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Federal Register

Tuesday
September 17, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Dairy Products
Agricultural Marketing Service

Endangered and Threatened Species
Fish and Wildlife Service

Food Assistance Programs
Food and Nutrition Service

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Investment Companies
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Agricultural Marketing Service

Meat and Meat Products
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Public Assistance Programs
Social Security Administration

Quarantine
Animal and Plant Health Inspection Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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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.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Surface Mining
Surface Mining Reclamation and Enforcement Office

Veterans
Defense Department
Veterans Administration

Viticultural Areas
Alcohol, Tobacco and Firearms Bureau

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5366 of September 14, 1985

National Hispanic Heritage Week, 1985

By the President of the United States of America

A Proclamation

One of the greatest strengths of our Nation is its rich mixture of people from various cultural backgrounds. Americans of Hispanic heritage have made an immense and unique contribution. In thousands of communities across the land, Hispanics are a vital element in fostering America's achievements in fields as diverse as the arts and industry, agriculture and education, religion and business, science and politics.

People from Spain were among the first explorers and settlers in the New World, long before the United States became an independent Nation. They came in search of a better life for themselves and their children, and they have helped to create a richer life for all of us.

In our international relations, Hispanic Americans also contribute to our Nation's identity—our own perception of who we are and our role in the world. The strong family and cultural ties which bind Hispanics in the United States with our nearest neighbors are an important element of strength, unity, and understanding in the Western Hemisphere. The freedom of our neighbors is our freedom. Their security is our security. We Americans seek justice, economic progress, the spirit of good neighborliness throughout the hemisphere, and we count on Americans of Hispanic heritage for special insight and leadership as we work together toward these goals.

In recognition of the many achievements of the Hispanic American community, the Congress, by Joint Resolution approved September 17, 1968 (Public Law 90–498), has authorized and requested the President to issue annually a proclamation designating the week which includes September 15 and 16 as "National Hispanic Heritage Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 15, 1985, as National Hispanic Heritage Week, in recognition of the Hispanic individuals, families, and communities that enrich our national life. I call upon the people of the United States, especially the educational community, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-22402
Filed 9-16-85; 11:13 am]
Billing code 3195-01-M

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 week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-379]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends "Subpart—Fruits and Vegetables" by removing provisions that previously allowed for fumigation with ethylene dibromide (EDB) as a condition-of-entry treatment for the importation of mangoes into the United States. Because of action taken by the Environmental Protection Agency, EDB may no longer be used for such purpose.

EFFECTIVE DATE: The effective date of this document is September 17, 1985. Written comments concerning this final rule must be received on or before November 18, 1985.

ADDRESSES: Written comments concerning this document should be submitted to Thomas O. Gessel, Director, Relgulatory Coordination Staff, USDA, APHIS, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-379. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles M. Amyx, Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

Prior to the effective date of this document, § 319.56-2h of the regulations provided for fumigation with ethylene dibromide (EDB) in the country of origin as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, and Brazil. Also, prior to the effective date of this document, § 319.56-2i of the regulations provided for fumigation with EDB in Mexico as a condition-of-entry treatment for the importation of mangoes into the United States from Mexico. The EDB treatments were designed to protect against the introduction into the United States of certain fruit flies.

This document removes the provisions in §§ 319.56-2h and 319.56-2i. Consequently, the regulations no longer provide for fumigation with EDB as a condition-of-entry treatment for the importation of mangoes into the United States. This action is necessary because of action taken by the Environmental Protection Agency (EPA).

Prior to September 1, 1985, a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes had been established by EPA for the use of EDB in foreign countries as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. However, effective September 1, 1985, the tolerance expired, and consequently the tolerance for residues of EDB per se in or on mangoes is zero (See 50 FR 2546-2550). EDB cannot be used as a fumigant for mangoes without leaving residues.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. It is necessary to make this interim rule effective immediately. Because of action taken by EPA, EDB may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon possible.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; 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, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This document merely reflects that because of action taken by EPA, EDB may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States. Also, for this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372

which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 7 CFR Part 319

Agricultural Commodities, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Mangoes.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, Part 319 is amended to read as follows:

1. The authority citation for 7 CFR Part 319 is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51 and 371.2(c).

2. Under the circumstances referred to above, "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) is amended by removing the provisions of §§ 319.56–2h and 319.56–2i, and by designating these sections as "Reserved".

