Act.

(Emergency Petroleum Allocation of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70 and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; E.O. 12287, 46 FR 9909)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., on October 28, 1983.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

1. Removed are §§ 211.66(i); 211.67; and 211.69.

§ 211.66 Reporting requirements.

* * * * *

(i) [Removed]

§ 211.67 [Removed]

§ 211.69 [Removed]

Appendix—Draft January 1981 and Entitlements Adjustments Notices

The draft January 1981 and Entitlements Adjustments Notices that follow are being published as an Appendix to the Notice of Public Proceeding initiated by DOE concerning issuance of these notices. The draft Notices reflect data available to DOE as of September 1, 1983. They are being published for purposes of information only to apprise firms of their updated entitlements positions, and so that firms may participate in the public proceedings with the benefit of current data.

Publication of the draft notices is subject to two significant qualifications. First, the draft entitlements notices have no legal force or effect under 10 CFR 221. 67 (b), (c) or (i), or 211.69(g).

Second, because the draft notices have been updated only through September 1, 1983, they do not reflect developments since that date that could affect calculation of firm's entitlements obligations. These include, *inter alia*, decisions by the Office of Hearings and Appeals (OHA), the Federal Energy Regulatory Commission (FERC), and the courts. Any change in entitlements obligations resulting from OHA, FERC, and court decisions with respect to one refiner affects entitlements obligations with respect to all other refiners, requiring complete recalculation of the notices.

Therefore, firms' entitlements obligations could change to reflect developments occurring after September 1, 1983.

None of the data reflected in the preamble to the draft January 1981 Entitlements Notice published at 47 FR 33434 (Aug. 2, 1982) has changed, with the exception of the national domestic crude oil supply ratio (DOSR) for January 1981 and the total number of entitlements that would be required to be purchased and sold pursuant to the notice. The DOSR for January 1981 based on this updated draft of the notice is calculated to be. 014912. The total number of entitlements that would be required to be purchased and sold under the updated draft notice is 15,330,496. The discussion of the January Notice contained in the preamble otherwise would generally still apply.

None of the data reflected in the preamble to the draft Entitlements Adjustments Notice, also published on August 2, 1982, has changed with the exception of the total of all firms' claims exceeding obligations for the notice, which is slightly more than $348 million.

NOTICE OF ENTITLEMENTS* FOR DOMESTIC CRUDE OIL, JANUARY 1981

Deemed old oil			Entitlement position				
Reporting firm short name	Adjusted receipts	Total issued	Exceptions and corrections	Entitlements		Required to buy	Required to sell
				Product	California		
Consol'd-Sales	−18,139	0	0	0	0	0	[1] 18,139
A-Johnson	0	28,061	0	0	0	0	28,061
ADM	0	670	0	0	0	0	670
Akron-Ohio	0	1,499	[2] 1,372	0	0	0	1,499

NOTICE OF ENTITLEMENTS* FOR DOMESTIC CRUDE OIL, JANUARY 1981—Continued

Reporting firm short name	Deemed old oil: Adjusted receipts	Deemed old oil: Total issued	Entitlement position: Exceptions and corrections	Entitlements: Product	Entitlements: California	Required to buy	Required to sell
Alexandria-VA	0	39	[5] 32	0	0	0	39
Allied	0	8,201	0	0	0	0	8,201
Amer-Agri-Fuels	0	248	[5] 239	0	0	0	248
Amer-Petrofina	−634,269	69,451	0	0	0	0	703,720
Amerada-Hess	1,749,579	191,240	0	5,346	0	1,558,339	0
Ames-Iowa	0	319	[5] 278	0	0	0	319
Amoco	1,030,990	350,048	0	0	0	680,942	0
Anchor	0	5,897	0	0	0	0	5,897
Apex	0	1,785	0	1,785	0	0	1,785
Arco	−243,603	248,630	0	0	0	0	492,233
Arizona	21,964	3,825	0	0	149	[1] 18,139	0
Arizona-Chem	0	144	0	0	0	0	144
Arlington-VA	0	−229	[3] −229	0	0	229	0
Asamera	−2,511	−154,795	[5] −172,658	0	0	152,285	0
Ashland	[1] 385,509	130,909	0	0	0	[5] 254,600	0
Atlanta	0	18	0	0	0	0	18
Austin-Minn	0	2	0	0	0	0	2
Azusa-Land	0	135	[3] 105	0	0	0	135
Bait-Methane	0	15	0	0	0	0	15
Bayou	0	1,382	0	0	0	0	1,382
Beacon	91,611	189,873	[2] [4] 169,432	0	3,330	0	98,262
Belcher	0	8,346	0	8,346	0	0	8,346
Beloit-WI	0	95	[5] 95	0	0	0	95
Bergen-County	0	983	[5] 966	0	0	0	983
Bi-Petro	0	1,428	0	0	0	0	1,428
Boise-Idaho	0	30	[5] 25	0	0	0	30
Boston-Quincy	0	1,114	[5] 1,092	0	0	0	1,114
Braintree	0	1,314	[5] 1,166	0	0	0	1,314
Bronco	0	1,085	0	0	0	0	1,085
Brookings-SD	0	0	0	0	0	0	0
Brown-Wood	0	−318	[5] 310	0	0	318	0
Bruin	15,628	0	0	0	0	15,628	0
C&H	0	131	[5] 73	0	0	0	131
Cadence-Chem	0	184	0	0	0	0	184
Calcasieu	−25,429	14,030	0	0	0	0	39,459
Calumet	0	2,968	0	0	0	0	2,968
Canal	6,951	9,174	[3] −101	0	0	0	2,223
Carbonit	0	15,141	[5] 5,087	0	0	0	15,141
Caribou	18,948	100,387	[2] [5] 91,903	0	0	0	81,439
Castle	0	7,156	0	7,156	0	0	7,156
CEA	0	733	[5] 733	0	0	0	733
Central	0	2,687	0	2,687	0	0	2,687
Champlin	−316,577	5,765	[3] −61,022	0	−10,934	0	322,342
Charter	0	−145,664	[5] −182,184	0	0	145,664	0
Chevron	−4,093,110	951,470	[2] [5] 541,774	0	−16,663	0	5,044,580
Cirro	−1,075	22,662	[5] 1,269	5,623	0	0	23,737
Citgo	135,161	89,067	[5] −9,426	0	0	46,094	0
Citronelle	0	−21,756	[3] −21,756	0	0	21,756	0
City-of-Seward	0	6	[5] 6	0	0	0	6
City-of-Wichita	0	320	[5] 303	0	0	0	320
Claiborne	8,418	5,630	0	0	0	2,788	0
Clark	−185,283	64,882	0	0	0	0	250,165
Clinton-Iowa	0	434	[5] 432	0	0	0	434
Clinton-Manges	4,853	1,707	0	0	0	3,146	0
Coastal	22,469	55,942	0	5,873	0	0	33,473
Coastal-Petro	0	10,090	0	0	0	0	10,090
Goldwater	0	442	[5] 430	0	0	0	442
Colonial	0	1,642	0	1,642	0	0	1,642
Columbus-Ohio	0	177	[5] 170	0	0	0	177
Conoco	−812,240	101,467	0	1,762	−16,106	0	913,707
Consumers-Power	0	194,032	[5] 191,949	2,083	0	0	194,032
Copano	0	10,853	0	0	0	0	10,853
Coral	0	18,567	0	0	0	0	18,567
Corco	0	60,266	0	24,551	0	0	60,266
CRA-Farmland	74,073	49,887	[5] 6,918	0	0	24,186	0
Cross	6,408	10,180	0	0	0	0	1,772
Crown	27,389	38,501	0	0	0	0	11,112
Crystal-Ck	25,657	20,986	0	0	0	4,671	0
Crystal-Ref	0	2,553	0	0	0	0	2,553
Cumberland	0	14	[5] 13	0	0	0	14
Deepwater	0	1,336	0	1,336	0	0	1,336
Dekalb-IL	0	1	0	0	0	0	1
Delta	141,908	41,069	0	0	0	100,839	0
Demenno	0	15,538	0	0	0	0	15,538
Detroit-ED	0	2,406	0	2,406	0	0	2,406
DFSC	0	1,562	[5] 412	1,150	0	0	1,562
Diamond	12,342	35,611	[5] 591	0	0	0	23,269
Dillman	0	34	[5] 34	0	0	0	34
Dorchester	3,825	18,692	0	0	0	0	14,867
Dow	1,859	367,116	[5] 367,116	0	0	[10] 368,975	0
Downers-Grove	0	18	[3] [5] 17	0	0	0	18
E-Seaboard	0	2,419	0	2,419	0	0	2,419
Eagle-refining	0	509	0	0	0	0	509
East-bay-mud	0	109	[5] 91	0	0	0	109
East-Moline-IL	0	1	0	0	0	0	1
Eastern-MWD	0	33	[5] 32	0	0	0	33
Eddy	4,060	5,209	0	0	0	0	1,149
El-Paso-TX	0	12	0	0	0	0	12

NOTICE OF ENTITLEMENTS* FOR DOMESTIC CRUDE OIL, JANUARY 1981—Continued

Reporting firm short name	Deemed old oil: Adjusted receipts	Deemed old oil: Total issued	Entitlement position: Exceptions and corrections	Entitlements: Product	Entitlements: California	Required to buy	Required to sell
Elgin-Il	0	27	[2] [3] 25	0	0	0	27
Energy-Coop	0	40,053	0	0	0	0	40,053
Enterprise	0	4,377	[2] 4,041	336	0	0	4,377
Ergon	8,629	47,628	[2] 33,746	0	0	0	38,999
Essex-Union	0	153	[2] 133	0	0	0	153
Evangeline	0	2,140	0	0	0	0	2,140
Ewing-Lawrence	0	12	[2] 10	0	0	0	12
Exxon	2,989,926	527,673	[2] −237	26,849	0	2,462,253	0
EZ-Serve	23,219	23,191	[2] 1,356	0	0	28	0
Farmers-UN	55,917	22,816	0	0	0	33,101	0
Fletcher	10,343	40,960	[2] 17,768	0	0	0	39,617
Flint	3,010	811	[2] 181	0	0	2,199	0
Fort-Worth-TX	0	50	[2] 44	0	0	0	50
Fresno-CA	0	5	0	0	0	0	5
Friendswood	2,685	11,879	0	0	0	0	9,194
Funding	21,014	5,019	0	0	0	15,995	0
Gary	4,223	18,219	[2] 3,683	0	0	0	13,996
Getty	207,779	95,005	0	0	2,648	112,774	0
Getty-Syn	0	996	[2] 912	0	0	0	996
Giant	0	8,335	0	0	0	0	8,335
Gibson	0	4,051	0	0	0	0	4,051
Glacier-Park	81,559	5,652	0	0	0	75,907	0
Gladieux	25	15,424	0	0	0	0	15,399
Glencoe-MN	0	0	0	0	0	0	0
Glenrock	0	3,363	0	0	0	0	3,363
Golden Eagle	0	13,728	0	0	0	0	13,728
Goldking	−229,350	28,594	0	0	0	0	257,944
Good-Hope	9,513	36,082	0	0	0	0	26,569
Green-Bay-WI	0	21	0	0	0	0	21
Guam	0	29,289	0	0	0	0	29,289
Gulf	428,201	87,924	[2] −226,856	2,844	3,008	340,277	0
Gulf-Energy	0	4,619	0	0	0	0	4,619
Gulf-Sts	−45,293	31,995	[2] 15,194	0	0	0	77,248
Harrisburg-Pa	0	306	0	0	0	0	306
Hayward-Ca	0	6	0	0	0	0	6
Health-Care	0	49	[2] 42	0	0	0	49
Hempstead-Town	0	553	482	0	0	0	553
Hri	0	32,345	[2] −2,973	0	0	0	32,345
Howell	299,451	34,674	0	0	0	264,777	0
Hudson-Oil	0	16,432	0	0	0	0	16,432
Hunt	93,364	34,435	[2] 7,832	0	0	58,929	0
Huntway	0	6,652	0	0	0	0	6,652
Husky	290,640	290,640	[2] 248,818	0	0	0	0
Idaho-Falls	0	555	[2] 552	0	0	0	555
Independent-Ref	0	30,344	[2] −13,797	0	0	0	30,344
Indiana-Farm	7,455	16,120	0	0	0	0	8,665
Indust-Fuel	0	1,318	0	0	0	0	1,318
Inter-Petro	0	2,210	0	2,210	0	0	2,210
Inter-Process	0	17,220	0	0	0	0	17,220
Ionia	0	1	0	0	0	0	1
Jackson-Mi	0	2	0	0	0	0	2
Kenco	18,087	5,175	0	0	0	12,912	0
Kenosha-Wi	0	6	0	0	0	0	6
Kentucky	7,3550	−2,065	[2] [3] −4,447	0	0	9,420	0
Kern	−46,773	170,165	[4] −153,759	0	−2,570	0	216,938
Kerr-McGee	389,405	41,519	0	0	0	347,886	0
Koch	0	58,437	0	1,763	0	0	58,437
La-County	0	482	[2] 208	0	0	0	482
La-Crosse	0	27	[2] 25	0	0	0	27
Lagloria	58,069	32,390	0	0	0	25,679	0
Lake-Charles	0	6,062	0	0	0	0	6,062
Lakeside	112	3,525	0	0	0	0	3,413
Laketon	20,742	−67,614	[2] −72,943	0	0	88,356	0
Lakewood-Oh	0	14	[2] 13	0	0	0	14
Lamprey-NH	0	193	[2] 168	0	0	0	193
Liquid-Energy	0	9,059	0	0	0	0	9,059
Little-Amer	154,886	−1,551,230	[2] −1,603,440	0	0	1,706,116	0
Los-Angeles-CA	0	2,274	[2] 2,077	0	0	0	2,274
Lotex	0	336	0	0	0	0	336
Louisiana-Land	26,302	64,681	[2] 33,262	0	0	0	38,379
MacMillan	4,618	20,824	0	0	195	0	16,206
Madison-Chatham	0	18	[2] 17	0	0	0	18
Madison-City-Wi	0	42	0	0	0	0	42
Madison-Wi	0	282	[2] 270	0	0	0	282
Mallard	0	6,991	0	0	0	0	6,991
Marathon	490,848	158,931	0	0	0	331,917	0
Marion	3,347	22,937	0	0	0	0	19,590
Marlex	782	−24,891	[2] 36,442	0	54	25,673	0
Marshalltown	0	5	0	0	0	0	5
Medford	0	1	0	0	0	0	1
Merced-CA	0	3	0	0	0	0	3
Metro-Seattle	0	215	[2] 179	0	0	0	215
Metropolitan	0	9,828	0	9,828	0	0	9,828
Miami-Dade	0	233	[2] 218	0	0	0	233
Mid-Amer	2,483	−83,577	[2] −87,482	0	0	86,060	0
Middletown-CH	0	4	0	0	0	0	4
Midwest-Solv	0	3,561	[2] 3,513	0	0	0	3,561
Miller-Oil	0	−21,011	[2] −21,011	0	0	21,011	0

NOTICE OF ENTITLEMENTS* FOR DOMESTIC CRUDE OIL, JANUARY 1981—Continued

Reporting firm short name	Deemed old oil		Entitlement position				
	Adjusted receipts	Total issued	Exceptions and corrections	Entitlements		Required to buy	Required to sell
				Product	California		
Milwaukee-WI	0	44	0	0	0	0	44
Mobil	360,016	311,149	[2] 24,690	0	7,830	48,867	0
Mobile-Bay	777	5,582	0	0	0	0	4,805
Mobridge-SD	0	0	0	0	0	0	0
Mohawk	0	−178,267	[3] −178,267	0	0	178,267	0
Monoco	0	649	0	649	0	0	649
Monroe-WI	0	23	[2] 23	0	0	0	23
Monsanto	−160,508	27,980	0	0	0	0	208,488
Moorhead-MN	0	1	0	0	0	0	1
Morrison	0	2,986	0	0	0	0	2,986
Mountaineer	1,747	771	0	0	0	976	0
MSDGC	0	141	0	0	0	0	141
Mt-Airy	2,835	9,062	0	0	0	0	6,227
Murphy	−59,656	59,009	0	0	0	0	118,667
N-Amer-Petro	0	15,239	0	0	0	0	15,239
N-Little-Rock	0	280	[3] 245	0	0	0	280
N-San-Mateo	0	4	[3] 4	0	0	0	4
Nashville-Tenn	0	160	0	0	0	0	160
Nassau-County	0	22	0	0	0	0	22
Natchez	0	3,000	0	0	0	0	3,000
Natl-Coop	56,885	33,568	0	0	0	23,317	0
Navajo	66,276	284,020	[2] [4] 258,050	0	0	0	217,744
Neptune	0	32	[2] 31	0	0	0	32
Nevada	0	2,702	0	0	0	0	2,702
New-Edgington	−44,471	34,340	[3] [4] 10,057	0	−3,475	0	78,811
New-Engl-Petro	0	9,440	0	9,440	0	0	9,440
New-York-EP	0	267	0	0	0	0	267
Newhall	257	−60,960	[3] −78,835	0	12	61,217	0
Northeast-Petro	0	1,196	0	1,196	0	0	1,196
Northland	10,107	10,107	[2] 9,246	0	0	0	0
NY-Sanitation	0	268	0	0	0	0	268
Ocean-Township	0	8	[3] 7	0	0	0	8
Ocean-Utilities	0	71	[2] 66	0	0	0	71
Oconomowoc-WI	0	8	[3] 7	0	0	0	8
OKC	112	17,770	0	0	0	0	17,658
Okla-Ref	12,551	16,444	0	0	0	0	3,893
Omaha	0	47	0	0	0	0	47
Orange-County	0	116	0	0	0	0	116
Osceola-AR	0	134	[3] 119	0	0	0	134
Oxnard	0	3,721	0	0	0	0	3,721
Peerless	0	2,925	0	0	0	0	2,925
Pennzoil	−189,189	48,632	0	0	0	0	237,821
Peoria-IL	0	650	[3] 650	0	0	0	650
Pester	56,971	23,870	[3] 408	0	0	33,101	0
Petraco-Valley	0	2,677	0	0	0	0	2,677
Philadelphia-PA	0	533	[3] 499	0	0	0	533
Phillips	26,240	108,317	0	0	0	0	82,077
Phillips-PR	0	31,980	0	31,980	0	0	31,980
Pima-AZ	0	19	0	0	0	0	19
Pioneer	16,753	22,041	[2] 8,126	0	0	0	5,288
Placid	361,221	82,532	[2] 39,028	0	0	278,689	0
Plateau	42,170	261,978	[3] [4] 243,366	0	0	0	219,808
Port	0	4,507	0	0	0	0	4,507
Powerine	−52,526	26,266	0	0	−2,808	0	78,792
Pride	0	25,150	0	0	0	0	25,150
Quad	0	2,709	[2] 2,709	0	0	0	2,709
Quaker-ST	6,690	24,041	0	0	0	0	17,351
Quilman	0	6,326	0	0	0	0	6,326
Racine-Waste-UT	0	89	[2] 83	0	0	0	89
Rahway	0	72	[2] 62	0	0	0	72
Rapid-SD	0	3	0	0	0	0	3
Ravenna-CH	0	506	0	0	0	0	506
Resco	0	1	0	0	0	0	1
Richards	0	81	0	0	0	0	81
Road-Oil	0	236	0	0	0	0	236
Roanoke-VA	0	10	0	0	0	0	10
Rock-Island	17,341	27,303	0	0	0	0	9,962
Saber-Tex	9,435	3,771	0	0	0	5,664	0
Sabre-Cal	0	−8,042	[3] −20,424	0	0	8,042	0
Sage-Creek	1,892	6,590	[2] 6,590	0	0	0	4,698
Salem-VA	0	24	0	0	0	0	24
San-Joaquin	0	16,020	[3] 2,091	0	0	0	16,020
San-Jose-CA	0	8,570	[2] 8,512	0	0	0	8,570
Santa-Cruz-CA	0	454	[3] 449	0	0	0	454
Scallop	0	8,523	[3] 665	7,858	0	0	8,523
Scanoil	0	7,082	0	7,082	0	0	7,082
Schulze	0	651	0	0	0	0	651
Seaview	0	15,277	0	0	0	0	15,277
Seminole	8,745	9,266	0	0	0	0	521
Sentry	0	19,901	0	0	0	0	19,901
Shell	3,156,229	328,991	[2] 1,376	0	1,512	2,827,238	0
Shepherd	−13,578	−58	[2] 2,346	0	0	0	13,520
Sigmor	2,903	19,287	0	0	0	0	16,384
Silver-Eagle	309	−2,395	[3] −2,395	0	0	2,704	0
Sioux-Falls	0	110	[2] 103	0	0	0	110
Slapco	−11,685	10,998	0	0	0	0	22,683
SMRSA	0	41	[2] 38	0	0	0	41
SC-Hampton	2,998	8,480	0	0	0	0	5,482
Sohio	1,041,175	159,247	0	0	0	881,928	0
Somerset	10,993	6,456	[3] 1,209	0	0	4,537	0
Sooner	7,664	5,140	0	0	0	2,504	0
Sound	0	11,795	0	0	0	0	11,795