Done at Washington, D.C., this 12th day of September, 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–22229 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361, Amdt. 1; Valencia Orange Reg. 362]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 361 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13–19, 1985. Regulation 362 establishes the quantity of such fruit that may be shipped to market during the period September 20–26. The amendment and regulation are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Regulation 361, Amendment 1 (§ 908.661) is effective for the period September 13–19, 1985. Regulation 362 (§ 908.662) is effective for the period September 20–26, 1985.

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

SUPPLEMENTARY INFORMATION:

Findings

This 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.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulation are consistent with the marketing policy for 1984–85. The committee met publicly on September 10, 1985, to consider the current and prospective conditions of supply and demand and recommended the quantities of Valencia oranges that it deemed advisable to be handled during the specified weeks. The committee reports that demand for Valencia oranges has 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 there is insufficient time between the date when information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 908 continues to read as follows:

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

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) *District 1:* 333,000 cartons;

(b) *District 2:* 567,000 cartons;

(c) *District 3:* Unlimited cartons.

3. Section 908.662 is added to read as follows:

§ 908.662 Valencia Orange Regulation 362.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 20, 1985, through September 26, 1985, are established as follows:

(a) *District 1:* 333,000 cartons;

(b) *District 2:* 567,000 cartons;

(c) *District 3:* Unlimited cartons.

Dated: September 12, 1985.

Thomas R. Clark,

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

[FR Doc. 85–22168 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Temporary Revision of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of a rule.

SUMMARY: This action extends the application of a lower pooling standard for plants operated by cooperative associations under the Southwest Plains Federal milk order. Through February 1986, the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants during the month in order for plants operated by cooperative associations to be pooled is reduced from 50 to 40 percent. The extension was requested by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply the

market, in order to prevent uneconomic movements of milk.

Notice of the proposed action was published in the **Federal Register** and interested parties were given an opportunity to comment. No opposing views were received.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision: Issued August 16, 1985; published August 22, 1985 (50 FR 33975).

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. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the Southwest Plains milk order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 33975) concerning the proposal to decrease the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants in order for plants operated by cooperative associations to qualify for pool status under the order during the months of September 1985 through February 1986. Interested parties were given the opportunity to comment on the proposal by submitting written data, views, and arguments. No views in opposition to the proposal were received.

Statement of Consideration

This action continues through February 1986 the application of a lower delivery percentage for plants operated by cooperative associations. The revision reduces the percentage of milk marketed by a cooperative association that must be physically received at pool distributing plants during the month by 10 percentage points, from 50 to 40 percent, for plants operated by cooperative associations to qualify for pool status under the order. Section 1106.7(d) of the order provides that the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points to obtain needed shipments or to prevent uneconomic shipments of milk.

Due to the significant change in the market's supply-demand relationship, that resulted from the termination of the St. Louis-Ozarks order on April 1, 1985, the delivery percentage was reduced from 50 to 40 percent for the months of May through August 1985. The downward revision of the delivery percentage was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates plants and represents producers supplying the Southwest Plains market. Mid-Am has requested that the 40-percent pooling standard continue to apply through February 1986 to accommodate the efficient pooling of milk supplies that are now associated with the market.

When the St. Louis-Ozarks order was terminated, certain plants and producer milk supplies formerly regulated under that order became regulated under the Southwest Plains order. This structural change had a dramatic impact on the size and supply-demand relationship of the Southwest Plains market. From March to April 1985, milk priced under the order was up more than 104 percent while producer receipts used in Class I increased only 59 percent. As a result, the market's Class I utilization declined almost 13 percentage points from 57.3 percent to 44.5 percent. During July 1985, the market's 46.1 percent Class I utilization was almost 9 percentage points below July 1984 and more than 11 percentage points below such utilization for March 1985 (the month immediately preceding the month in which the significant structural change in the Southwest Plains market resulting from the St. Louis-Ozarks order termination occurred).

In view of the change in the market's supply-demand relationship, it is concluded that a reduction of 10 percentage points in the pooling standard for cooperative association plants should be continued for the months of September 1985 through February 1986. In the absence of a lowering of the pooling standard, more milk would have to be delivered to distributing plants than is necessary to meet the fluid milk needs of the market. A lowering of the pooling standard will prevent costly and inefficient movements of milk to distributing plants solely for the purpose of pooling the milk of dairy farmers who supply the market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unncessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1985 through February 1986;

(b) This temporary revision does require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No opposing views were received.