NOTICE OF ENTITLEMENTS* FOR DOMESTIC CRUDE OIL, JANUARY 1981—Continued

Reporting firm short name	Deemed old oil: Adjusted receipts	Deemed old oil: Total issued	Entitlement position: Exceptions and corrections	Entitlement position: Entitlements: Product	Entitlement position: Entitlements: California	Entitlement position: Required to buy	Entitlement position: Required to sell
Southern-Union	86,961	31,697	0	0	0	55,264	0
Southland	121,151	51,904	[3] 31,396	0	0	69,247	0
Southland-CT	0	535,108	[4] 535,108	0	0	0	535,108
Southwest-Petro	0	4,445	0	0	0	0	4,445
Southwestern	−149	−2,373	[2] [3] −3,190	0	0	2,224	0
Sprague	0	7,324	0	7,324	0	0	7,324
Springfield-IL	0	2	0	0	0	0	2
St & San-Chicago	0	6,632	[3] 4,957	0	0	0	6,632
St-Clair-IL	0	525	[3] 525	0	0	0	525
St-Cloud-Minn	0	168	[2] [3] 166	0	0	0	168
Stevens-PT-WI	0	80	[3] 79	0	0	0	80
Stinnes-Inter	0	968	0	968	0	0	968
Stockton-CA	0	17	0	0	0	0	17
Sunland	0	13,039	[5] 1	0	0	0	13,039
Sunoco	187,134	140,745	0	2,403	0	46,389	0
Swann	0	3,921	0	3,921	0	0	3,921
T & S	0	188	0	0	0	0	188
Tacoma-WA	0	324	[3] 321	0	0	0	324
Tarco	4,468	1,339	0	0	0	3,129	0
Tamcone	0	1,593	0	1,593	0	0	1,593
Tenneco	−405,827	46,133	0	0	−3,381	0	451,960
Tesoro	−171,670	47,010	0	0	0	0	[6] 218,680
Texaco	−1,794,959	360,133	0	6,286	−443	0	2,155,092
Texas-American	824	10,975	0	0	0	0	10,151
Texas-City	74,168	−97,628	[3] 140,643	0	0	[10] 171,796	0
Texas-Refining	0	22,360	[3] 19,642	0	0	0	22,360
Texas-Standard	0	1,467	0	0	0	0	1,467
Thagard	3,015	12,793	[3] 1,434	0	175	0	9,778
Thorn-Creek	0	76	[3] 72	0	0	0	76
Thriftway	10,325	−2,688	[3] −7,081	0	0	13,013	0
Thunderbird	15,249	8,578	0	0	0	6,671	0
Tipperary	0	3,552	0	0	0	0	3,552
Tomahawk	0	25	[3] 25	0	0	0	25
Tonkawa	2,088	13,878	0	0	0	0	11,790
Tosco	−292,616	65,789	0	0	−7,223	0	358,405
Total-Petroleum	4,014	93,882	0	0	0	0	89,868
Tri-Valley	0	79	[3] 79	0	0	0	79
Turlock-Ca	0	27	0	0	0	0	27
Uco-Carbibe	0	11,944	0	11,944	0	0	11,944
UNI-RFF	0	15,172	0	0	0	0	5,172
Union-Carbide	0	1,635	0	1,635	0	0	1,635
Union-Oil	1,292,425	133,926	0	0	351	1,158,499	0
Unitd-Ref	25,953	31,268	0	0	0	0	5,315
Urban-II	0	49	[3] 43	0	0	0	49
US-Oil	0	12,201	0	0	0	0	12,201
USA-Petrochem	−15,155	154,355	[4] 132,360	0	0	0	169,510
Val-Verde							
0	0	48	0	0	0	0	48
Vicksburg	0	5,686	0	0	0	0	5,686
Waller	0	224	0	224	0	0	224
Warrior	31,891	4,547	[3] 513	0	0	27,344	0
Watson	0	31	0	0	0	0	31
West-Coast	0	766	0	0	0	0	766
West-Monmouth	0	22	[3] 21	0	0	0	22
Westchester-NY	0	147	[3] 130	0	0	0	147
Western	0	11,218	[3] 16	0	0	0	11,218
Winston-Salem	0	16	0	0	0	0	16
Wireback	0	38	0	0	0	0	38
Wilco	865	21,981	0	0	0	0	21,116
Wooster	0	3	0	0	0	0	3
Wyatt	0	3,427	0	3,427	0	0	3,427
Wyoming	0	11,197	0	0	0	0	11,197
Young	20,696	24,530	[3] 20,906	0	0	0	3,634
Total	6,782,647	6,782,647	−419,693	215,925	−44,339	15,330,496	15,330,496

* The price of an entitlement is $28.10.

[1] See Discussion in Notice.

[2] Correction of prior month.

[3] Exception from Office of Hearings and Appeals.

[4] Federal Energy Regulatory Commission decision.

[5] Pursuant to order of the United States District Court for the District of Wyoming in *Husky Oil Company* v. *DOE*, C.A. No. C77-190B, DOE is enjoined from requiring Husky Oil Company to purchase any entitlements until further order of the court.

[6] In *VGS Corp. d/b/a/ Southland Oil Co., et al.* v. *DOE, et al.*, C.A. No. J81-0170(c) (S.D. Miss., Jackson Division, May 12, 1981), the Court suspended two Supplemental Orders dated February 23, 1981 issued by OHA in Case Nos. DEX-0058 and DEX-061, pursuant to which Southland purchased $13,398,466 in entitlements, and an April 1, 1981 Supplemental Order issued in Case No. BEX-0186 requiring Southland to purchase an additional $1,638,068 in entitlements. DOE is enjoined from publishing the January Entitlements Notice unless Southland is authorized to sell $13,398,466 in entitlements, and DOE is enjoined form enforcing the purchase requirement for $1,638,068 in entitlements. Southland is required to escrow the sum of $15,036,534 (1977-78 entitlements in pending litigation) upon the sale of the $13,398,466 in entitlements, pending completion of administrative proceedings, involving the 1977-78 exception relief.

[7] This number does not reflect a claimed "artjustment" by Ashland to subtract from its crude oil receipts the number of barrels of price-controlled crude oil that it had in inventory on October 31, 1974. Such a subtraction is not an "adjustment" as defined in the regulations or on the Form ERA-49, and is not permitted under the regulations. *See Ashland Oil, Inc.*, 8 DOE ¶80,202 (1981).

[8] Pursuant to an Order of the Presiding Officer Granting Intrim Relief entered September 3, 1981 order in *Young Refining Corporation*, Docket Nos. RA 61-49-000 and RA 81-56-00, Young's additional entitlements purchase obligations ordered to be made by OHA as a result of its year-end reviews of Young's 1980 and 1981 fiscal years have been stayed. Furthermore, DOE is precluded from requiring Young to make entitlements purchases based on its crude oil receipts and runs to stills for January 1981 pending disposition of the proceedings relating to Young's 1981 fiscal year before the Commission. Young's entitlements position on the January 1981 Notice reflects (1) OHA's determinations that Young should be required to purchase $57,306 in entitlements in OHA Case No. DEX-0190 and to sell $159,415 in entitlements in OHA Case No. BYR-0225, neither of which are subject to the interim order issued in the proceedings before FERC, and (2) the Presiding Officer's determination that Young should be relieved of any entitlements purchase obligation for its January 1981 crude oil receipts and runs to stills.

[9] Pursuant to an order entered by the United States District Court for the Western District of Kentucky in *Ashland Oil, Inc.* v. *DOE, et al.*, C81-0187 L(A), Ashland is not required to fulfill this purchase obligation until further order of the court. DOE will seek a further order from the court before transactions specified by this Notice are required to be completed.

[10] Pursuant to orders issued by the Office Hearings and Appeals, these firms are required to pay their entitlements purchase obligations into a special U.S. Treasury escrow account. Rather than remove these firms from the notice, we have included them for purposes of this draft entitlement notice. If the notice were issued, and these firms had paid their entitlements obligations into the special escrow account, an appropriate adjustment would be made to take this into account.

BILLING CODE 6450-01-M

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR THE CLEAN-UP

REPORTING FIRM SHORT NAME	CLAIM(+)/OBLIGATION(-) FOR OCT 1980	NOV 1980	DEC 1980	JAN 1981	PROPORTIONATE SHARE	TOTAL
-CONSOL'D-SALES	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
A-JOHNSON	$384,792.72	$0.00	$0.00	$0.00	$484,016.72-	$99,224.00-
ADM	$0.00	$0.00	$0.00	$0.00	$39,617.00-	$39,617.00-
AKRON-OHIO	$0.00	$0.00	$0.00	$0.00	$10,176.00-	$10,176.00-
ALEXANDRIA-VA	$0.00	$0.00	$0.00	$0.00	$361.00-	$361.00-
ALLIED	$14,018.43-	$4,894.80	$9,092.16	$0.00	$151,218.53-	$151,250.00-
AMER-AGRI-FUELS	$0.00		$0.00	$0.00	$560.00-	$560.00-
AMER-PETROFINA	$3,555,875.58	$7,547,226.38	$5,203,031.58	$3,630,659.38	$2,926,915.92-	$17,009,877.00
AMERADA-HESS	$663,043.36	$1,645,002.97	$2,542,273.90	$301,326.26-	$12,120,770.97-	$7,571,777.00-
AMERICAN-CAN-CO	$0.00				$0.00	$0.00
AMES-IOWA	$0.00	$0.00	$0.00	$0.00	$2,597.00-	$2,597.00-
AMOCO	$1,851,038.99	$4,966,284.70	$13,392,161.52	$2,844,564.58-	$20,442,852.63-	$3,077,932.00-
ANCHOR	$0.00	$0.00	$0.00	$0.00	$97,245.00-	$97,245.00-
ANSCHUTZ			$0.00		$14,247.00-	$14,247.00-
APEX	$0.00	$0.00	$0.00	$0.00	$124,080.00-	$124,080.00-
ARCO[2/]	$7,924,337.62	$11,932,745.12	$20,846,220.83-	$14,409,055.66	$14,328,297.57-	$908,360.00-
ARIZONA	$0.00	$0.00	$0.00	$0.00	$67,804.00-	$67,804.00-
ARIZONA-CHEM	$0.00	$0.00	$0.00	$0.00	$9,019.00-	$9,019.00-
ARLINGTON-VA		$0.00	$0.00	$0.00	$0.00	$0.00
ASAMERA[2/]	$24,737.06	$93,758.31	$186,761.04	$242,821.53-	$439,586.88-	$377,152.00-
ASHLAND	$61,593.27	$1,500,075.30	$3,480,154.81	$1,486,920.03	$7,898,645.41-	$1,369,902.00-
ATLANTA			$0.00	$0.00	$858.00-	$858.00-
AUSTIN-MINN			$0.00	$0.00	$85.00-	$85.00-
AZUSA-LAND	$0.00	$0.00	$0.00	$0.00	$2,913.00-	$2,913.00-
BALT-METHANE			$0.00	$0.00	$738.00-	$738.00-
BALTIMORE-MD	$0.00	$0.00	$0.00		$10,988.00-	$10,988.00-
BAYOU	$0.00	$0.00	$0.00	$0.00	$29,114.00-	$29,114.00-
BEACON	$0.00	$0.00	$0.00	$451,457.06	$377,528.06-	$73,929.00
BELCHER	$0.00	$0.00	$0.00	$0.00	$399,799.00-	$399,799.00-
BELOIT-WI	$0.00	$0.00	$0.00	$0.00	$27.00-	$27.00-
BERGEN-COUNTY	$0.00	$0.00	$0.00	$0.00	$971.00-	$971.00-
BI-PETRO	$0.00	$0.00	$0.00	$0.00	$22,540.00-	$22,540.00-
BOISE-IDAHO	$0.00	$0.00		$0.00	$481.00-	$481.00-
BOSTON-QUINCY	$0.00	$0.00	$0.00	$0.00	$1,442.00-	$1,442.00-
BRAINTREE	$0.00			$0.00	$7,071.00-	$7,071.00-
BRONCO	$0.00	$0.00	$0.00	$0.00	$21,713.00-	$21,713.00-
BROOKINGS-SD			$0.00	$0.00	$7.00-	$7.00-
BROWN-WOOD		$0.00	$0.00	$0.00	$0.00	$0.00
BRUIN	$0.00	$0.00	$0.00	$171,937.02	$71,573.02-	$100,364.00
C&H		$0.00	$0.00	$0.00	$506.00-	$506.00-
CADENCE-CHEM	$0.00	$0.00	$0.00	$0.00	$10,572.00-	$10,572.00-
CALCASIEU	$0.00	$0.00	$0.00	$0.00	$356,630.00-	$356,630.00-
CALUMET	$0.00	$0.00	$0.00	$0.00	$52,540.00-	$52,540.00-
CANAL	$0.00	$113,835.67	$472,128.73	$480,109.01	$164,033.41-	$902,032.00
CARBONIT	$0.00	$0.00	$0.00	$1,519.56-	$195,229.44-	$196,749.00-
CARIBOU	$257,504.92	$123,558.43	$189,059.28	$176,726.92	$110,909.55-	$555,940.00
CASTLE	$0.00	$0.00	$0.00	$0.00	$305,491.00-	$305,491.00-
CEA	$0.00	$0.00	$0.00	$0.00	$386.00-	$386.00-

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR THE CLEAN-UP

REPORTING FIRM SHORT NAME	CLAIM(+)/OBLIGATION(-) FOR OCT 1980	NOV 1980	DEC 1980	JAN 1981	PROPORTIONATE SHARE	TOTAL
CENTRAL		$0.00	$0.00	$0.00	$119,554.00-	$119,554.00-
CHAMPLIN	$1,227,873.71-	$3,761,011.45-	$0.00	$12,897,569.39-	$4,267,372.45-	$22,153,827.00-
CHARTER	$0.00	$0.00	$0.00	$0.00	$1,431,835.00-	$1,431,835.00-
CHEVRON 2/	$196,697.55-	$813,108.45	$6,376,690.60	$9,815,975.23	$26,584,706.73-	$9,775,630.00-
CIBRO	$0.00	$0.00	$0.00	$0.00	$713,051.00-	$713,051.00-
CITGO 2/	$1,162,666.16	$516,619.79	$3,494,680.44	$2,812,103.53-	$5,897,396.56-	$3,535,536.00-
CITRONELLE				$0.00	$0.00	$0.00
CITY-OF-SEWARD	$0.00			$0.00	$0.00	$0.00
CITY-OF-WICHITA	$0.00	$0.00	$0.00	$0.00	$993.00-	$993.00-
CK-SMITH-CO			$0.00		$8,142.00-	$8,142.00-
CLAIBORNE	$0.00	$0.00	$0.00	$0.00	$94,391.00-	$94,391.00-
CLARK 2/	$0.00	$3,923.74	$75,903.30-	$20,958.91-	$2,309,871.53-	$2,402,810.00-
CLINTON-IOWA		$0.00	$0.00	$0.00	$108.00-	$108.00-
CLINTON-MANGES				$84,393.04	$14,954.04-	$69,439.00
COASTAL 2/	$61,264.06	$381,946.15	$387,491.56	$1,003,148.33	$3,143,169.10-	$1,469,319.00-
COASTAL-PETRO	$0.00	$0.00	$0.00	$0.00	$187,775.00-	$187,775.00-
COLDWATER	$0.00	$0.00	$0.00	$0.00	$704.00-	$704.00-
COLONIAL	$0.00		$0.00	$0.00	$82,778.00-	$82,778.00-
COLONIAL-OIL	$0.00				$0.00	$0.00
COLUMBUS-OHIO	$0.00	$0.00	$0.00	$0.00	$570.00-	$570.00-
CONOCO 2/	$307,019.02	$135,683.82-	$8,291,675.00	$2,722,158.89	$6,822,222.09-	$4,362,947.00
CONSOL-COAL			$0.00		$0.00	$0.00
CONSUMERS-POWER	$0.00	$0.00	$0.00	$0.00	$139,717.00-	$139,717.00-
COPAND	$0.00	$0.00	$0.00	$0.00	$174,694.00-	$174,694.00-
CORAL	$0.00	$0.00	$0.00	$0.00	$589,987.00-	$589,987.00-
CORCO	$0.00	$0.00	$0.00	$0.00	$2,457,039.00-	$2,457,039.00-
CRA-FARMLAND	$397.49-	$42,550.88	$56,577.06	$372,596.28-	$1,545,411.17-	$1,819,277.00-
CROSS	$0.00	$0.00	$0.00	$35,000.64	$178,986.64-	$143,986.00-
CROWN	$1,321.30-	$168,734.32	$291,378.56	$273,624.39	$1,624,486.97-	$892,071.00-
CRYSTAL-OIL	$0.00	$0.00	$6,151.43	$54,671.94	$376,896.37-	$316,073.00-
CRYSTAL-REF	$0.00	$0.00	$0.00	$0.00	$51,720.00-	$51,720.00-
CUMBERLAND	$0.00	$0.00	$0.00	$0.00	$49.00-	$49.00-
DEEPWATER			$0.00	$0.00	$61,742.00-	$61,742.00-
DEKALB-IL		$0.00	$0.00	$0.00	$39.00-	$39.00-
DELTA	$9.25	$9.73-	$1,660,881.94	$1,569,953.38	$1,062,947.84-	$2,167,887.00
DEMENNO	$0.00	$0.00	$298.74-	$5,086.10-	$281,565.16-	$286,950.00-
DETROIT-ED	$0.00	$0.00	$0.00	$0.00	$140,729.00-	$140,729.00-
DFSC			$0.00	$0.00	$57,466.00-	$57,466.00-
DIAMOND	$91,931.23	$72,051.01-	$524,186.74	$1,235,835.36	$1,369,249.32-	$410,653.00
DILLMAN	$0.00	$0.00	$0.00	$0.00	$127.00-	$127.00-
DORCHESTER	$0.00	$0.00	$46,286.94	$13,680.53	$445,957.47-	$385,990.00-
DOW	$6,576.79	$53,670.22	$0.00	$342,059.59-	$741,765.42-	$1,023,578.00-
DOWNERS-GROVE				$0.00	$24.00-	$24.00-
E-SEABOARD	$0.00	$0.00	$0.00	$0.00	$176,539.00-	$176,539.00-
EAGLE-REFINING	$0.00	$0.00	$0.00	$0.00	$13,459.00-	$13,459.00-
EAST-BAY-MUD	$0.00	$0.00	$0.00	$0.00	$1,012.00-	$1,012.00-
EAST-MOLINE-IL			$0.00	$0.00	$49.00-	$49.00-
EASTERN		$0.00			$0.00	$0.00

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EASTERN-MWD	$0.00	$0.00	$0.00	$0.00	$135.00-	$135.00-
ECO	$0.00	$0.00			$53,740.00-	$53,740.00-
EDDY	$173,996.40	$203,326.13	$99,624.63-	$24,664.95-	$98,627.95-	$154,405.00
EL-PASO-TX	$0.00	$0.00	$0.00	$0.00	$1,629.00-	$1,629.00-
ELGIN-IL	$0.00	$0.00	$0.00	$0.00	$70.00-	$70.00-
ENERGY-COOP	$0.00	$0.00	$0.00	$0.00	$1,780,399.00-	$1,780,399.00-
ENTERPRISE	$0.00		$0.00	$0.00	$19,250.00-	$19,250.00-
ERGON	$0.00	$0.00	$0.00	$69,760.75-	$235,775.25-	$305,536.00-
ERICKSON	$0.00	$0.00	$0.00		$111,714.00-	$111,714.00-
ESSEX-UNION	$0.00	$0.00	$0.00	$0.00	$826.00-	$826.00-
EVANGELINE	$0.00	$0.00	$0.00	$0.00	$38,128.00-	$38,128.00-
EWING-LAWRENCE	$0.00	$0.00	$0.00	$0.00	$119.00-	$119.00-
EXXON 2/	$898,665.08	$6,940,309.41	$17,877,886.11	$56,362,456.55	$31,922,383.15-	$49,356,934.00
EZ-SERVE	$0.00	$0.00	$0.00	$0.00	$399,666.00-	$399,666.00-
FARMERS-UN	$188,211.79	$27,744.91	$274,946.60-	$135,142.03-	$524,271.07-	$718,403.00-
FLETCHER	$0.00	$0.00	$0.00	$0.00	$608,411.00-	$608,411.00-
FLINT	$0.00	$6,043.78-	$0.00	$40.46	$12,677.68-	$18,681.00-
FORT-WORTH-TX	$0.00	$0.00	$0.00	$0.00	$1,140.00-	$1,140.00-
FRESCO-CA			$0.00		$0.00	$0.00
FRESNO-CA			$0.00	$0.00	$294.00-	$294.00-
FRIENDSWOOD	$0.00	$0.00	$4,608.02	$0.00	$217,584.02-	$212,976.00-
FUNDING	$67,175.57	$44,053.19	$44,809.39	$233,353.93	$95,057.08-	$294,335.00
GARY	$10,012.77-	$22,507.80	$42,797.30	$109,153.33	$273,648.66-	$189,203.00-
GETTY	$113,776.83-	$687,042.63	$3,121,256.35	$6,816,798.79	$5,696,792.94-	$4,814,528.00
GETTY-SYN	$0.00	$0.00	$0.00	$0.00	$4,700.00-	$4,700.00-
GIANT	$0.00	$0.00	$0.00	$0.00	$155,274.00-	$155,274.00-
GIBSON	$0.00	$0.00	$0.00	$0.00	$78,757.00-	$78,757.00-
GLACIER-PARK	$0.00		$0.00	$2,116,642.98	$49,524.98-	$2,067,118.00
GLADIEUX	$0.00	$0.00	$0.00	$788.05	$316,457.05-	$315,749.00-
GLENCOE-MN	$0.00	$0.00	$0.00	$0.00	$18.00-	$18.00-
GLENROCK	$0.00	$0.00	$0.00	$0.00	$53,097.00-	$53,097.00-
GOLDEN-EAGLE	$0.00	$0.00	$0.00	$0.00	$221,647.00-	$221,647.00-
GOLDKING	$177,677.39	$202,639.61	$341.19	$11,828.04	$644,800.23-	$252,314.00-
GOOD-HOPE	$0.00	$0.00	$12,383.59	$11,735.64	$1,433,642.14-	$1,409,523.00-
GREEN-BAY-WI			$0.00	$0.00	$616.00-	$616.00-
GUAM	$0.00	$0.00	$0.00	$0.00	$744,660.00-	$744,660.00-
GULF	$1,708,350.14	$1,551,299.39	$10,097,387.85	$6,718,662.64	$17,886,762.93-	$2,289,057.00
GULF-CITRO		$0.00			$0.00	$0.00
GULF-ENERGY	$0.00	$0.00	$0.00	$0.00	$64,126.00-	$64,126.00-
GULF-STS	$0.00	$0.00	$127,593.63-	$30,628.93-	$386,965.44-	$545,188.00-
HAMPTON-VA		$0.00	$0.00		$3,029.00-	$3,029.00-
HARRISBURG-PA	$0.00	$0.00	$0.00	$0.00	$17,419.00-	$17,419.00-
HAYWARD-CA		$0.00	$0.00	$0.00	$325.00-	$325.00-
HEALTH-CARE	$0.00	$0.00	$0.00	$0.00	$384.00-	$384.00-
HEMPSTEAD-TOWN	$0.00	$0.00	$0.00	$0.00	$6,458.00-	$6,458.00-
HIRI	$0.00	$0.00	$0.00	$0.00	$1,263,663.00-	$1,263,663.00-
HOWELL	$18,555.49	$28,747.68-	$72,359.61-	$339,397.83	$797,097.03-	$540,251.00-
HRR	$0.00				$0.00	$0.00

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HUDSON-OIL	$0.00	$0.00	$0.00	$0.00	$357,768.00-	$357,768.00-
HUNT	$0.00	$463,393.64	$933,219.43	$1,107,084.87	$708,936.94-	$1,794,761.00
HUNTWAY	$0.00	$0.00	$0.00	$0.00	$124,115.00-	$124,115.00-
HUSKY	$289,240.35-	$89,075.79	$1,212,945.95	$1,400,039.04	$969,837.43-	$1,442,983.00
IDAHO-FALLS		$0.00	$0.00	$0.00	$189.00-	$189.00-
IDEAL-BG-ASSOC 1/	$4,467.00	$4,467.00	$4,467.00	$4,467.00	$0.00	$17,868.00
INDEPENDENT-REF	$2,932.80	$0.00	$3,060.00	$152,655.30-	$985,576.50-	$1,132,239.00-
INDIANA-FARM	$0.00	$0.00	$0.00	$0.00	$325,804.00-	$325,804.00-
INDIANA-REF		$0.00			$7,727.00-	$7,727.00-
INDUST-FUEL	$0.00	$0.00		$6,341.58-	$21,416.42-	$27,758.00-
INTER-PETRO	$0.00	$0.00	$0.00	$0.00	$128,455.00-	$128,455.00-
INTER-PROCESS	$0.00	$0.00	$0.00	$0.00	$291,152.00-	$291,152.00-
IONIA			$0.00	$0.00	$30.00-	$30.00-
IRVING	$0.00	$0.00	$0.00		$45,371.00-	$45,371.00-
JACKSON-MI		$0.00	$2,809.08-	$0.00	$498.92-	$3,308.00-
KENCO	$11,866.40-	$3,443.17-	$2,125.55	$20,184.45	$90,763.43-	$83,763.00-
KENOSHA-WI			$0.00	$0.00	$283.00-	$283.00-
KENTUCKY	$37,978.23	$203,152.58-	$77,574.63	$22,940.66	$38,358.94-	$103,018.00-
KERN	$104,423.65	$52,452.55	$0.00	$0.00	$464,818.20-	$307,942.00-
KERR-MCGEE	$136,602.79	$398,234.37	$1,421,151.16	$3,566,604.50	$2,828,690.82-	$2,693,902.00
KOCH 2/	$0.00	$0.00	$1,817,659.47-	$0.00	$3,243,450.53-	$5,061,110.00-
LA-COUNTY	$0.00	$0.00	$0.00	$0.00	$16,224.00-	$16,224.00-
LA-CROSSE	$0.00	$0.00	$0.00	$0.00	$105.00-	$105.00-
LAGLORIA	$0.00	$0.00	$27,419.60	$98,620.55	$1,104,796.15-	$978,756.00-
LAKE-CHARLES	$0.00	$0.00	$0.00	$0.00	$127,459.00-	$127,459.00-
LAKESIDE	$0.00	$0.00	$0.00	$0.00	$67,131.00-	$67,131.00-
LAKETON	$0.00	$0.00	$0.00	$0.00	$117,713.00-	$117,713.00-
LAKEWOOD-OH	$0.00	$0.00	$0.00	$0.00	$258.00-	$258.00-
LAMPREY-NH		$0.00	$0.00	$0.00	$1,359.00-	$1,359.00-
LIQUID-ENERGY	$0.00	$3,379.95	$185.13	$101,964.75-	$150,509.33-	$248,909.00-
LITTLE-AMER	$159,956.36	$70,359.74	$1,153,556.69	$318,621.65-	$1,631,389.14-	$566,138.00-
LOS-ANGELES-CA	$0.00	$0.00		$0.00	$8,602.00-	$8,602.00-
LOTEX			$0.00	$0.00	$5,103.00-	$5,103.00-
LOUISIANA-LAND	$933,458.06	$362,746.72	$0.00	$213,849.82	$972,722.60-	$537,332.00
MACMILLAN	$0.00	$0.00	$0.00	$537.58	$414,180.58-	$413,593.00-
MADISON-CHATHAM	$0.00	$0.00	$0.00	$0.00	$55.00-	$55.00-
MADISON-CITY-WI	$0.00	$0.00	$0.00	$0.00	$2,442.00-	$2,442.00-
MADISON-WI	$0.00	$0.00	$0.00	$0.00	$689.00-	$689.00-
MALLARD	$0.00	$0.00	$0.00	$0.00	$110,537.00-	$110,537.00-
MANATEE	$0.00	$0.00	$0.00		$21,053.00-	$21,053.00-
MARATHON	$36,728.49	$39,144.45	$53,650.44	$6,212,005.18-	$9,446,494.20-	$15,528,976.00-
MARION	$0.00	$0.00	$0.00	$0.00	$564,700.00-	$564,700.00-
MARLEX 2/	$486,217.57	$555,294.68-	$47,808.66-	$1,572,690.94	$208,211.17-	$1,247,594.00
MARSHALLTOWN			$0.00	$0.00	$236.00-	$236.00-
MEDFORD			$0.00	$0.00	$50.00-	$50.00-
MERCED-CA			$0.00	$0.00	$109.00-	$109.00-
METRO-DENVER	$0.00				$77.00-	$77.00-
METRO-SEATTLE	$0.00	$0.00	$0.00	$0.00	$1,942.00-	$1,942.00-

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METROPOLITAN	$0.00	$0.00	$0.00	$0.00	$622,857.00-	$622,857.00-
MIAMI-DADE	$0.00	$0.00	$0.00	$0.00	$2,462.00-	$2,462.00-
MID-AMER	$0.00	$0.00	$0.00	$13,237.84	$70,588.84-	$57,351.00-
MIDDLETOWN-OH			$0.00	$0.00	$170.00-	$170.00-
MIDWEST-SOLV	$0.00	$0.00	$0.00	$0.00	$3,280.00-	$3,280.00-
MILLER-OIL				$0.00	$0.00	$0.00
MILWAUKEE-WI	$0.00	$0.00	$0.00	$0.00	$2,584.00-	$2,584.00-
MOBIL	$471,804.94	$505,648.14	$15,117,399.61	$16,965,965.02-	$17,897,755.67-	$17,968,868.00-
MOBILE-BAY	$18,949.00-	$3,904.84	$3,865.40-	$343.91-	$137,878.53-	$149,132.00-
MOBRIDGE-SD		$0.00	$0.00	$0.00	$16.00-	$16.00-
MOHAWK				$0.00	$0.00	$0.00
MONDCO	$0.00	$0.00	$0.00	$0.00	$32,659.00-	$32,659.00-
MONROE-WI		$0.00		$0.00	$0.00	$0.00
MONSANTO	$4,426.58-	$107,978.44-	$2,828,443.85	$209,732.91-	$685,521.92-	$1,020,784.00
MOORHEAD-MN	$0.00		$0.00	$0.00	$113.00-	$113.00-
MORRISON	$0.00	$0.00	$0.00	$0.00	$50,858.00-	$50,858.00-
MOUNTAINEER	$6,633.61	$18,086.39	$5,227.55	$8,517.47	$12,612.02-	$25,853.00
MSDGC	$0.00	$0.00	$0.00	$0.00	$7,999.00-	$7,999.00-
MT-AIRY	$0.00	$0.00	$0.00	$0.00	$171,490.00-	$171,490.00-
MURPHY	$27,050.80	$24,038.43	$1,131,974.00	$107,597.40-	$1,949,241.83-	$873,776.00-
N-AMER-PETRO	$0.00	$0.00	$0.00	$0.00	$393,889.00-	$393,889.00-
N-LITTLE-ROCK	$0.00	$0.00	$0.00	$0.00	$2,128.00-	$2,128.00-
N-SAN-MATEO	$0.00		$0.00	$0.00	$26.00-	$26.00-
NASHVILLE-TENN	$0.00	$0.00	$0.00	$0.00	$11,162.00-	$11,162.00-
NASSAU-COUNTY	$0.00	$0.00	$0.00	$0.00	$1,273.00-	$1,273.00-
NATCHEZ	$0.00	$0.00	$0.00	$0.00	$55,809.00-	$55,809.00-
NATL-COOP	$152,113.12	$153,282.19	$254,687.77	$616,607.01	$1,184,323.09-	$74,367.00
NAVAJO	$51,843.62	$52,934.75-	$27,187.39	$1,632,024.46-	$639,334.86-	$1,645,263.00-
NEPTUNE	$0.00	$0.00	$0.00	$0.00	$74.00-	$74.00-
NEVADA	$0.00	$0.00	$0.00	$0.00	$43,023.00-	$43,023.00-
NEW-EDGINGTON	$0.00	$0.00	$0.00	$0.00	$709,299.00-	$709,299.00-
NEW-ENGL-PETRO	$0.00	$0.00	$0.00	$0.00	$570,927.00-	$570,927.00-
NEW-ENGL-POWER	$0.00	$0.00	$0.00		$104,554.00-	$104,554.00-
NEW-YORK-EP	$0.00	$0.00	$0.00	$0.00	$15,152.00-	$15,152.00-
NEWHALL	$0.00	$0.00	$0.00	$0.00	$484,557.00-	$484,557.00-
NORTHEAST-PETRO	$0.00	$0.00	$0.00	$0.00	$135,518.00-	$135,518.00-
NORTHLAND		$0.00	$0.00	$0.00	$10,608.00-	$10,608.00-
NY-SANITATION	$0.00	$0.00	$0.00	$0.00	$15,620.00-	$15,620.00-
OCCOQUAN			$0.00		$70.00-	$70.00-
OCEAN-TOWNSHIP	$0.00	$0.00	$0.00	$0.00	$37.00-	$37.00-
OCEAN-UTILITIES	$0.00	$0.00	$0.00	$0.00	$308.00-	$308.00-
OCONOMOWOC-WI	$0.00	$0.00	$0.00	$0.00	$37.00-	$37.00-
OKC	$0.00	$0.00	$0.00	$0.00	$351,595.00-	$351,595.00-
OKLA-REF	$0.00	$36,889.30	$10,461.96	$223,894.53	$347,440.79-	$76,995.00-
OMAHA	$0.00	$0.00	$0.00	$0.00	$6,247.00-	$6,247.00-
ORANGE-COUNTY	$0.00	$0.00	$0.00	$0.00	$6,532.00-	$6,532.00
OSCEOLA-AR	$0.00	$0.00	$0.00	$0.00	$934.00-	$934.00-
OXNARD	$0.00	$0.00	$0.00	$0.00	$66,848.00-	$66,848.00-

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PEERLESS	$0.00	$0.00	$0.00	$0.00	$33,335.00-	$33,335.00-
PENNZOIL	$129,483.53	$129,030.89	$8,994.81-	$358,415.50-	$1,110,981.11-	$1,219,877.00-
PEORIA-IL	$0.00			$0.00	$0.00	$0.00
PESTER	$4,322.42	$13,222.86	$45,998.57	$200,488.77	$592,494.62-	$320,462.00-
PETRACO-VALLEY	$0.00	$0.00	$0.00	$0.00	$48,789.00-	$48,789.00-
PHILADELPHIA-PA	$0.00	$0.00	$0.00	$0.00	$2,871.00-	$2,871.00-
PHILLIPS	$275,258.09	$2,273,898.39	$5,541,092.56	$4,877,909.01	$6,327,421.05-	$6,639,937.00
PHILLIPS-PR	$0.00	$0.00	$0.00	$0.00	$891,721.00-	$891,721.00-
PIMA-AZ		$0.00	$0.00	$0.00	$968.00-	$968.00-
PIONEER	$0.00	$343.41-	$34,846.18-	$613.66-	$229,943.75-	$265,747.00-
PLACID	$822,535.98	$852,502.20	$1,026,559.07	$1,858,596.37	$1,053,531.62-	$3,556,662.00
PLATEAU	$455,059.92	$819,181.47	$693,490.96	$23,554.93	$340,747.28-	$1,655,540.00
PORT	$0.00	$0.00	$0.00	$0.00	$126,297.00-	$126,297.00-
PORTLAND-MI			$0.00		$2.00-	$2.00-
POWERINE	$0.00	$0.00	$0.00	$0.00	$823,918.00-	$823,918.00-
PRIDE 2/	$0.00	$6,141.41	$29,418.95	$23,021.58	$654,776.94-	$596,195.00-
QUAD				$0.00	$0.00	$0.00
QUAKER-ST	$1,824.83-	$1,338.28-	$15,404.49-	$55,166.82-	$487,387.58-	$561,122.00-
QUITMAN	$0.00	$0.00	$0.00	$0.00	$105,457.00-	$105,457.00-
RACINE-WASTE-UT		$0.00	$0.00	$0.00	$277.00-	$277.00-
RAHWAY	$0.00		$0.00	$0.00	$454.00-	$454.00-
RAPID-SD		$0.00	$0.00	$0.00	$195.00-	$195.00-
RAVENNA-OH			$0.00	$0.00	$46.00-	$46.00-
RESCO	$0.00	$0.00	$0.00	$0.00	$32,730.00-	$32,730.00-
RICHARDS	$0.00	$0.00	$0.00	$0.00	$1,409.00-	$1,409.00-
ROAD-OIL	$0.00	$0.00	$0.00	$0.00	$4,294.00-	$4,294.00-
ROANOKE-VA			$0.00	$0.00	$457.00-	$457.00-
ROCK-ISLAND	$0.00	$0.00	$6,829.13	$28,731.29	$710,720.42-	$675,160.00-
SABER-TEX	$0.00	$0.00	$0.00	$57,375.58	$144,267.58-	$86,892.00-
SABRE-CAL	$0.00	$0.00	$0.00	$0.00	$239,368.00-	$239,368.00-
SAGE-CREEK	$0.00	$0.00	$0.00	$0.00	$3,195.00-	$3,195.00-
SALEM-VA	$0.00	$0.00	$0.00	$0.00	$1,418.00-	$1,418.00-
SAN-JOAQUIN	$0.00	$0.00	$0.00	$0.00	$280,539.00-	$280,539.00-
SAN-JOSE-CA	$0.00	$0.00	$0.00	$0.00	$3,798.00-	$3,798.00-
SANTA-CRUZ-CA	$0.00	$0.00	$0.00	$0.00	$303.00-	$303.00-
SCALLOP	$0.00	$0.00	$0.00	$0.00	$752,593.00-	$752,593.00-
SCANOIL	$0.00	$0.00	$0.00	$0.00	$286,248.00-	$286,248.00-
SCHULZE	$0.00	$0.00	$0.00	$0.00	$12,093.00-	$12,093.00-
SEAVIEW	$0.00	$0.00	$0.00	$0.00	$380,593.00-	$380,593.00-
SECTOR		$0.00			$0.00	$0.00
SEMINOLE	$0.00	$0.00	$0.00	$56,356.28	$219,221.28-	$162,865.00-
SENTRY	$0.00	$0.00	$0.00	$0.00	$402,559.00-	$402,559.00-
SHELL	$976,727.15	$5,025,262.63	$20,567,096.26	$30,949,084.65	$19,444,755.69-	$38,073,415.00
SHEPHERD	$0.00	$0.00	$0.00	$0.00	$38,530.00-	$38,530.00-
SIGMOR	$36,695.42	$15,436.03	$51,726.49	$46,145.45	$386,848.39-	$236,845.00-
SILVER-EAGLE	$0.00	$0.00	$0.00	$0.00	$21,918.00-	$21,918.00-
SIOUX-FALLS	$0.00	$0.00	$0.00	$0.00	$502.00-	$502.00-
SLAPCO	$0.00	$0.00	$0.00	$5,226.60	$201,915.60-	$196,689.00-