Therefore, it is appropriate to reduce the delivery percentage specified in § 1106.7(c) by 10 percentage points for the months of September 1985 through February 1986 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

It is therefore ordered, That the 50-percent delivery requirement specified in § 1106.7(c) of the order be reduced to 40 percent for the months of September 1985 through February 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1106.7 [Amended]

In 7 CFR Part 1106 in § 1106.7(c) the 50-percent delivery requirement is reduced to 40 percent for the months of September 1985 through February 1986.

Effective date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 85–22166 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This action continues, for September 1985 through February 1986, a prior suspension that removed the

requirement that plants operated by cooperative associations need to be located either in the marketing area or in a county adjacent to the marketing area to be eligible for regulation under the order. The continuing action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. The action is needed to avoid costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri distributing plants, will continue to have their milk priced and pooled under the order.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 16, 1985; published August 22, 1985 (50 FR 33974).

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. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order or suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33974) concerning a proposed suspension of a certain provision of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No comments opposing an extension of the prior suspension were received.

After consideration of all revelant information, including the proposal set forth in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.7(c) the words "located in the marketing area or in a county adjacent to the marketing area".

Statement of Consideration

The order provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the cooperative's producer milk is physically received at distributing plants. This action, for September 1985–February 1986, continues a prior suspension that removed the location requirement as a basis of pooling eligibility for plants operated by cooperative associations during the months of April–August 1985.

A continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. Such plants, and the supplies of producer milk associated with such plants, became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. Supplemental milk has historically been furnished to these distributing plants from Mid-Am's supply plants, which also located in southwest Missouri.

Mid-Am indicates that during the upcoming fall and winter months there will be a sufficient supply of milk available to furnish the fluid milk needs of the distributing plants on a direct-shipped basis. However, since Mid-Am's supply plants are not located inside the marketing area or in a county adjacent to the marketing area, Mid-Am will not be able to pool the milk of its member producers without making costly and inefficient shipments of milk from the supply plants to the distributing plants. With a suspension action, the milk can be pooled on the basis of Mid-Am's total performance in supplying distributing plants with direct-shipped milk, thus eliminating the need to make costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid needs of southwest Missouri distributing plants, will continue to have their milk pooled and priced under the order.

Interested parties were given an opportunity to submit written data, views, or arguments concerning this action. No comments in opposition to a continuation of the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area in that without the suspension costly and inefficient movements of milk would be made solely for pooling purposes;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

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

It is therefore ordered, That the following language in § 1106.7 of the order is hereby further suspended for the months of September 1985 through February 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

§ 1106.7 [Temporarily suspended in part]

In 7 CFR Part 1106 in § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

Effective date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-22160 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September through December 1985, provisions of the Eastern Colorado Federal milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and uneconomic movements of milk.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 19, 1985; published August 22, 1985, (50 FR 33976).

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 lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33976) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through December 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the second sentence of § 1137.7(b), the words "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

3. In the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Statement of Consideration

This action removes for the months of September through December 1985 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant.

The order now provides that a cooperative association may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicates that producer receipts on the Eastern Colorado order since April 1985 have exceeded those of the same months of 1984 by percentages ranging from 12.2 to 20.5 percent, while producer milk used in Class I has increased only slightly. Mid-Am estimates that during the September through December period, shipments to surplus handling plants in eastern Kansas and Nebraska will average approximately 100 loads per month. Without suspension of the requested provisions, qualification of Mid-Am member milk in western Kansas and western Nebraska under the provisions of the Eastern Colorado order would require approximately 40 loads of milk per month to be shipped to pool distributing plants. Such shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. The cooperative contends that suspension action therefore is necessary to prevent uneconomic movements of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

No comments in opposition to the proposed action were received. However, Mountain Empire Dairymen's Association, a cooperative association which represents a substantial majority of the producers on the market, filed comments supporting the suspension action as a means of avoiding costly and inefficient movements of milk.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be suspended for the months of September through December 1985 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data,

views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1137 continues to read as follows:

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

It is therefore ordered, That the following provisions of the Eastern Colorado order are hereby suspended for the months of September through December 1985:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

§ 1137.7 [Temporarily suspended in part]

In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "of March through August".