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR THE CLEAN-UP

REPORTING FIRM SHORT NAME	CLAIM(+)/OBLIGATION(-) FOR				PROPORTIONATE SHARE	TOTAL
	OCT 1980	NOV 1980	DEC 1980	JAN 1981		
SMRSA	$0.00	$0.00	$0.00	$0.00	$149.00-	$149.00-
SO-HAMPTON	$15,256.80	$0.00	$70,587.14	$93,447.22	$209,407.16-	$30,116.00-
SOHIO	$72,153.05-	$56,190.48	$1,503,727.44	$2,703,118.98	$9,586,474.85-	$5,395,591.00-
SOMERSET	$0.00	$0.00	$0.00	$0.00	$93,707.00-	$93,707.00-
SOONER	$52,019.76	$0.00	$0.00	$0.00	$94,761.76-	$42,742.00-
SOUND	$3,992.95-	$0.00	$0.00	$0.00	$187,675.05-	$191,668.00-
SOUTHERN-UNION	$4,370.24-	$164,202.75	$37,023.13-	$1,078,257.00	$747,827.38-	$453,239.00
SOUTHLAND	$4,124.25	$1,426,452.13	$910,093.44	$1,533,792.45	$415,218.27-	$3,459,244.00
SOUTHLAND-CT				$0.00	$0.00	$0.00
SOUTHWEST-PETRO	$0.00	$0.00	$25,090.47	$0.00	$76,114.47-	$51,024.00-
SOUTHWESTERN	$0.00	$0.00	$0.00	$0.00	$13,003.00-	$13,003.00-
SPR	$0.00	$0.00	$0.00		$0.00	$0.00
SPRAGUE	$0.00	$0.00	$0.00	$0.00	$442,079.00-	$442,079.00-
SPRINGFIELD-IL			$0.00	$0.00	$116.00-	$116.00-
ST&SAN-CHICAGO	$0.00	$0.00	$0.00	$0.00	$31,894.00-	$31,894.00-
ST-CLAIR-IL		$0.00	$0.00	$0.00	$53.00-	$53.00-
ST-CLOUD-MINN	$0.00	$0.00		$0.00	$87.00-	$87.00-
ST-JOSEPH-MO	$0.00				$133.00-	$133.00-
STEUART			$0.00		$77,479.00-	$77,479.00-
STEVENS-PT-WI	$0.00	$0.00	$0.00	$0.00	$76.00-	$76.00-
STINNES-INTER		$0.00		$0.00	$34,666.00-	$34,666.00-
STOCKTON-CA	$0.00	$0.00	$0.00	$0.00	$1,077.00-	$1,077.00-
STOUGHTON-WI			$0.00		$0.00	$0.00
SUNLAND	$0.00	$0.00	$0.00	$0.00	$238,074.00-	$238,074.00-
SUNOCO	$509,257.74	$2,979,028.03-	$13,851,478.99-	$13,590,840.41	$8,664,151.13-	$11,394,560.00-
SWANN	$0.00	$0.00	$0.00	$0.00	$290,786.00-	$290,786.00-
T&S	$0.00	$0.00	$0.00	$0.00	$26,495.00-	$26,495.00-
TACOMA-WA	$0.00	$0.00	$0.00	$0.00	$353.00-	$353.00-
TARCO	$15,345.32	$40,595.30-	$62,427.36	$43,261.94-	$31,873.44-	$37,958.00-
TARRICONE	$0.00	$0.00		$0.00	$63,537.00-	$63,537.00-
TENNECO	$649,378.00-	$338,983.72-	$1,664,651.89	$538,914.33	$2,410,097.50-	$1,194,885.00-
TESORO	$9,791.27	$829,739.69	$383,892.79	$2,641,907.93-	$1,246,280.32-	$2,664,764.00-
TEXACO	$2,629,565.48	$725,028.18	$5,563,081.16	$31,311,104.57	$22,502,529.39-	$17,726,250.00
TEXAS-AMERICAN	$0.00	$0.00	$0.00	$0.00	$187,244.00-	$187,244.00-
TEXAS-CITY	$0.00	$0.00	$57,485.96	$1,026,412.13	$1,734,811.09-	$590,913.00-
TEXAS-REFINING		$0.00	$0.00	$0.00	$105,904.00-	$105,904.00-
TEXAS-STANDARD	$0.00	$0.00	$0.00	$0.00	$20,384.00-	$20,384.00-
THAGARD	$4,976.40-	$5,182.59-	$3,872.43-	$75.13-	$217,429.40-	$231,536.00-
THORN-CREEK	$0.00	$0.00	$0.00	$0.00	$198.00-	$198.00-
THRIFTWAY	$0.00	$2,329.44	$1,044.34	$133,571.64	$65,975.42-	$70,970.00
THUNDERBIRD	$405.02-	$589.95-	$405.90-	$2,146.24	$160,734.37-	$159,980.00-
TIPPERARY	$0.00	$0.00	$0.00	$0.00	$89,699.00-	$89,699.00-
TOM-BROWN-INC 1/	$16,004.00	$16,003.00	$16,004.00	$16,003.00	$0.00	$64,014.00
TOMAHAWK		$0.00		$0.00	$1.00-	$1.00-
TONKAWA	$0.00	$109,995.47-	$0.00	$1,011.49	$257,972.02-	$366,956.00-
TOSCO	$31,088.76	$588,964.61-	$6,461,501.89	$1,089,529.82	$4,326,562.86-	$2,666,593.00
TOTAL-PETROLEUM	$14,877.99	$223,001.27	$119,706.96-	$591,052.50-	$2,958,544.50-	$1,431,425.00-
TRI-VALLEY		$0.00		$0.00	$0.00	$0.00

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR THE CLEAN-UP

REPORTING FIRM SHORT NAME	CLAIM(+)/OBLIGATION(-) FOR OCT 1980	NOV 1980	DEC 1980	JAN 1981	PROPORTIONATE SHARE	TOTAL
TURLOCK-CA			$0.00	$0.00	$1,159.00-	$1,159.00-
UCC-CARIBE	$0.00	$0.00	$0.00	$0.00	$506,596.00-	$506,596.00-
UNI-REF	$0.00	$0.00	$0.00	$0.00	$196,801.00-	$196,801.00-
UNION-CARBIDE		$0.00	$0.00	$0.00	$74,037.00-	$74,037.00-
UNION-OIL	$165,750.72	$119,582.85-	$2,114,290.46	$5,126,616.53	$8,074,677.86-	$787,603.00-
UNTD-IND			$0.00		$0.00	$0.00
UNTD-REF	$0.00	$2,153.06	$212,343.65	$156,306.05-	$954,897.66-	$896,707.00-
URBANA-IL	$0.00	$0.00	$0.00	$0.00	$620.00-	$620.00-
US-OIL	$0.00	$0.00	$0.00	$0.00	$241,970.00-	$241,970.00-
USA-PETROCHEM	$0.00	$0.00	$0.00	$0.00	$441,100.00-	$441,100.00-
VAL-VERDE	$0.00	$0.00	$0.00	$0.00	$6,373.00-	$6,373.00-
VICKSBURG	$0.00	$0.00	$0.00	$0.00	$108,977.00-	$108,977.00-
WALLER	$0.00			$0.00	$7,981.00-	$7,981.00-
WARRIOR	$0.00	$0.00	$0.00	$33,777.44	$68,244.44-	$34,467.00-
WATSON	$0.00		$0.00	$0.00	$1,742.00-	$1,742.00-
WEST-COAST	$0.00	$0.00	$0.00	$0.00	$196,307.00-	$196,307.00-
WEST-MONMOUTH	$0.00	$0.00	$0.00	$0.00	$68.00-	$68.00-
WESTCHESTER-NY	$0.00		$0.00	$0.00	$935.00-	$935.00-
WESTERN	$0.00	$862.47-	$0.00	$76.44-	$207,559.09-	$208,498.00-
WINSTON	$1,626.09				$23,013.09-	$21,387.00-
WINSTON-SALEM	$0.00	$0.00	$0.00	$0.00	$2,893.00-	$2,893.00-
WIREBACK	$0.00	$0.00	$0.00	$0.00	$713.00-	$713.00-
WITCO	$0.00	$0.00	$0.00	$2,508.50	$368,926.50-	$366,418.00-
WOOSTER	$0.00	$0.00	$0.00	$0.00	$145.00-	$145.00-
WYATT		$0.00	$0.00	$0.00	$171,337.00-	$171,337.00-
WYOMING	$88,176.48	$419,411.78	$0.00	$0.00	$214,412.26-	$293,176.00
YETTER	$0.00				$0.00	$0.00
YOUNG	$0.00	$0.00	$0.00	$0.00	$66,510.00-	$66,510.00-
TOTAL	$25,882,527.20	$45,617,740.60	$189,884,393.85	$166,633,220.96	$348,017,882.61-	$0.00

Entitlements Adjustments Notice Footnotes

1/ Exception from Office of Hearings and Appeals

2/ Refiners reporting adjustments for the Entitlements Adjustments Notice were required by 10 CFR § 211.69(d)(2)(ii) to identify the months in the reporting period when the crude oil subject to adjustment was reported as a crude oil receipt. These refiners reported negative adjustments to a category(ies) of price-controlled crude oil in a month(s) of the reporting period exceeding the volumes originally reported as unadjusted crude oil receipts. This would not appear to be permitted under the regulations. In other instances, refiners' responses have raised the possibility of other reporting errors. The Notice gives effect to the total amount of negative adjustments currently claimed by these firms, even in those instances where claimed negative adjustments still exceed unadjusted crude oil receipts originally reported, until such time as DOE is in a position to determine the extent to which the report is in error. DOE reserves the right to take such other appropriate action as necessary, in the event a satisfactory explanation for the volume of claimed negative adjustments is not forthcoming.

APPENDIX A

NOTICE OF POST CLEAN-UP PERCENTAGE OF DEEMED RUNS
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR OCTOBER 1980 - JANUARY 1981

-CONSOL'D-SALES	0.00000000000	A-JOHNSON	0.12619202928	ADM	0.01157569793	AKRON-OHIO	0.00316881747
ALEXANDRIA-VA	0.00009291828	ALLIED	0.04608518272	AMER-AGRI-FUELS	0.00016032498	AMER-PETROFINA	0.86897703848
AMERADA-HESS	3.56260482511	AMERICAN-CAN-CO	0.00000000000	AMES-IOWA	0.00076599065	AMOCO	5.93325155285
ANCHOR	0.03131304930	ANSCHUTZ	0.00349098877	APEX	0.04264937149	ARCO	3.95604584761
ARIZONA	0.01946959695	ARIZONA-CHEM	0.00272774822	ARLINGTON-VA	0.00000000000	ASAMERA	0.13275657672
ASHLAND	2.31452151469	ATLANTA	0.00015511735	AUSTIN-MINN	0.00001351645	AZUSA-LAND	0.00185701972
BALT-METHANE	0.00013223886	BALTIMORE-MD	0.00999825221	BAYOU	0.00971142262	BEACON	0.11153387873
BELCHER	0.09297111266	BELOIT-WI	0.00000877692	BERGEN-COUNTY	0.00027980806	BI-PETRO	0.00561915665
BOISE-IDAHO	0.00033750165	BOSTON-QUINCY	0.00047921957	BRAINTREE	0.00337601118	BRONCO	0.00706173044
BROOKINGS-SD	0.00000122877	BROWN-WOOD	0.00000000000	BRUIN	0.03603655101	C&H	0.00006886955
CADENCE-CHEM	0.00303125395	CALCASIEU	0.09412036194	CALUMET	0.01390011764	CANAL	0.04620302745
CARBONIT	0.05421482968	CARIBOU	0.02348965816	CASTLE	0.06632012667	CEA	0.00032515545
CENTRAL	0.02487032544	CHAMPLIN	1.16373463926	CHARTER	0.44151324031	CHEVRON	7.79025289887
CIBRO	0.20750236645	CITGO	1.65246469921	CITRONELLE	0.00000000000	CITY-OF-SEWARD	0.00000000000
CITY-OF-WICHITA	0.00027928144	CK-SMITH-CO	0.00199493431	CLAIBORNE	0.02746519116	CLARK	0.67462588466
CLINTON-IOWA	0.00002627223	CLINTON-MANGES	0.00203466448	COASTAL	0.95558986112	COASTAL-PETRO	0.05294223549
COLDWATER	0.00019935300	COLONIAL	0.02030211661	COLONIAL-OIL	0.00000000000	COLUMBUS-OHIO	0.00021842816
CONOCO	1.94512947390	CONSOL-COAL	0.00000000009	CONSUMERS-POWER	0.04476858692	COPAND	0.04592257573
CORAL	0.20591076065	CORCO	0.81220566885	CRA-FARMLAND	0.41496119941	CROSS	0.05100394154
CROWN	0.50004830170	CRYSTAL-OIL	0.10641617650	CRYSTAL-REF	0.01545790306	CUMBERLAND	0.00001263876
DEEPWATER	0.01093094573	DEKALB-IL	0.00000965461	DELTA	0.32173058261	DEMENNO	0.07647402285
DETROIT-ED	0.04459117621	DFSC	0.01046758312	DIAMOND	0.40593191863	DILLMAN	0.00007934351
DORCHESTER	0.12568647896	DOW	0.37006148537	DOWNERS-GROVE	0.00000321820	E-SEABOARD	0.05582299469
EAGLE-REFINING	0.00525602641	EAST-BAY-MUD	0.00026084992	EAST-MOLINE-IL	0.00003784071	EASTERN	0.00000000000
EASTERN-MWD	0.00004195365	ECO	0.03769158466	EDDY	0.02607526302	EL-PASO-TX	0.00109102907
ELGIN-IL	0.00001281430	ENERGY-COOP	0.49714519072	ENTERPRISE	0.00641703676	ERGON	0.06892283511
ERICKSON	0.08765042964	ESSEX-UNION	0.00018566101	EVANGELINE	0.01203127834	EWING-LAWRENCE	0.00003294269
EXXON	8.98665248790	EZ-SERVE	0.12139521107	FARMERS-UN	0.14697968484	FLETCHER	0.17404084534
FLINT	0.00411561257	FORT-WORTH-TX	0.00080238559	FRESCO-CA	0.00000000000	FRESNO-CA	0.00005476795
FRIENDSWOOD	0.06245167204	FUNDING	0.02797782152	GARY	0.07315556823	GETTY	1.65509151291
GETTY-SYN	0.00122666167	GIANT	0.04615253091	GIBSON	0.02468087734	GLACIER-PARK	0.00673850598
GLADIEUX	0.08624817116	GLENCOE-MN	0.00001117594	GLENROCK	0.01351129525	GOLDEN-EAGLE	0.06448458114
GOLDKING	0.14893787313	GOOD-HOPE	0.42219232430	GREEN-BAY-WI	0.00008384880	GUAM	0.19680354087
GULF	4.87082826067	GULF-CITRO	0.00000000000	GULF-ENERGY	0.01232694335	GULF-STS	0.11830608799
HAMPTON-VA	0.00096867887	HARRISBURG-PA	0.00502162427	HAYWARD-CA	0.00007419419	HEALTH-CARE	0.00010912631
HEMPSTEAD-TOWN	0.00241014092	HIRI	0.37327840833	HOWELL	0.22803851734	HRR	0.00000000000
HUDSON-OIL	0.10416957877	HUNT	0.20376217181	HUNTWAY	0.03516599805	HUSKY	0.27228085722
IDAHO-FALLS	0.00004563996	IDEAL-BG-ASSOC	0.00000000000	INDEPENDENT-REF	0.21081986486	INDIANA-FARM	0.09175422263
INDIANA-REF	0.00425112814	INDUST-FUEL	0.00796382178	INTER-PETRO	0.03143229832	INTER-PROCESS	0.08615531139
IONIA	0.00000497359	IRVING	0.01946357013	JACKSON-MI	0.00011995117	KENCO	0.02453463769
KENOSHA-WI	0.00005160326	KENTUCKY	0.00958883837	KERN	0.13903406053	KERR-MCGEE	0.96066514160
KOCH	0.83092132879	LA-COUNTY	0.00463608364	LA-CROSSE	0.00002919787	LAGLORIA	0.31966753944
LAKE-CHARLES	0.04346070953	LAKESIDE	0.02005010212	LAKETON	0.03025242954	LAKEWOOD-OH	0.00021567800
LAMPREY-NH	0.00031228264	LIQUID-ENERGY	0.04371892638	LITTLE-AMER	0.46641884894	LOS-ANGELES-CA	0.00300088582
LOTEX	0.00092935829	LOUISIANA-LAND	0.27995112045	MACMILLAN	0.12342776909	MADISON-CHATHAM	0.00001398455
MADISON-CITY-WI	0.00081525840	MADISON-WI	0.00019227296	MALLARD	0.02966878201	MANATEE	0.01827979832
MARATHON	2.64149121353	MARION	0.16091052168	MARLEX	0.06591205863	MARSHALLTOWN	0.00004166109
MEDFORD	0.00000836733	MERCED-CA	0.00001866557	METRO-DENVER	0.00007571552	METRO-SEATTLE	0.00049989904
METROPOLITAN	0.17484990138	MIAMI-DADE	0.00169622663	MID-AMER	0.02047701127	MIDDLETOWN-OH	0.00003001705
MIDWEST-SOLV	0.00096258218	MILLER-OIL	0.00000000000	MILWAUKEE-WI	0.02075896911	MOBIL	4.91655156684

NOTICE OF POST CLEAN-UP PERCENTAGE OF DEEMED RUNS
SEPTEMBER 1983

BASED ON DATA SUBMITTED FOR OCTOBER 1980 - JANUARY 1981

MOBILE-BAY	0.03847466183	MOBRIDGE-SD	0.00000374482	MOHAWK	0.00000000000	MONOCO	0.00836644814
MONROE-WI	0.00000000000	MONSANTO	0.17699433582	MOORHEAD-MN	0.00006635348	MORRISON	0.01481566692
MOUNTAINEER	0.00355862953	MSDGC	0.00214993464	MT-AIRY	0.04788649828	MURPHY	0.57199279266
N-AMER-PETRO	0.09719947933	N-LITTLE-ROCK	0.00064293830	N-SAN-MATEO	0.00000631938	NASHVILLE-TENN	0.00332182835
NASSAU-COUNTY	0.00036365685	NATCHEZ	0.01893806696	NATL-COOP	0.30688109532	NAVAJO	0.18276018398
NEPTUNE	0.00002012839	NEVADA	0.01137517467	NEW-EDGINGTON	0.18933204552	NEW-ENGL-PETRO	0.16653980104
NEW-ENGL-POWER	0.05340325759	NEW-YORK-EP	0.00418500871	NEWHALL	0.11622238981	NORTHEAST-PETRO	0.04537758781
NORTHLAND	0.00177685723	NY-SANITATION	0.00392246192	OCCOQUAN	0.00001726127	OCEAN-TOWNSHIP	0.00000959609
OCEAN-UTILITIES	0.00008039654	OCONOMOWOC-WI	0.00000994717	OKC	0.09222542595	OKLA-REF	0.09674021262
OMAHA	0.00413041630	ORANGE-COUNTY	0.00176537736	OSCEOLA-AR	0.00027694093	OXNARD	0.01928873398
PEERLESS	0.00537486585	PENNZOIL	0.29271456905	PEORIA-IL	0.00000000000	PESTER	0.17109251134
PETRACO-VALLEY	0.01566708620	PHILADELPHIA-PA	0.00055996719	PHILLIPS	1.81083722958	PHILLIPS-PR	0.23822098454
PIMA-AZ	0.00020034772	PIONEER	0.05660291128	PLACID	0.27499444535	PLATEAU	0.09265526074
PORT	0.03397069922	PORTLAND-MI	0.00000058513	POWERINE	0.23204800454	PRIDE	0.18778082657
QUAD	0.00000000000	QUAKER-ST	0.14560644869	QUITMAN	0.03011909627	RACINE-WASTE-UT	0.00005693292
RAHWAY	0.00018444529	RAPID-SD	0.00004698575	RAVENNA-OH	0.00000789922	RESCO	0.01000919410
RICHARDS	0.00038378525	ROAD-OIL	0.00122075188	ROANOKE-VA	0.00008162531	ROCK-ISLAND	0.19746350638
SABER-TEX	0.05430663621	SABRE-CAL	0.06817041742	SAGE-CREEK	0.00083901458	SALEM-VA	0.00043919684
SAN-JOAQUIN	0.08689754586	SAN-JOSE-CA	0.00117868120	SANTA-CRUZ-CA	0.00008847131	SCALLOP	0.22586847111
SCANOIL	0.07266086278	SCHULZE	0.00390578578	SEAVIEW	0.12160585703	SECTOR	0.00000000000
SEMINOLE	0.07160535096	SENTRY	0.10899372295	SHELL	5.47443766688	SHEPHERD	0.00910207066
SIGMOR	0.11174118947	SILVER-EAGLE	0.00793421432	SIOUX-FALLS	0.00016974554	SLAPCO	0.05830861698
SMRSA	0.00003861843	SO-HAMPTON	0.07345839181	SOHIO	2.83315212573	SOMERSET	0.02671107861
SOONER	0.02928885860	SOUND	0.04998301076	SOUTHERN-UNION	0.21128597757	SOUTHLAND	0.12903592534
SOUTHLAND-CT	0.00000000000	SOUTHWEST-PETRO	0.02135037285	SOUTHWESTERN	0.00317420064	SPR	0.00000000000
SPRAGUE	0.12133043743	SPRINGFIELD-IL	0.00002071352	ST&SAN-CHICAGO	0.01005067965	ST-CLAIR-IL	0.00001322389
ST-CLOUD-MINN	0.00002539454	ST-JOSEPH-MO	0.00012983983	STEUART	0.01898464313	STEVENS-PT-WI	0.00002194229
STINNES-INTER	0.00750806583	STOCKTON-CA	0.00036471008	STOUGHTON-WI	0.00000005851	SUNLAND	0.06888953934
SUNOCO	2.64952677196	SWANN	0.07816785045	T&S	0.00687811737	TACOMA-WA	0.00022888277
TARCO	0.01074505067	TARRICONE	0.01721264246	TENNECO	0.67525027441	TESORO	0.36609589954
TEXACO	6.42067110234	TEXAS-AMERICAN	0.05006644997	TEXAS-CITY	0.49106518751	TEXAS-REFINING	0.02187710479
TEXAS-STANDARD	0.00500570879	THAGARD	0.06545501540	THORN-CREEK	0.00004704427	THRIFTWAY	0.01517195116
THUNDERBIRD	0.04854500097	TIPPERARY	0.03112270727	TOM-BROWN-INC	0.00000000000	TOMAHAWK	0.00000052661
TONKAWA	0.07548275804	TOSCO	1.23549879386	TOTAL-PETROLEUM	0.81099024164	TRI-VALLEY	0.00000000000
TURLOCK-CA	0.00019742208	UCC-CARIBE	0.13941667552	UNI-REF	0.07966624542	UNION-CARBIDE	0.01552993228
UNION-OIL	2.38674721801	UNTD-IND	0.00000000000	UNTD-REF	0.25747841419	URBANA-IL	0.00035710342
US-OIL	0.07836773007	USA-PETROCHEM	0.10216961236	VAL-VERDE	0.00190517573	VICKSBURG	0.03004800325
WALLER	0.00237339490	WARRIOR	0.01949627877	WATSON	0.00047453855	WEST-COAST	0.09502075642
WEST-MONMOUTH	0.00002001137	WESTCHESTER-NY	0.00023416810	WESTERN	0.06136187173	WINSTON	0.02249897849
WINSTON-SALEM	0.00128353608	WIREBACK	0.00025178044	WITCO	0.10219366111	WOOSTER	0.00004025678
WYATT	0.03678762090	WYOMING	0.06035685643	YETTER	0.00000000000	YOUNG	0.02128167886
TOTAL	100.00000000004						

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federal register

Thursday
November 3, 1983

Part III

Office of Management and Budget
Department of Defense
General Services Administration

Circular A-122: Cost Principles for Nonprofit Organizations; Lobbying and Related Activities

OFFICE OF MANAGEMENT AND BUDGET

Circular A-122: Cost Principles for Nonprofit Organizations; Lobbying and Related Activities

AGENCY: Office of Management and Budget.

ACTION: Notice.

I. Summary

This notice offers interested parties an opportunity to comment on the Office of Management and Budget's (OMB) proposed revision to Circular A-122, "Cost Principles for Nonprofit Organizations." The proposed revision makes unallowable the costs associated with lobbying and related activities. Parallel revisions are being proposed for defense and civilian contractors by the Department of Defense (DOD or Defense), the General Services Administration (GSA), and NASA. These proposed revisions follow the A-122 revision text.

The comments printed in the text of the proposed revision are for explanatory purposes. They will not be printed in the Circular after the revisions are final.

II. Supplementary Information

OMB published a proposal on January 24, 1983, to revise Circular A-122's treatment of the costs of lobbying and related activities. Following publication, OMB received approximately 48,300 comments from the general public, private and public organizations, and federal agencies. Approximately 16,500 comments opposed the proposed revisions, and approximately 31,800 supported them. Many of the opposing comments expressed support for the general principle that federal tax dollars should not be used for lobbying and related purposes, but objected that the means proposed in the January 24 notice would disrupt the legitimate activities of federal nonprofit grantees and contractors. On the other hand, many of the supporting comments have implied or stated a need for regulations significantly more restrictive than those proposed in January. In order to accord the issues raised by these comments further study, and to permit a new round of public comments on a revised proposal, OMB withdrew the January 24 proposal at the end of a 45-day public comment period. The current proposal is significantly changed from the January 24 proposal, the most important changes have been:

- to adopt an allocation method accounting for the costs of lobbying and related activities;
- to use a more limited definition of unallowable costs; and
- to clarify and limit reporting and recordkeeping requirements in the spirit of the Paperwork Reduction Act.

III. Background of Circular A-122

Circular A-122, "Cost Principles for Nonprofit Organizations," establishes uniform rules for determining the costs of grants, contracts, and other agreements. Like other OMB cost principle circulars for state and local governments and for educational institutions, A-122 is a management directive addressed to the Heads of Federal Departments and Agencies and is the legal basis for defining allowable costs and setting forth procedures for recovering them.

Circular A-122 was first issued in June, 1980. It was developed by an interagency team made up of the major grant-making agencies and led by OMB. Before issuance, public comments were sought and received and consultations were held with the General Accounting Office. The cost principles built upon accounting rules previously in use by federal agencies in their dealings with nonprofit organizations. The Circular standardized and simplified those rules. Generally, the circular provides that, to be recovered from the federal government, costs must be necessary, reasonable, and related to the federally-sponsored activity. In addition, costs must be legal, proper, and consistent with the policies that govern the organization's other expenditures.

The disallowance of lobbying and related costs in the proposed revision is comparable to the disallowance by Circular A-122 of other costs which are disallowed on grounds of public policy: for example, advertising, fundraising costs, and entertainment. In each of these examples, a determination has been made that it would not be an appropriate or cost-efficient practice to permit federal tax dollars to be used for these purposes. In this notice, costs of lobbying and related activities are proposed to be similarly disallowed.

IV. Purpose of the Revisions

The purpose of these revisions is to establish a comprehensive government-wide set of cost principles to ensure that federally-appropriated funds are not used by contractors or grantees for lobbying or related activities. The intent is not to discourage or in any way penalize organizations for lobbying efforts conducted with their own funds, but to ensure that the federal government does not subsidize such activities. In addition, as later noted, the revision is for the purpose of assuring compliance with a myriad of statutory provisions mandating that no federal funds be used for lobbying purposes, and to comply, in balanced fashion, with fundamental First Amendment imperatives.

For contractors or grantees to use federal monies to engage in lobbying is an inappropriate use of federal funds for a purpose that was not intended. Such misuse of funds diverts precious resources from the true mission of the grant or contract. Moreover, government subsidy of the lobbying efforts of its contractors and grantees distorts the political process. It favors the political expression of some—organizations with contracts or grants—at the expense of others, who must carry on their political expression at their own expense.

Despite the frequently worthwhile content of the lobbying conducted by such organizations, it runs against the grain of First Amendment government neutrality in political debate for federal funds to be used in this manner. Government neutrality in the democratic process is especially endangered by the practice of using grant or contract funds for lobbying and related activity because, as a general rule, only one side in the debate is funded. Those favoring grant programs and contracting activity have the grants and contracts; those opposed do not. Not to control this practice, then, is not only to subsidize national debate over the extent and desirability of government spending, domestic and military, but to subsidize systematically but one side of those debates.

Moreover, use of federal funds for private lobbying and related political activity can give the appearance of federal support of one political position over another. It can create misunderstanding and interfere with the neutral, non-ideological administration of federally-funded programs. All citizens have the right to receive the benefits of federally-funded programs without being made the captive audience for a grass roots lobbying campaign, and without fear that delvery of services is accompanied by federally-funded partisanship in political or public policy controversies.

This proposal is designed to balance the First Amendment rights of federal grantees and contractors with the corresponding First Amendment obligation and legitimate governmental interest of ensuring that the government does not subsidize the political advocacy activities of private groups or institutions. No person or group has a First Amendment right to receive governmental funding for political

expression; requiring grantees and contractors to bear the costs of their own lobbying efforts does not infringe upon their constitutional rights. Free speech does not mean subsidized speech. The Supreme Count emphasized this point in a recent unanimous opinion when it stated that the federal government "is not required by the First Amendment to subsidize lobbying. . . . We again reject the notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State." *Regan v. Taxation with Representation of Washington*, 103 S. Ct. 1997, 2001 (1983).

On the other hand, there are serious constitutional problems with a system that permits tax money to be used for the political expression of private individuals or groups. Americans have the First Amendment right both to engage freely in speech and political expression, and to refrain from speaking, without interference or control on the part of the government or its agents. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The proposed revision is intended to ensure that the use of Federal grants, contracts and other agreements by private organizations engaging in lobbying does not erode or infringe these constitutional rights, or distort the political process by encouraging or discouraging certain forms of political activity.

The activities of government in a democracy necessarily involve a degree of political advocacy, since government officials are expected to communicate with the people, explain their programs, and provide leadership and direction to the nation. Thus, Members of Congress and their staffs, the President and his political appointees, necessarily participate in forms of political advocacy. However, it is a distortion of the marketplace of ideas for the government to use its financial power to "tip the electoral process," *Elrod v. Burns*, 427 U.S. 353, 356 (1976), by subsidizing the political advocacy activities of private organizations and corporations. This proposal will ensure, to the extent consistent with the communications function of the government, that taxpayers are not required, directly or indirectly, "to contribute to the support of an ideological cause (they) may oppose." *Abood v. Detroit Board of Education*, 431 U.S. 209, 235–236 (1977). The proposal also seeks to avoid the appearance that, by awarding Federal grants, contracts, or other agreements to organizations engaged in political advocacy on particular sides of public issues, the government has endorsed, fostered, or "prescribe[d] [as] orthodox" a particular view on such issues. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 645 (1943).

OMB has received thousands of letters from members of the public who are understandably concerned when they see their tax money involved in projects that involve political organizing for causes they may not support. Furthermore, numerous cases have been cited and documented—by federal agencies, the Comptroller General, Congress, and the general public—of federal grant and contract funds that were used for lobbying or related activities. Nevertheless, due to prior insufficient regulatory restrictions and limited enforcement efforts, the true magnitude of these abuses has never been quantified. Many organizations receiving federal grants engage in extensive lobbying and related political activity, but in many instances the financial and performance reports filed by the organizations are insufficiently detailed to permit the federal agency to determine whether federal funds have been used for those purposes and, therefore, misused. The problem has been exacerbated by the lack of any clear definitions of lobbying, and, in particular, of exactly what activities are unallowable.

Both criminal statutes—18 U.S.C. Section 1913—and appropriations restrictions—including Section 607(a) of the Treasury, Postal Service, and General Government Appropriations Act—currently prohibit the use of federal funds for certain types of lobbying, but there is no clear, uniform definition of prohibited activities to which grantees, contractors, auditors, agency officials, or the public can refer. The clear signal from Congress through the appropriations laws and other actions has not been translated into effective management controls.

The vagueness of existing anti-lobbying restrictions has hampered the ability of contractors and grantees to comply voluntarily with the restrictions, and has made the job of auditors difficult, if not impossible. For example, in recent General Accounting Office (GAO) investigations of improper lobbying expenditures, the contractors and grantees were able to urge that current rules did not ban the expenditures. As the Investigations Subcommittee of the House Armed Services Committee recently concluded:

> [T]here is a deficiency in the appropriations acts' prohibition of lobbying with appropriated funds. A review of the legislative history of the publicity-propaganda appropriations acts restrictions provides no definition of the critical terms 'publicity' and 'propaganda.' Thus, there appears to be no firm distinction between the conduct which is premissible and that which is prohibited.

Moreover, in the absence of clear and fair guidelines enforceable across the board, agency officials have been reluctant to make politically-sensitive determinations in particular cases. This problem is especially serious where there is a natural conjunction of interest between agency officials and their contractors and grantees, as where grantees or contractors lobby for additional appropriations to the agency involved. The thousands of grantees and contractors who receive federal money are a strong lobbying force in Washington, and can use grant and contract funds to help perpetuate their programs, irrespective of the programs' merit or effectiveness.

The improper use of federal funds for lobbying and related activities has been perceived as a problem for many years. In 1919, Congress passed legislation making certain uses of federal funds for lobbying purposes a criminal offense for federal employees; as early as 1948, the General Accounting Office began to unearth instances of federal grantees using federal funds for lobbying purposes. Over the past ten years, Congress has attached over fifty riders to appropriations bills addressing parts of the problem. In the past few years, pressure has increased for further steps. As a result:

- On December 18, 1981, the Department of Defense issued revisions to its Defense Acquisition Regulations (DAR), addressing for the first time the issue of lobbying costs, and making such costs unallowable under DOD contracts.
- On April 27, 1982 and October 22, 1982, DOD further toughened its rules disallowing lobbying costs, eliminating certain exceptions from coverage.
- On May 28, 1982, NASA issued a new cost principle in the NASA Procurement Regulations (NASAPR) making lobbying costs unallowable for NASA contractors. This was revised August 16, 1982.
- On November 2, 1982, the General Services Administration issued a new cost principle in the Federal Procurement Regulations (FPR) making lobbying costs unallowable for civilian contracts with commercial organizations.

These developments, however, affect only defense and civilian contracts with commercial organizations. No generally-applicable cost principle has been issued to control the federal funding of lobbying under contracts and grants to nonprofit organizations.

This proposal thus addresses the final major area in which federal cost principles have not yet adopted restrictions on the use of federal funds for lobbying and related activities by private organizations. It has been prepared in active consultation with the General Accounting Office, which supports this initiative. The proposal is similar in critical respects to the current Defense, NASA, and GSA procurement regulations. Parallel revisions now being proposed by GSA and NASA will eliminate all differences; revisions now being proposed by Defense will eliminate these differences save for certain provisions later described in this notice which retain more restrictive definitions of lobbying contained in the present DAR.

V. Necessity for the A–122 Revision

There is little disagreement regarding the inappropriateness of using federal grant and contract funds for lobbying and related activities. Still, some have argued that no regulations should be in effect for contractors; alternatively, others have agreed that none should be in effect for nonprofit grantees. (Often, and without even appreciating the irony of their positions, those arguing for self-exemption strenuously assert the need for *strong* regulation to restrict the use of federal funds for lobbying purposes by everyone other than themselves.) The procurement agencies have properly rejected the notion of no regulation for civilian, space and defense contractors. This revision of the OMB Circular is in furtherance of the view that fair, consistent regulation makes sense for and is in the interest of the government as well as nonprofit grantees. The following points help explain that position:

1. *It is indefensible to cover contractors under tough guidelines while effectively exempting nonprofit grantees from any regulation:* During the past two years, lobbying provisions far more restrictive than the proposed A–122 revision have been added to the cost principles governing all defense and civilian contractors. (These provisions are described elsewhere in the preamble.) Use of federal funds for lobbying and related purposes is no less an abuse when engaged in by grantees than by contractors, and OMB knows of no basis for differential, much less highly differential treatment of the two. Since parallel revisions are being issued for A–122, the FPR, and the NASAPR sets of cost principles, the present initiative guarantees uniformity of lobbying cost rules for both nonprofit and profit-making recipients of federal funds. (As is elsewhere described in the preamble, the proposals are in fact identical save for the inclusion in the DAR proposal of *more restrictive* definitions of lobbying and related activities than are proposed for all other covered parties.)