§ 1137.12 [Temporarily suspended in part]

1. In 7 CFR Part 1137, in the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In 7 CFR Part 1137, in the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Effective Date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22161 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1150

Dairy Promotion Program; Determination of Approval; Order of Continuance

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of approval and continuance of rule.

SUMMARY: This document orders the continuation of the Dairy Promotion and Research Order that became effective May 1, 1984. This program provides for dairy product promotion, research and nutrition education. It is funded by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States. A referendum was conducted in August 1985 to determine whether producers favored continuation of the program. More than the necessary majority of the producers voting in the referendum favor continuation of the program. Thus, it is ordered that the Dairy Promotion Program shall remain in effect.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6909.

SUPPLEMENTARY INFORMATION: Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, which authorized and mandated the implementation of the Dairy Promotion and Research Order, also provided that a referendum be conducted among producers within the 60-day period preceding September 30, 1985, to ascertain whether the Dairy Promotion and Research Order should be continued. Continuation of the program is authorized only if the Secretary determines that is has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) were engaged in the production of milk for commercial use. The representative period for the purposes of this referendum was April 1985. Of the 120,330 producers voting, 107,926 or 89.69 percent favored continuation of the order.

It is hereby determined, That continuation of the Dairy Promotion and Research Order has been approved by not less than a majority of the producers voting in the referendum, who during the April 1985 representative period were engaged in the production of milk for commercial use.

It is therefore ordered, That the Dairy Promotion and Research Order, 7 CFR Part 1150, that is now in effect shall be continued.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

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

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

Signed at Washington, D.C., on: September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22162 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Procedures for Production or Disclosure of Records or Information in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has added Subpart D to Part 9 of Chapter 10 of the Code of Federal Regulations to prescribe procedures with respect to the production of documents or disclosure of information in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State and Federal proceedings (excluding Federal grand jury proceedings). This rule clarifies Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on NRC employees to produce NRC records or to disclose information through testimony or depositions. The rule also ensures that the responsibility for determining the response to the demands is placed on the appropriate Commission official.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–1493.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past several years there has been a substantial increase in the Nuclear Regulatory Commission's inspection and investigation functions resulting in enforcement actions taken against NRC licensees. As a result of this activity, and in the wake of many cancellations of nuclear power plants, there are now increasing demands for access to NRC records and for testimony by NRC employees by parties in litigation to which the NRC is not a party. This regulation is limited to situations where the NRC is not a party. NRC personnel have been and are expected to be subpoenaed for depositions or testimony in private actions and called upon to produce NRC records or to disclose information relating to licensing and enforcement activities. The NRC had not uniform written policies or procedures for dealing with these demands. It is the purpose of these amendments to

prescribe a uniform policy to provide NRC personnel with clear guidance on how to respond to subpoenas or other demands for disclosure.

Following the lead of other Federal agencies that have established a "clearinghouse" or centralized decisionmaking approach to subpoenas, the amendments establish that copies of all subpoenas or other demands served on NRC employees will be referred to the General Counsel. A minor change requiring simultaneous service of such demands on the General Counsel was made in order to expedite this process and ensure efficient internal administration of subpoenas or other demands for production or disclosure. The General Counsel is to review the proposed discovery, ascertain the scope of the proposal, and decide on the approach to be followed in each case, including authorizing litigation, if necessary, to resolve disputes between the NRC and the party seeking the discovery. In addition, the amendments set forth the procedures to be followed in the event a response to a subpoena is required before instructions from the General Counsel are received. If a court or other authority declines to stay its demand pending the employee's receipt of instructions, the regulations direct the employee to invoke the case of *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951) and these regulations. *Touhy* holds that government agencies may lawfully establish housekeeping procedures to facilitate the orderly processing of requests for agency information. It further provides that a requesting party's failure to follow those procedures may be valid grounds for an agency and its employees to refuse to provide the requested information.

In deciding whether and to what extent to make documents or testimony available pursuant to a demand, the General Counsel is to consider, among other things, whether the discovery would be proper under the general provisions governing discovery set forth in Fed. R. Civ. P. 26(b) and under the rules of procedure governing the case or matter in which the demand arose. The General Counsel must also consider whether disclosure is appropriate under the relevant substantive law concerning various discovery privileges, including those unique to the government and its agencies, general statutes and regulations governing possession and use of government and corporate information; laws governing trade secret or proprietary information; policies governing ongoing investigations or concerning investigative methods, informants, or similar considerations. The General Counsel will advise the party seeking discovery of the results of the NRC's deliberations in writing as far in advance of the response date as is practicable. Any claim of privilege or assertions of unreasonable burden which cannot be resolved by the General Counsel and the requesting party will, as always, ultimately be reviewed and resolved by the appropriate court.

II. Comments

Four letters of comment were received, each containing several comments and suggestions. The individual comments and suggestions were considered by NRC and are discussed in terms of two categories: (A) those that led to a change in the regulations as proposed and (B) those that did not lead to any changes.

A. Comments That Led to a Change in the Regulations as Proposed

1. *Former employees should not be included within the scope for the rule.* Each of the four commenters responded to Commissioner Asselstine's request for comments on the desirability of applying these regulations to former employees. All four commenters opposed applying the rule to former employees. The Commission has decided not to extend these regulations to cover former employees.

2. *Before disclosing documents in its files which were submitted by contractors, applicants, or licensees and which may contain trade secrets or other privileged information, the NRC should contact the submitter.* In order to ensure, before disclosure of any information or production of documents, that the material is reviewed to see if it contains any trade secrets or proprietary information, the words "trade secrets or proprietary information" have been added to the list of items for the General Counsel to consider when he or she is deciding whether and to what extent to make documents or testimony available pursuant to a demand. The NRC already has a general policy of contacting the submitter of proprietary information before releasing such information. *See* 10 CFR 2.790.

B. Comments Which Did Not Lead to Any Changes in the Final Rule

1. *The NRC has no legal authority to promulgate rules dealing with demands for testimony of its employees.* The authorities relied on in the publication of the proposed rule where section 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201) and section 210, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841). Section 201 of the Energy Reorganization Act of 1974 establishes the Nuclear Regulatory Commission and transfers to it all the licensing and regulatory functions of the Atomic Energy Commission. *See* 42 U.S.C. 5841(f). Section 161 of the Atomic Energy Act of 1954 details the general duties of the Atomic Energy Commission, including promulgating such rules as necessary to carry out the purposes of the Act. *See* 42 U.S.C. 2201(p). The Courts have found this section to be a broad grant of rulemaking authority paralleling the discretion given NRC in its broad regulatory scheme which enables it to achieve its statutory objective. *See Public Service Company of New Hompshire* v. *Nuclear Regulatory Commission*, 582 F.2d 77, 82 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978); *Westinghouse Electric Corp.* v. *Nuclear Regulatory Commission*, 555 F. 2d 82, 83 (3d Cir. 1977); *Siegel* v. *Atomic Energy Commission*, 400 F. 2d 778, 783 (D.C. Cir. 1968). Proper protection of classified and safeguards materials, e.g., 42 U.S.C. 2167, proprietary and trade secrets data, e.g., 18 U.S.C. 1905, and various types of privileged information is necessary if the NRC is to carry out its statutory duties. Thus, the NRC has clear authority to promulgate these rules.

2. *Touhy* v. *Ragen does not apply to the NRC because it is an independent, not an executive, agency.* The Department of Justice regulations which were upheld in *Touhy* v. *Ragen*, 340 U.S. 462 (1951), were promulgated under the Federal housekeeping statute, 5 U.S.C. 22 (now 5 U.S.C. 301), which applies only to executive and military departments. Although the Federal housekeeping statute does not apply to the NRC, 42 U.S.C. 2201(p), one of the statutes under which these regulations were promulgated, gives the NRC the authority to promulgate such rules as it believes are necessary to carry out the Atomic Energy Act. In *Touhy*, the Supreme Court's inquiry focused on the validity of the Department of Justice's rule suggesting that as long as the agency regulations are validly promulgated under a statutory grant of authority, the *Touhy* rationale will apply. Thus, applying the reasoning of the Supreme Court in *Touhy*, the independent status of the NRC would be irrelevant as long as the rule was valid. The case cited in the comment, *General Engineering, Inc.* v. *National Labor Relations Board*, 341 F.2d 367 (9th Cir. 1965), held that the National Labor Relations Board NLRB) was not an executive agency and, therefore, could not promulgate rules based on the Federal housekeeping statute. The court, however, did not strike down the

NLRB's rule which was also promulgated under the general authority given it to promulgate such rules as would further its mission. After some preliminary observations on the validity of the rule, the court considered whether the NLRB's claim of privilege was valid. 341 F.2d 367 at 375. In another case concerning the NLRB and assertion of privilege, the court recognized that "[A]n agency has a legitimate and tidy housekeeping objective in centralizing the determinations of when to assert and when not to assert a privilege." *National Labor Relations Board* v. *Capitol Fish Co.*, 294 F.2d 868, 875 (5th Cir. 1961).