2. *Existing rules have failed to stop or identify abuses:* Cases have been cited and documented of federal grant and contract funds that were used for lobbying and related activities. Moreover, insufficient regulatory guidance under the current A–122 has limited enforcement efforts so that the true magnitude of actual abuses has not been quantified. Such audits as now take place regarding the use of federal funds for lobbying purposes can easily bog down into disputes between attorneys and accountants regarding definitions, rules and standards. Thus, many agencies choose not to commit limited auditing resources to an effort which, whatever its importance, can often be limited or even thwarted because existing standards are vague and unclear.

3. *The vagueness of existing standards impose administrative and interpretative problems on nonprofit grantees:* The corollary to the above problem for auditing agencies is that many nonprofit grantees—often the least financially endowed—are particularly disadvantaged if and as actually audited. Many grantees may lack the resources or access to outside professional assistance to effectively resist forced, questionable or subjective construction by auditors of the presently undefined "lobbying" term. Moreover, the absence of clearly defined standards ensures that all grantees are now necessarily uncertain of the allowability of many intended expenditures—whatever their good faith desire not to spend grant funds for lobbying purposes. The A–122 proposal clearly defines what types of lobbying and related activities are unallowable and, further and critically, provides for binding advance guidance from agencies in situations where grantees are in doubt as to the meaning of the Circular.

4. *The A–122 proposal also safeguards against paperwork requirements to which grantees are presently subject:* Aside from the current absence of definitions of lobbying and related activities, audited grantees are, further, effectively subject to the requirement that they document certain allowable expenses charged to the government. This requirement is particularly onerous with indirect cost ("overhead") employees who frequently spend limited amounts of time engaged in lobbying or related activities—but who may nonetheless be required to maintain fully documented time records in order to rebut auditor assertions of disbelief of their claims. The A–122 proposal includes specific provisions to safeguard against this potential problem and exempts indirect cost employees from documentation requirements, including the creation of time logs, calendars, or similar records, if they self-certify that they spent less than 25% of their time on lobbying or related activities. The proposed revision also mandates that agency documentation guidance be restricted further by review pursuant to the Paperwork Reduction Act, to ensure it is the least burdensome necessary to satisfy the documentation requirement objectives. The self-certification rights and protections of the proposal are only possible because of the clear definitions of lobbying and related activities that are elsewhere set forth. It is impossible, risky for grantees and ultimately meaningless to self-certify to compliance with a vague and ultimately meaningless standard.

5. *The A–122 proposal explicitly protects many activities presently subject to claims of unallowability:* A–122's comprehensive treatment of lobbying makes many activities allowable that auditors might currently deem unallowable. Examples of the above include:

—Lobbying at the state level to enhance the organization's ability or cost to perform the grant or contract; also, in recognition of principles of federalism, state subgrantors may, through appropriate state processes, waive the disallowance provision for state lobbying by state subgrantees.
—All federal Executive Branch contacts except attempts to influence the signing or veto of legislation.
—Employee activity related to service as an elected or appointed official, or member of a governmental advisory panel.
—Providing technical advice to legislative bodies in response to specific written requests.

6. *The Internal Revenue Code and other restrictions on lobbying have no bearing on preventing the use of grantee funds for lobbying purposes:* The notion that Code lobbying provisions for tax exempt organizations preempt or otherwise make unnecessary the promulgation of cost standards in this area is belied by the fact that those provisions are for the purpose of defining the *character* and *status* of such organizations. Under the Code, as long as an organization's lobbying expenditures do not exceed a certain

portion of its revenues, it is eligible for tax exempt status. The Code lobbying provisions are only determinative, however, of wherther an organization is sufficiently devoted to a public purpose to justify preferential tax treatment. The provisions do not address the issue of whether federal grant monies should be used to subsidize lobbying—the sole purpose of cost standards. Indeed, the fact that the code lobbying provisions do not address the use of grant monies for lobbying has been implicitly recognized by Congress on numerous occasions through appropriation bill riders prohibiting such expenditures. *See, e.g.*, Pub. L. 97-377, section 509; Pub. L. 96-74, section 607.

It is clear that because expenditures by nonprofits are permissible under the Code does not mean that federal grant monies should be spent for those purposes. For example, the Code does not prohibit tax exempt organizations from spending their revenues on advertising or entertainment. Circular A-122, however, allows only certain advertising costs, and disallows all entertainment costs. Another example is section 503 of the Code, which denies tax exempt status in certain instances to organizations using their revenues for the private gain of controlling individuals. The regulatory scheme embodied in section 503 does not imply, however, that the federal government should not have more stringent restrictions on the use of federal grant monies for private gain. This point is best understood by the fact that nothing in the Code would prevent many grantees from spending *all* of their grant funds for lobbying purposes.

Correlatively, the fact that the Code and other provisions of law regulate the business community in its lobbying activities, e.g., Section 162(e), IRC; Federal Election Campaign Act, 2 U.S.C. Sections 431-456, does not mean that there should be no provisions in the DAR, FPR or NASAPR regarding such activities. Some in the business community have suggested that current provisions regarding the unallowability of lobbying expenditures should be superseded by definitions of lobbying set forth in the Federal Regulation of Lobbying Act, 2 U.S.C. sections 261-270. That position has been properly rejected, and no Congressional intent or operative theory can seriously support the notion that the Code, lobbyists registration laws or any other like statutes permit the government to avoid its responsibility to assure that federal grant and contract funds are spent for authorized purposes and intended and best uses.

7. *The Comptroller General supports the need for A-122 revision:* As indicated elsewhere in the preamble, the A-122 proposal was prepared in active consultation with the General Accounting Office, which supports the initiative and believes that the proposal satisfies the concerns which it had expressed earlier.

And, as noted elsewhere, after a GAO investigation of lobbying activities by grantees under Title X of the Public Health Services Act, the Comptroller General stated in September 1982:

> Clear federal guidance is needed both to ensure that Title X program funds are not used for lobbying and to preclude unnecessary controversy over whether grantees are violating federal restrictions. *The move to revise and make more specific the cost principles applicable to all federal grantees is the appropriate mechanism to achieve these ends.* [*Emphasis* added.]

VI. Summary Description of Proposal

This proposal uses the term "lobbying and related activities" to describe unallowable activities instead of the expansive term "political advocacy" used in the January 24 proposal. This reflects a significant tightening of the definition of unallowable activity in the new proposal. Unlike the January 24 proposal, this proposal will *not* cover:

- Lobbying at the local level (covered under the current DAR and FPR);
- Appearances before Congress or state legislatures at their written request (covered under the current DAR);
- Contracts with Executive Branch officials, other than in connection with the veto or signing of enrolled bills, or attempts to use state or local officials as conduits for unallowable lobbying (covered under the January 24 proposal);
- Litigation on behalf of others not directly authorized by grant or contract (covered under the January 24 proposal);
- Lobbying at the state level that would affect the organization's ability or cost of performing a grant or contract (covered under the current DAR, FPR, and NASAPR);
- The entire cost of membership dues to trade associations or other organizations which have lobbying as a "substantial organizational purpose" (covered under the January 24 proposal).

Unallowable activities will consist of:

- Federal, state or local electioneering and support of campaign organizations, PACS, and the like;
- Direct lobbying of Congress and, to the degree noted above, state legislatures;
- Grass roots lobbying concerning state or federal legislation;
- Efforts to employ state or local officials to lobby Congress or state legislatures;
- Legislative liaison activities, but only to the extent that they are directly related to unallowable lobbying activities as otherwise defined by the Circular. (All legislative liaison activities are covered by DAR.)

The proposal will make unallowable only the portion of costs attributable to lobbying and related activities—not, as in the January 24 proposal, entire cost items used in part for political advocacy.

Further, and critically, the proposal will provide relief from paperwork and audit problems such as those experienced under the current DAR, FPR, and NASAPR: for the purposes of complying with this revision, employees accounted for on an indirect basis will *not* be required to maintain time logs or similar records if they lobby less than 25% of the time. The federal government will rely upon their good faith certification of lobbying time below 25%, except for organizations that have been found to have materially misstated allowable or unallowable costs within the preceding five-year period. Under the proposal, the absence of time logs or similar records not kept pursuant to grantee or contractor discretion will no longer serve as a basis for contesting or disallowing claims for indirect cost employees.

In order to provide even-handed, government-wide rules for paperwork and audits, Defense, GSA, and NASA are proposing parallel revisions in their procurement regulations.

VII. Variances With the Lobbying Provision of Defense Acquisition Regulations (DAR)

A standardized lobbying provision that will govern grantees and contractors alike resulted from extensive negotiations among the four agencies which are responsible for the major sets of cost principles affecting grants and contracts: the Federal Procurement Regulations (FPR), which covers civilian contractors and which is administered by GSA; the NASA Procurement Regulations (NASAPR); the DAR, which covers defense contractors and is administered by the Department of Defense; and Circular A-122, which covers nonprofit organizations and is implemented under the guidance of OMB.

Although exact conformity was reached between the lobbying provisions in the FPR, NASAPR, and the A-122 proposal, four exempted activities under these regulations are restricted under the DAR proposal. The activities

allowable under the proposed A–122, FPR, and NASAPR, but unallowable under the proposed DAR are as follows:

(a) Local lobbying activities to influence officials on local concerns.

(b) Providing technical advice or assistance to Congress or state legislatures, or members or committees thereof, in response to a specific written request; and

(c) Lobbying and related activities at the state level: (1) for the purpose of influencing legislation directly affecting the ability of the organization or cost to the organization of performing the grant or contract; or (2) in the case of states' subgrantees, if the restrictions are waived by the state (the subgrantor) through appropriate state processes.

(d) Legislative liaison activities that are unrelated to unallowable lobbying activities, as otherwise defined in the proposal.

VIII. Analysis

The proposed revision comprises three paragraphs. The first creates a new paragraph in Attachment B to Circular A–122, to be called "B21 Lobbying and Related Activities." Paragraph B21 consists of three subparagraphs.

Subparagraph a establishes an administrative framework for the overall revision. Subparagraph a(1) represents no departure from the current principles of cost allocation familiar to grantees and contractors. While the precise detail of reporting procedures will necessarily be set according to individual agency paractice, this paragraph establishes a general format similar to, and no more onerous than, that now applicable to comparable unallowable activities. See, for example the HHS "Guide for Nonprofit Organizations" (May 1983), at p. 73 (Sample Indirect Cost Proposal Format—Direct Allocation Method).

Indirect cost rate negotiations are conducted between an organization and a single cognizant agency on an organization-by-organization rather than on a grant-by-grant basis. This approach will save agencies and recipient organizations considerable time and effort in cases where the organization receives more than one grant or contract. Further, the subparagraph follows existing accounting practice and emphasizes that lobbying and related costs must be identified and dealt with apporpriately, in accordance with the Circular's provisions.

No detailed record-keeping requirements have been included in this proposal, as such requirements are generally set forth for all nonprofit organizations in OMB Circular A–110: "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations: Uniform Administrative Requirements." (See, e.g. Circular A–110, Attachments C and F.) The Circular, *inter alia*, generally requires grantees to keep for a period of three years, "[f]inancial records, supporting documents, statistical records, and all other records pertinent to [grants]," and to access for audit purposes "pertinent books, documents, papers and records of * * * recipient organizations."

As later described in the preamble, the proposal also modifies, in certain situations, the ability of auditors to require the creation of certain documents and records. See paragraph 1.a.(4) of the proposal.

As with the DAR, FPR, and NASAPR, and as is already the case under A–122's general rules for unallowable costs, the costs identified as unallowable by these revisions include not only costs of the direct activity but also the costs of other activities directly supporting such direct activity. Under the proposal, for example, if a lobbyist spends four hours lobbying the Congress and an additional eight hours in study, consultation, and preparation for the lobbying, the full twelve hours are disallowed, along with the cost of any support services and any other costs attributable to the lobbying activity.

As emphasized in the comment published along with the proposal's text only the portion of cost items allocable to the lobbying activity is unallowable. This departs from the approach taken in the January 24, 1983, proposal which made the entire cost of any cost item used for lobbying activities unallowable.

Subparagraph a(2) makes clear that the certification required as a part of the financial status report required under Attachment G of Circular A–110 is deemed a certification of compliance with this revision (paragraph B21, "Lobbying and Related Activities"). It is important that a responsible official of the contractor or grantee investigate and ensure compliance with these provisions; however, no new paperwork is required.

Subparagraph a(3) restates the general rule for cost documentation, but is modified by subparagraph a(4), which provides that for the purposes of complying with this revision, organizations are not required to prepare or maintain time logs, calendars, or like records to document the time spent by indirect cost employees who state in good faith that they spend less than 25% of their time on lobbying and related activities. This means that the agency and auditor must rely on the good-faith estimates of time spent in lobbying by such employees, or upon other evidence not precluded above. As earlier noted, the absence of time logs or comparable records for indirect cost employees not kept pursuant to the discretion of the grantee or contractor will not serve as a basis for contesting or disallowing claims. Only if a material misstatement is found on the basis of other evidence can an agency require the keeping of time logs for such employees. This avoids the necessity of employees who engage in incidental lobbying having to account for all of their time to federal agencies.

Subparagraph a(5) requires agencies to establish procedures for advance resolution of definitional issues arising under this revision. This will alleviate the inevitable problems of interpretation at the margin and will avoid creating a disincentive for organizations to engage in borderline activity merely because of the uncertainty of applicability of the provisions.

Subparagraph b defines five categories of lobbying and related activities that are unallowable. It should be read in conjunction with subparagraph c, which establishes exceptions to these prohibitions.

Subparagraph b(1) makes unallowable certain electioneering activities at the federal, state, or local levels. It applies to referenda as well as to elections of candidates to office. The restrictions should be familiar to nonprofit organizations, since they are prohibited by 26 U.S.C. Section 501(c)(3).

Subparagraph b(2) makes unallowable the financial or administrative support of political entities—including political parties, compaigns, political action committees, or other organizations—with the purpose of influencing elections. Thus, it bars indirect support of electioneering activities through intermediaries.

Subparagraph b(3) makes unallowable the costs of attempts to influence state or federal legislation. Unlike the January 24, 1983, proposal, this proposal confines the reach of unallowable lobbying to legislative, but not executive, decisionmaking. This is the traditional understanding of lobbying, and was strongly urged by many commenters. Many commenting organizations stressed the necessity and appropriateness of contacts with officials charged not with passing laws but with executing them. Thus the only Executive Branch lobbying made unallowable are attempts to influence a decision to sign or veto enacted legislation, and attempts to use state and local officials as conduits for

grantee and contractor lobbying of Congress or state legislatures.

The coverage of subparagraph b(3) has been limited to state and federal legislation in these proposals, unlike the prohibitions in the Internal Revenue Code, the DAR, the FPR, and the NASAPR, because it is difficult to distinguish between legislative and executive lobbying at the local level. Many of the comments received from organizations critical of the January 24, 1983, proposal gave examples of contacts with local officials that are vital to carrying out grants or contracts—for example, obtaining zoning changes, police protection, or permits. At the local level, there is no rigorous separation between legislative and Executive Branches, and it would be difficult to construct or enforce a rule regarding legislative lobbying at the local level.

As indicated, however, in keeping with the intent of the revision, b(3) includes a phrase clarifying that efforts expended to influence state and local officials to accomplish the lobbying activities defined in b(3) are likewise unallowable. Under the proposal, the government would not reimburse the cost of meeting with mayors or city council representatives if the purpose is to convince them to lobby the Congress for legislation that the grantee or contractor favors.

Subparagraph b(4) deals with grass roots lobbying, and is applicable only to grass roots compaigns concerning legislation. This provision is not meant to disallow associations from informing their membership about legislative developments or soliciting their members' views as a basis for developing the associations' own legislative positions.

The proposal's definition of grass roots lobbying is less inclusive than the Internal Revenue Code definition, in that the IRC includes local lobbying, and restricts "any attempt to influence any legislation through an attempt to affect the *opinions* of the general public or any segment thereof." This subparagraph restricts only efforts to obtain specified lobbying *actions* on the part of the public. (See 26 U.S.C. 4911(d)(1)(A)).

Subparagraph b(5) makes unallowable the cost of legislative liaison activities when they relate to unallowable lobbying and related activities as defined in paragraph b. This distinction recognizes that while the primary purpose of an organization's "legislative liaison" unit is ordinarily to direct and prepare for what has been defined in this revision as unallowable lobbying, there are many other functions served that this revision does not make unallowable. Under the DAR, *all* legislative liaison activities are deemed unallowable.

Subparagraph c sets forth five exceptions to subparagraph b. The costs of activities described in subparagraph c are not unallowable under this proposal. Note that this does not necessarily make such costs *allowable;* allowability or unallowability of such costs will be determined by the terms of the grant, contract, or other agreement involved. Circular A–122 does not authorize costs or expenditures; it exclusively limits the allowability of costs or expenditures.

Subparagraph c(1) exempts the provision of technical advice or assistance to a legislature upon a specific written request. This includes not merely testimony, but also conferences with legislators and staff when requested. The exemption is meant to be permitted on a limited basis, to fulfill the specific informational needs of legislatures, and members and staffs thereof.

Subparagraph c(2), patterned after 26 U.S.C. 4911(d)(2)(E), makes clear that communications with Executive Branch officials are not unallowable, with two exceptions: (1) to influence a decision to sign or veto legislation or (2) to influence state or local officials to serve as conduits for unallowable lobbying activities, as defined by this revision.

Subparagraph c(3) ensures that the salary of an employee does not become unallowable because of participation in civic affairs as an elected or appointed official or member of a governmental advisory panel.

Subparagraph c(4) exempts lobbying or related activity at the state level where it directly affects the ability of or cost to the organization of performing the grant or contract. Such lobbying can directly benefit the federal government. The proposed exception does *not* permit the use of federal funds to lobby state legislatures to promote the ideological objectives of the organization, merely because those objectives are consonant with the purposes of the grant or contract. A recipient of a grant for services to the elderly cannot thereby engage in lobbying on behalf of the concerns of the eldery. Rather, the lobbying must relate to the organization's direct performance of the grant or contract. For example, a grantee in a drug rehabilitation program might be able to lobby a state legislature for laws permitting the prescription of methadone to heroin addicts, or a grantee distributing dairy products to the needy might lobby against an increased excise tax on milk that would increase its distribution costs. It should be understood, however, that state lobbying exempted from unallowability under this section must be *"directly* related" to lower costs or better performance of grants or contracts. Lobbying in the case of secondary, tangential or speculative links between proposed state laws and grant or contract costs or performance will remain unallowable.

In recognition of the principles of federalism, states which are subgrantors for federal grants may, through appropriate state processes, waive the disallowance provision for state lobbying by state subgrantees.

The final exception, in subparagraph c(5), is for any activity specifically authorized by statute to be undertaken pursuant to the federal grant, contract, or other agreement. The provisions of this Circular do not override statutory law.

Paragraph 2 renumbers paragraphs B21 through B50 of Circular A–122's Attachment B. Since the cost items covered under Attachment B are numbered in alphabetical order, "Lobbying and Related Activities" is appropriately designated as paragraph B21, necessitating the renumbering of paragraphs B21 through B50 as B22 through B51.

Paragraph 3, like paragraph 2, is a technical language change. It changes the former term "lobbying" to the new term "lobbying and related activities," as used in this revision.

IX. Legal Authority

The responsibility for implementing grant programs, including the power of administration, has been delegated by Congress to the grant- and contract-making agencies. Those agencies have the direct legal authority to establish cost principles and, prior to the late 1970's, did so in a piecemeal fashion without coordinated government-wide standards. OMB's legal authority in this process derives from the President's constitutional authority to "Take Care that the Laws be Faithfully Executed," U.S. Constitution, Article II, Section 3, as well as from general supervisory responsibilities vested by Congress in the President and in OMB.