Although the facts in *Touhy* dealt solely with written records, the Court's analysis is equally applicable to information contained in NRC files which is sought by a demand for oral testimony. Lower courts have applied *Touhy* to oral testimony. *See United States* v. *Winner*, 641 F.2d 825 (10th Cir. 1981); *United States* v. *Allen*, 554 F.2d 399, 406 (10th Cir. 1977); *Davis* v. *Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1966). It would be too easy to circumvent an agency's valid claim to withhold certain information if all that need be done to gain access to the desired information would be to rephrase a demand to request oral testimony.

3. *Incorporate additional language recognizing that these regulations do not provide any new or additional authority to withhold information or testimony.* These regulations do not give the Commission any new substantive bases for claims of privilege; they do not purport to do so; and thus there is no need to state this fact in the body of the regulations. Failure to follow the procedures set forth in the regulations, however, may be grounds for not providing the requested information. *See Touhy* v. *Ragen*, 340 U.S. 462 (1951).

4. *The General Counsel should be required to inform the Commission of any adverse determination under these regulations.* The Commission does not believe this is necessary. The NRC manual delegates to the General Counsel the responsibility of representing and protecting the interests of the NRC in various court proceedings. NRC-0115-032.[1]

[1] 10 CFR 1.2 states: "The definitive statement of the NRC's . . . delegations of authority is in the Nuclear Regulatory Commission Manual and other elements of the NRC's Management Directives System . . ." The NRC Manual is available in the NRC Public Document Room, located at 1717 H Street, NW, Washington, DC.

5. *The proposed regulations could delay or withhold information from State Public Utilities Commissions and State Utility Consumer Advocates.* The new regulations are merely procedural and give the NRC no new authority to withhold either information or records. The Commission feels that any slight delay which may be caused by compliance with these regulations is more than offset by the benefits of allowing the Commission the opportunity to better protect privileged information.

6. *The rule should contain a policy statement that the NRC intends to cooperate fully with other tribunals in the production of the requested documents and testimony.* The purpose behind this rule is to allow the NRC to respond to such requests expeditiously. The NRC is in the same position as any other entity from which discovery is requested and owes the same duties of cooperation. The Commission does not believe such a statement is necessary. Its objections to discovery or claims of privilege will be treated like those of any other governmental entity.

7. *The rule's requirement that litigants submit an outline or plan with their demand for oral testimony is inappropriate.* One comment suggested that the Commission's requirement for a plan or summary of the oral testimony desired will affront other tribunals. The Commission disagrees. The NRC requires that a plan of the oral testimony desired be submitted only so that the General Counsel may ascertain whether the proposed testimony will lead to the disclosure of privileged information or will be unnecessarily burdensome. The Commission has acknowledged that any claim of privilege or assertion of unreasonable burden will ultimately be reviewed by a court. The opportunity for judicial review of the General Counsel's decision makes more explicit guidelines for the decision, as suggested by another comment, unnecessary.

Another comment suggested that the NRC's requirement of a plan will require divulgence of attorney work product. The requested information need not include material which would be subject to the attorney work product privilege. It merely must provide the NRC with details in order to allow it to determine whether to oppose the discovery request on grounds of privilege or burden. The NRC has a legitimate interest in obtaining this information.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget Approval number 3150-0043.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule affects only those activities which involve NRC regulatory, licensing, or enforcement activities. The companies that own, build, or design these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CRF Part 121.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201 Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841). Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

2. Section 9.1 is revised to read as follows:

§ 9.1 Scope.

The regulations in this part: (a) Implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying; (b) implement the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; (c) implement the provision of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation; and (d) describe procedures with respect to the production of agency records,

informaton, or testimony in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State, and Federal proceedings.

3. Section 9.1a is revised to read as follows:

§ 9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act. Subpart D sets forth Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on current or former employees for the production of NRC records or the disclosure of information through depositions or testimony.

4. In § 9.12, paragraph (b) is revised to read as follows:

§ 9.12 Production or Disclosure of Exempt Records.