Grants management responsibility was placed in OMB by Executive Order No. 11541 (July 1, 1970), pursuant to Reorganization Plan No. 2 of 1970, 5 U.S.C. App. Subsequently, grants management authority was transferred to GSA by Executive Order No. 11717 (May 9, 1973) and retransferred back to OMB by Executive Order No. 11893 (December 31, 1975). Relevant statutory authorities include the Budget and Accounting Act of 1921, ch. 18, Section

209, 31 U.S.C. Section 18; the Budget and Accounting Procedures Act of 1950, ch. 946 Section 104, 31 U.S.C. Section 18a; Pub. L. No. 97–258, Section 1, 31 U.S.C. Section 3507; Pub. L. No. 93–400, Section 3, 41 U.S.C. Section 402. Under these and other general management authorities, OMB may develop plans for implementing better management with "a view to efficient and economical service" and may issue supplementary interpretative guidelines "to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements." In its capacity of exercising the President's general management functions over the Executive Branch, OMB has the power to supervise and direct the management activities of federal agencies.

Agencies, in turn, incorporate the provisions and requirements of applicable OMB circulars into grant and contract agreements through regulations, grant or contract terms, or other means. In this manner, the Circular provisions become legally binding upon contractors and grantees. Moreover, it has been held that the provisions of OMB Circular A–102 are legally applicable to grants even when the grant-making agency has not explicitly implemented the Circular. *Qonaar Corporation v. Metropolitan Atlanta Rapid Transit Authority*, 441 F. Supp. 1168, 1172 (N.D. Ga. 1977). Circular A–122 is on the same legal footing.

In summary, the legal authority for OMB cost principles derives from OMB's delegated authority from Congress and the President to manage the Executive Branch with a view toward economy and efficiency, as it affects the agencies' exercise of their grant administration functions.

This proposed revision, like cost principles disallowing advertising costs, fundraising costs, and entertainment costs, is directly related to the efficient and economical administration of grants, contracts, and other agreements. By prohibiting the use of grant and contract monies for lobbying or related activities (unless specifically authorized to be conducted with grant or contract funds by statute), funds can be directed toward their proper uses, thereby achieving greater public benefit. As the Comptroller General has noted, "The cost principles applicable to all federal grantees is the appropriate mechanism to achieve these ends [of ensuring that program funds are not used for lobbying]." GAO/HRD–82–106 (September 24, 1982), at 27.

The legal basis for the proposed revision is further supported by a series of congressional actions over the last 20 years. Although it has never enacted comprehensive legislation to address the use of federal funds for lobbying purposes on a government-wide basis, Congress has used the vehicle of appropriations acts to curb some of the more flagrant abuses and to prod the Executive Branch into action. Over the past ten years, some 40 to 50 riders have been attached to appropriations bills to address some aspects of the problem. These appropriations riders use many different formulations, but have as a common element the prohibition of the use of appropriated funds for publicity or propaganda purposes designed to support or defeat legislation. One such appropriations rider, Section 607(a) of the Treasury, Postal Service, and General Government Appropriations Act, applies across the board to all federal agencies:

> No part of any appropriation contained in this *or any other Act*, or of the funds available for expenditure by corporation or agency, shall be used for "publicity or propaganda" purposes designed to support or defeat legislation before Congress. (Emphasis added).

The Department of Interior Appropriations Acts use the following formulation, which is more restrictive than the Treasury formulation:

> No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote "public support or opposition" to any legislative proposal on which congressional action is not complete, in accordance with 18 U.S.C. 1913.

The Labor, Health and Human Services, Education, and Related Agencies Appropriations Act states:

> No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agency acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress.

Other agencies and entities affected by appropriations riders (in addition to the generally applicable provision in the Treasury appropriation) include Defense, State, Justice, Commerce, District of Columbia, Legal Services Corporation, ACTION, Community Services Administration, and Health Systems Agencies. Taken as a whole, these provisions indicate a far-ranging Congressional concern to control the use of federal funds for lobbying purposes. Neither legislation nor legislative history suggests any deliberate departure by the Congress from this principle.

In serveral specific instances, Congress has directly authorized the use of appropriated funds for activities that would be classified as unallowable under these revisions. Subparagraph c(5) of the proposal makes any such specifically authorized activity allowable; thus, this revision does not conflict with any enacted statutes but is consistent with the broad thrust of congressional policy in the area.

As noted, this proposal has been prepared in active consultation with the General Accounting Office, which supports this initiative and believes that this proposal satisfies the concerns which the GAO had expressed earlier.

X. Enforcement

Circular A–122 is a management directive to federal agencies establishing cost principles for use in connection with grants and contracts with nonprofit organizations. It does not contain its own enforcement mechanism, though its terms are incorporated in grants and contracts through agency regulations or grant instruments. The degree and nature of enforcement of these anti-lobbying provisions will depend, therefore, on operational experience and competing demands on enforcement resources. This analysis of enforcement is descriptive rather than prescriptive; it is presented to provide a context for public understanding of the proposal.

1. *Voluntary Compliance.* The bedrock for enforcing these provisions is voluntary compliance by grantees and contractors. In the past, restrictions on the use of federal funds for lobbying and related activities have been inadequately communicated and defined. Neither agencies nor recipient organizations devoted much attention to them. This proposal is expected to improve compliance significantly by:

- Defining unallowable activities so that organizations can comply in good faith, and
- Providing formats (indirect cost rate negotiations, certification of financial status report) in which responsible officials of the grantee or contractor will confront the issue of the organization's compliance.

To assist organizations in complying, agencies shall be prepared to resolve definitional questions concerning potential expenditures in advance; this procedure should reduce the inevitable difficulty of interpretations at the margin.

2. *Sanctions.* Penalties for violations of this revision are the same as for violations of existing A–122 provisions. The principal sanction in the event of minor or unintentional violations of these restrictions is cost recovery, *i.e.*, the federal agency will obtain

reimbursement from the contractor or grantee of misspent funds. In more serious cases, contracts and grants can be suspended or terminated, or contractors and grantees can be debarred from further awards. The availability of these sanctions for violating the anti-lobbying restrictions on appropriations legislation has been confirmed by the Office of Legal Counsel of the Department of Justice.

3. *Advance screening.* One of the most effective means of enforcing these restrictions is to ensure that grants and contracts officers are aware of the past performance of organizations seeking new or continued funding. If an organization has not devoted past appropriations to the grant or contract purposes, and has materially diverted them to lobbying (or other extraneous activities), questions can legitimately be raised as to whether additional grants or contracts would be appropriate. Once uniform and understood cost principles are in place, it is expected that agencies will take steps to ensure more thorough advance screening of grant and contract applications.

4. *Audits.* Contractors and grantees are currently subject to audit requirements, and to the possibility of audit by agency Inspectors General or the Comptroller General; However, most audits have not focused on compliance with anti-lobbying provisions. Audit strategy and priority will continue to be established by the independent judgment of these enforcement bodies. After uniform cost principles are promulgated, it will become possible for more vigorous and effective audit enforcement to take place. Stratified audits and other strategies can be used to create an incentive for greater compliance among all grantees and contractors. Alternatively, promulgation of a defined set of rules can and will serve as a protective barrier against audit harassment, and will and should make for fairer and simpler audits for grantees and contractors. This should be of particular benefit to smaller grantees and contractors who lack the means and support staff to contend with audits under the vague, ambiguous, and differential rules now in effect. With expanded Inspector General and agency audit staffs now in place, the *protections* afforded by the proposal are manifest.

XI. Alternative Approaches to Major Issues in The Revision

1. *General Cost Treatment.* This proposal makes unallowable only the portion of a cost item that is actually used in lobbying activities, as opposed to the entire item. Thus, if an employee spends 60% of his time on lobbying activities and 40% on federal grant activities, 40% of the salary may be allocated to the grant. This approach is consistent with the DAR, FPR, and NASAPR lobbying cost treatment provisions, as well as the traditional accounting method of prorating costs between allowable and unallowable activities.

An alternative method of allocating costs of items used for both lobbying actitvities and grant/contract purposes that was considered and rejected was the concept that no federal money can be used to pay for any portion of a cost item that is used for lobbying activities (1) in any way, or (2) over 5% of the time.

The OMB proposal published on January 24, 1983 followed this approach. Commenters argued that it would increase the cost of performing federal grants and contracts because it would effectively require them to separate their lobbying activities from their grant or contracts activities. This could lead to inefficient duplication of equipment and facilities—with attendent increased costs to the taxpayer. They also argued that it would burden the First Amendment rights of contractors and grantees because engaging in lobbying activities could result in disallowance of otherwise legitimate costs. The purpose of this proposal, however, is to enforce governmental neutrality by preventing the use of federally appropriated funds for lobbying and related activities. To the extent that an approach would significantly increase costs or burden First Amendment expression, it is inappropriate.

Some commenters have urged that nonprofit organizations should be ineligible to receive any federal funding if they engage in any lobbying activities. Such an approach would be more restrictive then OMB's January 24, 1983, proposal and would be strongly opposed by many affected groups. Furthermore, a wholesale preclusion of participation in grants and contracts as a result of even a modest amount of lobbying would raise difficult questions of legality and efficiency in a case where the applicant was otherwise the most qualified applicant.

One variation from the allocation principle considered by OMB related to the costs of conducting meetings and conferences that are held in "substantial part" to promote lobbying.

The practice of partisan meeting sponsors scheduling large blocks of "open time" to facilitate lobbying during Washington meetings could make the allocation approach impractical.

On the other hand, considerable problems of definition and interpretation arise when terms such as "substantial" are used to define the point at which the entire cost of a meeting or conference is to become wholly unallowable.

Given the inherent difficulties in using cost principles to attempt to deal with this problem, it appears that the better approach would be for agencies to adopt more stringent policies regarding the funding of meetings and conferences when they are likely to finance or otherwise support clear lobbying activities. (See Office of Management and Budget Memorandum, M–82–4: "Improper Uses of Federal Funds," April 26, 1982.)

2. *Definition of Lobbying Activities.* One of the weaknesses of current restrictions on tax-funded lobbying is the lack of a clear and detailed definition of exactly what is and what is not covered. In constructing the definition in this proposal, OMB has drawn upon experience and language from Internal Revenue Code definitions, statutory provisions, Defense, GSA, and NASA procurement regulations, and similar sources. Care has been taken not to prohibit activities that are legitimately necessary to the fulfillment of the grant or contract.

The proposal addresses the various categories of lobbying (*e.g.*, grass roots lobbying), and defines the unallowable activities. A separate section is devoted to activities which are exceptions to the general restrictions.

The following alternative definitions of unallowable activities have been considered and rejected:

a. *The definitions used in OMB's January 24, 1983, proposal could be used:.* This would result in disallowing, among others, the following categories of activity not covered in this proposed revision:

- Lobbying on local concerns at the local level.
- Lobbying at the state level, even when the lobbying is directly related to the cost to or ability of the organization to perform the grant or contract.
- Attempts to influence "licensing, grants, ratemaking, formal or informal adjudications, guidelines, and policy statements."
- Contacts with Executive Branch officials concerning any governmental decisions.
- Litigation on behalf of others not directly authorized by grant or contract.
- Encouragement of grass roots lobbying to influence notice and comment rulemaking.

• Membership dues or contributions to organizations which have lobbying as a "substantial organizational purpose."

Many commenters on the January 24 proposal felt that the scope of unallowable lobbying activities in that proposal was too broad and would result in disallowing certain legitimate activities appropriately funded under a grant or contract. For example, many contracts with Executive Branch officials at the local, state, and federal levels are considered necessary to performance of the grant or contract, and, often, compliance with the law. Moreover, the concept of lobbying has traditionally been understood to be an attempt to influence legislative rather than executive actions. Departure from this understanding appears to create uncertainty and uneasiness among affected parties. Thus, OMB has rejected as too broad a definition of lobbying that would deem Executive Branch contacts (other than in connection with the signing or veto of legislation) as unallowable.

Unlike the January 24 proposal, the current draft does not disallow the promotion of grass roots lobbying to influence notice and comment rulemaking. The reason for the original inclusion of this provision was that such rulemakings are quasi-legislative in character and that it is inappropriate for the government to be financing march captains, rally orgainizers and other such persons for the performance of such activities in connection with grass roots campaigns regarding such regulations. On the other hand, the consultation process relative to the current draft disclosed serious concerns about the possible applicability of any provision regarding regulations to joint or collaborative efforts by grantees or contractors to share information and thereby to improve the comments made by them to federal agencies. It is OMB's intention, in light of the above, that this matter should be studied during the course of the coming year to determine whether it can be known, and if so to what extent, the federal government now finances grass roots lobbying activities of march captains, rally organizers and the like in connection with notice and comment rulemaking. Agency auditors and others will examine this matter so as to determined whether additional language is needed in the Circular to deal with this matter.

The exception in the January proposal for distribution of nonpartisan analysis for non-lobbying purposes is made superfluous by changes in the current draft, and thus has been deleted. As previously stated, the exception included "making available the results of nonpartisan analysis, study, or research, the distribution of which is not primarily designed to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure, or any governmental decision." The current proposal's revised lobbying definition and accounting treatment do not make such activity unallowable in the first place, so the inclusion of such exception is not only unnecessary but confusing.

b. *Lobbying could be defined as broadly as possible, with a detailed list of the unallowable activities:* Some criticism was made of OMB's January 24 proposal for not being comprehensive enough in its restrictions on lobbying activities. Commenters felt that because of the ambiguous nature of lobbying and quasi-lobbying activities, it was more efficient to restrict the broadest scope of these activities. As noted above, this argument was rejected in rewriting the proposal; in fact, the definitions have been made less expansive.

C. *The lobbying restriction could consist of a broad, but undefined, prohibition on lobbying activities:* This is essentially the approach being used currently in the grants area through assorted appropriation bill riders, and it has not been effective. By not specifying which activities are restricted, agencies are required to do much more interpretative and negotiation work to implement the restriction. Grantees and contractors are uncertain as to what is restricted, and whether the govenment is serious in enforcing those restrictions. In addition, such an approach would complicate audits conducted to determine whether funds had been used for lobbying purposes, and would be particularly burdensome to smaller grantees and contractors.

d. *The lobbying restriction could be made identical in coverage to that of current Defense, GSA, or NASA procurement regulations, or to the definition of "influencing legislation" in the Internal Revenue Code:* There would be substantial advantages to this approach, since current DAR, FPR, NASAPR, and IRS restrictions are well-established and, in the case of the Internal Revenue Code, reasonably well-defined. However, the DAR, FPR, and NASAPR provisions are unfamiliar to the nonprofit community, while the IRS restrictions on lobbying by 501(c)(3) organizations are unfamiliar to defense and civilian contractors. Moreover, the IRS definition of "influencing legislation" is intended to identify the *character* of the organization—whether it is engaged in "substantial" lobbying activity—rather than to identify specific *activities* that should not be subsidized by the federal government. The result of adopting any of those previously established definitions in whole would be to disallow certain activities that are properly allowable, and to allow certain activities that are not proper purposes for the expenditure of federal funds.

Therefore, the approach of this proposal has been to use concepts and definitions from the DAR, FPR, NASAPR, and Internal Revenue Code (IRC) where appropriate, and to deviate from them where appropriate. The "Analysis" section of this preamble identifies the areas of deviation and the rationale for them. Several areas of particular interest, however, should be noted. Unlike the DAR, FPR, NASAPR, and IRC, this proposal does not include local lobbying, because of the difficulty in distinguishing legislative from executive lobbying at the local level and the necessity of frequent contact by contractors and grantees with local officials or matters of administrative concern to the contract and grant.

On the issue of legislative liaison activity, this proposal basically adopts the FPR and NASAPR position in making such activity unallowable only when related to otherwise unallowable lobbying. When legislative liaison activity is performed in preparation for lobbying, it would contradict the revision's intent to make such activity completely allowable. On the other hand, legislative liaison can serve other functions not made unallowable by this revision.

3. *Documentation Requirements:* When the method of cost treatment was changed from total disallowance of cost items partially involved in lobbying (the January 24 proposal) to the typical "proportional" cost treatment used for cost items related to both unallowable and allowable activities, documentation of amounts of allowable and unallowable costs became a necessity.

The principal alternative considered was to adopt the documentation philosophy of the GSA, Defense, and NASA procurement regulations' restrictions on lobbying, *i.e.*, to place the burden on the contractor or grantee to prove in all instances the appropriateness of a cost. This approach, while consistent with the cost principles in general, would entail an implied burden on indirect cost employees to maintain records (time logs, calendars, or the like) to establish the proportion of their time spent on lobbying or related activities. This would be particularly onerous for high level officials who, in the ordinary

course of business, frequently engage in only a small amount of lobbying. OMB (along with Defense, GSA, and NASA) therefore proposes to allow grantees and contractors to certify in good faith the amout of lobbying and related activities performed by indirect cost employees (*i.e.*, those who do not already have to account for their time spent directly on a grant or contract). Only if the employee is engaged (according to the organization's own estimate or outside evidence) in lobbying or related activities more than 25% of his time could further documentation be required. If a contractor or grantee is determined to have materially misstated allowable or unallowable costs within the preceding five-year period, more extensive documentation could be required.

OMB also considered and rejected more extensive "sunshine" provisions which would have called for full disclosure by recipient organizations of detailed information concerning their personnel, public policy positions, affiliations of officers and directors, publications, and other such information. OMB believes such reporting requirements would exceed those necessary to achieve the purpose of these proposals, *i.e.*, to ensure that federally appropriated funds are not used for lobbying or related activities by grantees and contractors. However, OMB has explicitly sought comments on this issue. (See *Issues for Comment*, paragraph 2.)

4. *Penalties:* OMB considered and rejected as too stringent a penalty provision which would require the return to the federal government of all grant or contract funds received by a nonprofit organization found to be engaged in lobbying or related activities. Instead, OMB has opted to follow the standard A–122 penalties of cost recovery and, in certain cases, suspension, termination, and debarment.

XII. Issues for Comment

In addition to any other comments, the public is specifically invited to comment on the following issues:

(1) Do the provisions of Subparagraph a(4) (concerning the maintenance of time logs and similar records) adequately protect against unreasonable recordkeeping burdens without rendering these provisions unenforceable? What changes, if any, are recommended?

(2) Should broader disclosure requirements for recipient organizations be included to facilitate the monitoring of their activities? For example, should recipient organizations be required to provide the agency granting or awarding the federal funds corporate organizational documents; audit reports; publications, newsletters, periodicals, etc. issued by the recipient organization; and/or other information relating to a recipient organization's activities?

(3) Is the broad exclusion of local level lobbying from coverage of these provisions necessary or desirable?

(4) Are any additional exceptions necessary or desirable? Are any of the exceptions provided in this proposal unnecessary or undesirable?

(5) Restrictions on the encouragement of grass roots lobbying inherently require an understanding of the distinction between providing information and encouraging lobbying. The intent of the section on grass roots lobbying (subparagraph b(4)) is that internal communications between an organization and its bona fide members to provide legislative information is allowable, but the promotion of membership lobbying is not. In light of the above, is it desirable to add language to the Circular regarding such internal communications; if so, what form should this language take?

(6) Is the allocation method the proper accounting method for disallowing costs related to sponsoring meetings and conferences when these are used to promote lobbying? Would it be possible to disallow the *entire* cost of a meeting or conference if a "substantial part" is devoted to promoting lobbying? If so, how should the term "substantial" be defined?

(7) Are there are any cases where the explanatory comments in the proposal and the preamble are not sufficiently clear or detailed to enable understanding of the proposal's meaning?

XIII. Designation as "Non-major" Rule

OMB has determined that the proposed revision to A–122 does not qualify as a "major rule" under the criteria as listed in Executive Order 12291:

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The principal effect of the proposed revisions will be to ensure that federal grant funds are used for the purposes that were intended, and not to facilitate lobbying campaigns. As noted above, current financial control procedures do not permit an accurate estimate of the amount of tax dollars now diverted to lobbying efforts by grantees and contractors; whether large or small, correction of this problem will produce a net gain to the intended beneficiaries of federal programs. The costs to be considered are primarily accounting and recordkeeping costs for grantees and contractors, as well as federal agencies. These new costs, however, are minimal in both absolute and relative amounts, and in many instances the revisions should reduce audit and compliance costs. Furthermore, much of the accounting work that the revision requires is already mandated by other sections of Circular A–122, or Circular A–110. This proposal has nonetheless been prepared in accordance with the analytical requirements of Executive Order 12291.

XIV. Paperwork Reduction Act Requirements

In accordance with the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and 5 CFR Part 1320, the collection of information requirements contained in this proposed revision have been submitted for review to OMB's Office of Information and Regulatory Affairs.

Comments about the appropriateness of collection of information requirements in this proposal should be addressed to Edward C. Springer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, (202) 395–4814.

XV. Comment Submittal and Further Information

Comments should be submitted in duplicate to the Financial Management Division, Office of Management and Budget, Washington, D.C. 29593. All comments should be received within 45 days of this notice.

FOR FURTHER INFORMATION CONTACT: John J. Lordan, Financial Management Branch, Office of Management and Budget, Washington, D.C. 20503 (202) 395–6823.

Issued in Washington, D.C., November 1, 1983.

Darrell Johnson,

Budget and Management Officer.

[Circular A–122]

Cost Principles for Nonprofit Organizations

Circular A–122 is revised as follows:

1. Insert a new paragraph in Attachment B, as follows: "B21 *Lobbying and Related Activities."*

a. (1) Organizations shall include, as part of their annual indirect cost proposal, a statement identifying by category costs attributable in whole or in part to activities made unallowable by subparagraph b, and stating how they are accounted for.

Comment: The fact that a cost included in the proposal discussed in subparagraph a(1) (such as an employee's salary, an item of equipment, or the cost of a facility) may be used in part for lobbying or related activities, as defined by subparagraph B21 b, does not make the remainder unallowable.

(2) The certification required as a part of the Financial Status Report required under Attachment G of Circular A–110 shall be deemed to be a certfication that the requirements and standards of this paragraph, and of other paragraphs of Circular A–122 respecting "lobbying and related activities," have been compiled with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to subparagraph a(1) above complies with the requirements of this circular.

Comment: As with other costs under this Circular, to the extent that such documentation is not provided by the organization, the amount that cannot reasonably be demonstrated to be allowable, up to the entire cost in question, shall be disallowed.

(4) For the purposes of complying with subparagraph a, there will be no requirement for time logs, calendars, or similar records documenting the activities of an employee whose salary is treated as an indirect cost, and the absence of time logs or comparable records for indirect cost employees not kept pursuant to the discretion of the grantee or contractor will not serve as a basis for contesting or disallowing claims, unless: (a) the employee engages in lobbying or related activities more than 25% of the time or (b) the organization has materially misstated allowable or unallowable costs within the preceding five year period. Agency guidance regarding the extent and nature of documentation required pursuant to subparagraph a(3) shall be reviewed under the criteria of the Paperwork Reduction Act, to ensure that requirements are the least burdensome necessary to satisfy the objectives of this subparagraph.

Comment: This provision is for the purpose of assuring that agencies and auditors must rely on the good faith estimates of time spent on lobbying by such employees, or upon outside evidence.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of subparagraphs a or b. Any such advance resolution, if in writing, shall be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Circular.

b. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

Comment: The Internal Revenue Code prohibits tax-exempt charitable organizations from "interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. Section 501(c)(3). In addition, for purposes of defining "influencing legislation," the Internal Revenue Code defines "legislation" to include "action with respect to Acts, bills, resolutions, or similar items . . . by the public in a referendum, initiative, constitutional amendment, or similar procedure." 26 U.S.C. Section 4911(e)(2).

In one respect, this subparagraph is narrower than the Internal Revenue provisions, because it is confined to "contributions, endorsements, publicity, or similar activity," in contrast to the broader proscription of "participat[ion] or interven[tion], directly or indirectly * * *"

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

Comment: The Internal Revenue Service has included within the list of disqualifying activities under 26 U.S.C. Section 501(c)(3) the following: "participa[tion] or interven[tion], directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office." 26 CFR Section 1.501 (c)(3)–(c)(3)(iii).

(3) Attempts to influence legislation pending before Congress or a State legislature by communicating with any member or employee of the Congress or legislature, (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enacted legislation;

Comment: The Treasury, Postal Service, and General Government Appropriations Act traditionally contains a rider providing: "No part of any appropriation contained in this or any other Act . . . shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." *E.g.*, Pub. L. 96–74, Section 607, 93 Stat. 575. The Internal Revenue Code defines "influencing legislation" as including "any attempt to influence any [federal, state, or local] legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation." 26 U.S.C. Section 4911(d)(1)(B). This provision is narrower than the Internal Revenue Code provisions because it does not apply to influencing legislation at the local level. Moreover, subparagraph c(5) excludes from the coverage of this provision any lobbying or related activity at the state level directly related to the ability of or cost to the organization of performing the grant or contract.

(4) Preparation, distribution, or use of publicity or propaganda designed to influence legislation pending before Congress or a State legislature by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, or fundraising drive, lobbying campaign, or letter-writing or telephone campaign, for the purpose of influencing such legislation; or

Comment: The Treasury, Postal Service, and General Government Appropriations Act traditionally contains a rider providing: "No part of any appropriation contained in this or any other Act . . . shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." *E.g.*, P.L. 96–74, Section 607, 93 Stat. 575. The Internal Revenue Code defines "influencing legislation" to include: "any attempt to influence any [federal, state, or local] legislation through an attempt to affect the opinions of the general public or any segment thereof." 26 U.S.C. Section 4911 (d)(1)(A). This subparagraph is more narrowly tailored than these provisions, because it is limited to efforts to obtain concerted *actions* on the part of the public and does not, therefore, include mere attempts "to affect the *opinions* of the general public or any segment thereof," if such attempts do not lead to concerted action. This is consistent with the GAO's interpretation of the "publicity or propaganda" appropriations rider. See B–202975 (Nov. 3, 1981).

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation, except to the extent that such activities do not relate to lobbying or related activities as defined by paragraph 1.b. hereof.

Comment: The costs of all legislative liaison activities are made unallowable for contractors under the current Defense Acquisition Regulations (DAR), Section 15–205.51, but are allowable for civilian

contractors under the current Federal Procurement Regulations (FPR), Section 1–15.205–52.

This subparagraph is narrower than the DAR provisions, because it only makes legislative liaison costs unallowable if they relate to otherwise unallowable lobbying activities.

C. Notwithstanding subparagraph b, costs associated with the following activities are not unallowable under this paragraph:

(1) Providing technical advice or assistance to the Congress or a State legislature or to a member, committee, or other subdivision thereof, in response to a specific written request by such member, legislative body, or subdivision;

Comment: This tracks the exception at 26 U.S.C. Section 4911 (d)(2)(B).

(2) Any communication with an executive branch official or employee, other than a communication made expressly unallowable by paragraph 1.b.(3) hereof.

Comment: This is identical in substance to the exception at 26 U.S.C. Section 4911 (d)(2)(E). Read in conjunction with subparagraph b(3), the effect is to make clear that the only contacts with executive branch officials made unallowable are those in connection with the signing or veto of enrolled bills, or attempts to use state and local officials as conduits for grantee and contractor lobbying of Congress or state legislatures.

(3) Any activity in connection with an employee's service as an elected or appointed official or member of a governmental advisory panel;

(4) Any lobbying or related activity at the state level for the purpose of influencing legislation directly affecting the ability of the organization or cost to the organization of performing the grant, contract, or other agreement; however, state governments acting as subgrantors may, through appropriate state processes, waive the current practice under OMB Circular A–102 making Circular A–122 applicable to nonprofit subgrantees with regard to such lobbying activities at the state level as are deemed appropriate.

Comment: The Internal Revenue Code provisions defining "influencing legislation" cover lobbying at the state and local level, as do the current Defense Acquistion Regulations (DAR), Section 15–205.51 and the current Federal Procurement Regulations (FPR), Section 1–15.205–52. This subparagraph is narrower than those provisions because (1) lobbying at the local level is not covered, and (2) lobbying at the state level is not covered if it (a) directly affects the ability of or cost to the grantee or contractor of performing the grant or contract; or (b) when states choose to adopt rules waiving such restrictions for their federal grant subgrantees.

(5) Any activity specifically authorized by statute to be undertaken pursuant to the federal grant, contract, or other agreement.

Comment: This circular does not, nor could it, limit the ability of Congress subject to constitutional constraints, to appropriate funds for the use by contractors or grantees for lobbying or related activities.

2. Renumber subsequent paragraphs of Attachment B.

3. Insert language in subparagraph B.4.b of Attachment A, so that it reads as follows:

b. Promotion, lobbying or related activities (as defined by subparagraph B21(b) of Attachment B), and public relations.

Comments This is a technical language change, which amends the former term "lobbying" to "lobbying and related activities." The added language is "or related activities (as defined by subparagraph B21(b) of Attachment B)."

[FR Doc. 83–30029 Filed 11–2–83; 10:26 am]

BILLING CODE 3110–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 1-39

[DAR Amendment]

Lobbying and Related Activities

AGENCY: Office of Under Secretary of Defense Research and Engineering (AM).

ACTION: Proposed rule.

SUMMARY: DOD Proposes to revise the cost principles on lobbying in DAR 15-205.51. The basis for the proposal is a proposed amendment to Office of Management and Budget (OMB) Circular A-122, Cost Principles of Nonprofit Organizations, that adds a new cost principle entitled "Lobbying and related activities."

DATES: Comments must be received on or before December 19, 1983.

ADDRESSES: Comments should be addressed to Mr. James T. Brennan, Director, Defense Acquisition Regulatory System, OUSDRC/AM/DARS, Room 3 D139 (M&RS)—The Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Kendig, Director of Cost, Pricing and Finance, (202-697-6710).

SUPPLEMENTARY INFORMATION: The proposal being published concurrently by OMB amending OMB Circular A-122 contains a lengthy explanation of the proposed rules on lobbying and related activity costs and the changes form an earlier OMB proposal. This material is not republished in this notice. It is suggested that commenters review the OMB **Federal Register** notice for further information on the background of this proposal. The Department of Defense has determined that this regualtion is not determined that this regulation is not a major rule for purposes of Executive Order 12291 because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

List of Subjects in 32 CFR Part 1-39

Government procurement, Lobbying.

Accordingly, DOD proposes to amend Parts 1-39 as follows:

1. The authority for the regulation is 32 CFR Parts 1-39 is Chapter 137 of Title 10, United States Code, 10 M S.C. 2301 *et seq.*

PARTS 1-39—CONTRACT COST PRINCIPLES AND PROCEDURES

2. The Table of Contents for Parts 1-39 is amended to revise one entry under Subpart 15-2 as follows:

15-205.5 Lobbying and related activities.

Subpart 15-2—Contracts With Commercial Organizations

3. Section 15-205.51 is revised to read as follows:

§ 15-205.51 [Reserved]

(a)(1) Contractors shall include, as part of their annual indirect cost proposals, a statement identifying by category costs attributable in whole or in part to activities made unallowable by subparagraph (b), and stating how they are accounted for.

(2) Contractors shall submit as a part of their annual indirect cost proposal a certification that the requirements and standards of this section respecting "lobbying and related activities," have been complied with.

(3) Contractors shall maintain adequate records to assure that the determination of costs as being allowable and unallowable costs pursuant to subparagraph (a)(1) above complies with the requirements of this section.

(4) For the purposes of complying with paragraph (a), of this section there will be no requirement for time logs, calendars, or similar records documenting the activities of an employee whose salary is treated as an indirect cost, and the absence of time logs or comparable records for indirect cost employees not kept pursuant to the discretion of the grantee or contractor will not serve as a basis for contesting or disallowing claims, unless: (a) The employee engages in lobbying or related activities more than 25% of the time or (b) the organization has materially misstated allowable or unallowable costs within the preceding five year period. Agency guidance regarding the extent and the nature of documentation required pursuant to subparagraph (a)(3) shall be reviewed under the criteria of the Paperwork Reduction Act, to ensure that requirements are the least burdensome necessary to satisfy the objectives of this subparagraph.

(5) Contracting officers shall enter into advance agreement where necessary to resolve any significant questions or disagreements concerning the interpretation or application of subparagraphs (a) or (b). Any such advance agreement shall be binding in any subsequent settlements, audits, or investigations with respect to that contract for purposes of interpretation of this section.

(b) Cost associated with the following activities are unallowable:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity.

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections.

(3) Attempts to influence legislation pending before Congress, State or local legislature by communicating with any member or employee of the Congress or legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enacted legislation.

(4) Preparation, distribution, or use of publicity or propaganda designed to influence legislation pending before Congress, State or local legislature, by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, or fund raising drive, lobbying campaign, or letter-writing or telephone campaign, for the purpose of influencing such legislation or regulation.

(5) legislative liaison activities.

(c) Costs associated with the following activities are not unallowable under this paragraph:

(1) Any communication with an executive branch official or employee, other than a communication made expressly unallowable by paragraph (b)(3) here of.

(2) Any activity in connection with an employee's service as an elected or appointed official or member of a governmental advisory panel.

(3) Any activity specifically authorized by statute to be undertaken pursuant to the federal grant, contract, or other agreement.

Harvey J. Gordon,

Acting Deputy Under Secretary (Acquisition Management).

[FR Doc. 83-30030 Filed 11-2-83; 10:20 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 1–15

Lobbying and Related Activities

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: GSA proposes to revise the cost principles on lobbying and trade, business, technical and professional activity costs in Subpart 1–15.2. The basis for the proposal is a proposed amendment to Office of Management and Budget (OMB) Circular A–122, Cost Principles for Nonprofit Organizations, that adds a new cost principle entitled "Lobbying and related activities." The intended effect of the revision is to achieve uniformity in the coverage of lobbying costs and related activities as between commercial and nonprofit organizations.

DATE: Comments must be received on or before December 19, 1983.

ADDRESSES: Comments should be addressed to General Services Administration, Office of Acquisition Policy, (VR), Washington, D.C. 20450.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202–523–4768).

SUPPLEMENTARY INFORMATION: The proposal being published concurrently by OMB amending OMB Circular A–122 contains a lengthy explanation of the proposed rules on lobbying and related activity costs and the changes from an earlier OMB proposal. This material is not republished in this notice. It is suggested that commenters review the OMB **Federal Register** notice for further information on the background of this proposal.

The National Aeronautics and Space Administration's (NASA) proposed revision to the NASA Procurement Regulations is identical to the GSA (FPR) proposed revision set forth below. Comments to NASA may be addressed to Clarence Milbourne, NASA-Code HC, 600 Independence Avenue, S.W., Washington, D.C. 20546.

The General Service Administration has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

List of Subjects in 41 CFR Part 1–15

Cost principles, Government procurement, Lobbying.

Accordingly, GSA proposes to amend Part 1–15 as follows:

1. The authority citation for 41 CFR Part 1–15 reads as follows:

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

PART 1–15—CONTRACT COST PRINCIPLES AND PROCEDURES

2. The Table of Contents for Part 1–15 is amended by revising the following entry under Subpart 1–15.2 as follows:

Sec.

* * * * *

1–15.205–52 Lobbying and related activities.

Subpart 1–15.2—Contracts With Commercial Organizations

3. Section 1–15.205–52 is revised to read as follows:

§ 1–15.205–52 Lobbying and related activities.

(a)(1) Contractors shall include, as part of their annual indirect cost proposal, a statement identifying by category costs attributable in whole or in part to activities made unallowable by paragraph (b) of this section, and stating how they are accounted for.

(2) Contractors shall submit as a part of their annual indirect cost proposal a certification that the requirements and standards of this § 1–15.205–52 have been complied with.

(3) Contractors shall maintain adequate records to assure that the determination of costs as being allowable and unallowable costs pursuant to paragraph (a)(1) above complies with the requirements of this section.

(4) For the purposes of complying with paragraph (a) of this section, there is no requirement for time logs, calendars, or similar records documenting the activities of an employee whose salary is treated as an indirect costs, and the absence of time logs or comparable records for indirect cost employees not kept pursuant to the discretion of the contractor will not serve as a basis for contesting or disallowing claims, unless: (i) the employee engages in lobbying or related activities more than 25% of the time, or (ii) the organization has materially misstated allowable or unallowable costs within the preceding five year period. Agency guidance regarding the extent and nature of documentation required pursuant to paragraph (a)(3) of this section shall be reviewed under the criteria of the Paperwork Reduction Act, to ensure that requirements are the least burdensome necessary to satisfy the objectives of this paragraph.

(5) Contracting officers shall enter into advance agreement where necessary to resolve any significant questions or disagreements concerning the interpretation or application of paragraphs (a) or (b) of this section. Any such advance agreement shall be binding in any subsequent settlements, audits, or investigations with respect to contracts for purposes of interpretation of this section.

(b) Costs associated with the following activities and unallowable:

(1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity.

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections.

(3) Attempts to influence legislation pending before Congress or a State legislature by communicating with any member or employee of the Congress or legislature, (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enacted legislation.

(4) Preparation, distribution, or use or publicity or propaganda designed to influence legislation pending before Congress or a State legislature by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, or fundraising drive, lobbying campaign, or letter-writting or telephone campaign, for the purpose of influencing such legislation.

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation, except to the extent that such activities do not relate to lobbying or related activities as defined by paragraph (b) hereof.

(c) Costs associated with the following activities are not unallowable under this § 1–15.205–52:

(1) Providing technical advice or assistance to the Congress or a State legislature or to a member, committee, or other subdivision thereof, in response to a specific written request by such member, legislative body, or subdivision.

(2) Any communication with an executive branch official or employee, other than a communication made expressly unallowable by paragraph (b)(3) of this section.

(3) Any activity in connection with an employee's service as an elected or appointed official or member of a governmental advisory panel.

(4) Any lobbying or related activity at the state level for the purpose of influencing legislation directly affecting the ability of the organization or cost to the organization or performing the contract.

(5) Any activity specifically authorized by statute to be undertaken pursuant to the contract.

Dated: November 1, 1983.

Ray Kline,

Acting Administrator.

[FR Doc. 83-30031 Filed 11-2-83; 10:26 am]

BILLING CODE 6820-61-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.R. 3913/Pub. L. 98–139

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. (Oct. 31, 1983; 97 Stat. 871) Price: $3.25

S. 96/Pub. L. 98–140

Lee Metcalf Wilderness and Management Act of 1983. (Oct. 31, 1983; 97 Stat. 901) Price: $1.75

H.R. 1213/Pub. L. 98–141

Public Lands and National Parks Act of 1983. (Oct. 31; 97 Stat. 909) Price: $1.75