* * * * *

(b) NRC personnel and NRC contractors from whom a record exempt from disclosure is sought by non-judicial means shall follow the procedure specified below. Where the record is sought by judicial or similar process, NRC personnel and contractors shall follow the procedure specified in Subpart D:

(1) If an exempt record is sought from NRC personnel by non-judicial means, the request shall promptly be forwarded to the Director, Office of Administration, who shall process the request as provided in this Part or take such other action as may be appropriate.

(2) If an exempt record is sought from an NRC contractor by non-judicial means, the request shall promptly be forwarded to the NRC contracting officer administering the contract who will then follow the procedure specified in paragraph (b)(1) of this section.

5. Subpart D (§§ 9.200 thru 9.204) is added to read as follows:

Subpart D—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

Sec.

9.200 Scope of subpart.
9.201 Production or disclosure prohibited unless approved by appropriate NRC official.
9.202 Procedure in the event of a demand for production or disclosure.
9.203 Procedure where response to demand is required prior to receiving instructions.
9.204 Procedure in the event of an adverse ruling.

Subpart D—Production of Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 9.200 Scope of subpart.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") for the production of NRC records or disclosure of NRC information, including testimony regarding such records, is issued by a court or other judicial or quasi-judicial authority in a proceeding, excluding Federal grand jury proceedings, to which the NRC is not a party. Information and documents subject to this subpart include:

(1) Any material contained in the files of the NRC;

(2) Any information relating to material contained in the files of the NRC.

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.2, including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC official.

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the General Counsel of NRC.

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure must serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b)(1) and (2) of this section. Whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Counsel in appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The General Counsel will notify the employee and such other persons, as circumstances may warrant, of his or her decision on the matter.

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the

effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated at Washington, DC, this 11th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-22227 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 84-ASO-27]

Alteration of Jet Route J-91; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns a portion of Jet Route J-91 in the vicinity of Lakeland, FL, to improve the flow of air traffic between the Atlanta, GA, and Miami, FL, terminal areas. This action will aid flight planning and reduce controller workload.

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J-91 between Atlanta, GA, and Miami, FL, (50 FR 4230) to improve the traffic flow between those terminal areas. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns J-91 between Atlanta, GA, and Miami, FL. Recent construction in the vicinity of the Lakeland, FL, VORTAC has rendered J-89 unusable north of Lakeland; therefore, traffic proceeding over Atlanta to South Florida is routinely rerouted via Atlanta, J-91 to Cross City, FL, then vectors until southeast of Lakeland. With J-91 realigned to replace the unusable portions of J-89, traffic flow and flight planning is improved, controller workload is reduced, and arrival/departure operations in the Atlanta and Miami terminal areas are more efficiently handled by the system.

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

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. § 75.100 is amended as follows:

J-91 [Revised]

From INT Orlando FL, 242° and Cross City, FL, 136° radials; Cross City, INT Cross City 338° and Atlanta, GA, 169° radials; Atlanta; Knoxville, TN; Henderson, WV; to Bellaire, OH.

Issued in Washington, D.C., on September 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22144 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24764; Amdt. No. 1303]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

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

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

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the pubic interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Issued in Washington, DC on September 6, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

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

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449), January 12, 1983; and 14 CFR 11.49(b)(2)).

PART 97—[AMENDED]

2. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective November 21, 1985*

Clinton, OK—Clinton-Sherman, VOR 1 RWY 35L, Amdt. 10

Enid, OK—Enid Woodring Muni, VOR RWY 17, Amdt. 8

Enid, OK—Enid Woodring Muni, VOR RWY 35, Amdt. 9

Norman, OK—University of Oklahoma Westheimer Airpark, VOR/DME RWY 3, Amdt. 2

Oklahoma City, OK—Clarence E. Page Muni, VOR-B, Amdt. 4, Cancelled

Oklahoma City, OK—Clarence E. Page Muni, VOR-B, Orig

Oklahoma City, OK—Sundance Airpark, VOR RWY 17, Orig, Cancelled

Oklahoma City, OK—Sundance Airpark, VOR Rwy 17, Orig

Oklahoma City, OK—Wiley Post, VOR RWY 17L, Amdt. 9

Oklahoma City, OK—Wiley Post, VOR-A, Amdt. 3, Cancelled

Oklahoma City, OK—Wiley Post, VOR-A, Orig

Oklahoma City, OK—Wiley Post, VOR-C, Amdt. 3, Cancelled

Oklahoma City , OK—Will Rogers World, VOR RWY 12, Admt. 20, Cancelled

** * * Effective October 24, 1985*

Bay Minette, AL—Bay Minette Muni, VOR RWY 8, Amdt. 4

Washington, DC—Dulles Intl, VOR/DME or TACAN RWY 12, Admt. 6

Athens, GA—Athens Muni, VOR RWY 27, Admt. 10

Elberton, GA—Elbert County—Patz Field, VOR/DME RWY 10, Admt. 2

Champaign-Urbana, IL—University of Illinois-Willard, VOR RWY 4, Admt. 9

Champaign-Urbana,IL—University of Illinois-Willard, VOR/DME RWY 22, Admt. 6

Waterville, ME—Waterville Robert LaFleur, VOR/DME RWY 5, Admt. 5

Ocean City, MD—Ocean City, VOR-A, Amdt. 1

Columbia, MS—Columbia-Marion County, VOR/DME RWY 23, Admt. 8

Ashland, OH—Ashland County, VOR-A, Amdt. 4

Coshocton, OH—Richard Downing, VOR-A, Amdt. 6

Portage, WI—Portage Muni, VOR/DME-A, Amdt. 4

** * * Effective September 3, 1985*

Grand Ledge, MI—Abrams Muni, VOR-A, Amdt. 3

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective November 21, 1985*

Enid, Ok—Enid Woodring Muni, LOC RWY 35, Amdt. 3

Norman, OK—University of Oklahoma Westheimer Airpark, LOC RWY 3, Amdt. 3

Oklahoma City, OK—Sundance Airpark, LOC RWY 17, Orig

Oklahoma City, OK—Will Rogers World, LOC BC RWY 17L, Amdt. 4

Oklahoma City, OK—Will Rogers World, LOC BC RWY 35L, Amdt. 9

** * * Effective October 24, 1985*

Calhoun, GA—Tom B. David Fld, LOC RWY 35, Orig

Champaign-Urbana, IL—University of Illinois-Willard, LOC BC RWY 14, Amdt. 6
Waterville, ME—Waterville Robert LaFleur, LOC RWY 5, Admt. 3

* * * *Effective September 26, 1985*

Mosinee, WI—Central Wisconsin, LOC BC RWY 26, Amdt. 9

4. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

* * * *Effective November 21, 1985*

Clinton, OK—Clinton-Sherman, NDB RWY 17R, Amdt. 9
Elk City, OK—ELK City Muni, NDB RWY 17, Amdt. 4
Enid, OK—Enid Woodring Muni, NDB RWY 35, Amdt. 2
Holdenville, OK—Holdenville Muni, NDB RWY 17, Amdt. 2
Norman, OK—University of Oklahoma Westheimer Airpark, NDB RWY 3, Amdt. 5
Oklahoma City, OK—Will Rogers World, NDB RWY 17L, Amdt. 2 Cancelled
Oklahoma City, OK—Will Rogers World, NDB RWY 17R, Amdt. 22
Oklahoma City, OK—Will Rogers World, NDB RWY 35L, Amdt. 2, Cancelled
Oklahoma City, OK—Will Rogers World, NDB RWY 35R, Amdt. 4
Shawnee, OK—Shawnee Muni, NDB RWY 17, Amdt. 5
Woodward, OK—West Woodward, NDB RWY 17, Amdt. 2
Babelthuap Island, Carolina Is., TT—Babelthuap/Koror, NDB/DME RWY 9, Orig

* * * *Effective October 24, 1985*

Hartford, CT—Hartford-Brainard, NDB RWY 2, Orig
Calhoun, GA—Tom B. David Fld, NDB RWY 35, Amdt. 1, Cancelled
Calhoun, GA—Tom B. David Fld, NDB RWY 35, Orig
Champaign-Urbana, IL—University of Illinois-Willard, NDB RWY 32, Amdt. 9
Waterville, ME—Waterville Robert LaFleur, NDB-A, Amdt. 11
Maryville, MO—Maryville Memorial, NDB RWY 14, Amdt. 2
Ashland, OH—Ashland County, NDB RWY 18, Amdt. 6
Toledo, OH—Toledo Express, NDB RWY 7, Amdt. 20
Emporia, VA—Emporia Muni, NDB RWY 33, Amdt. 6
Waupaca, WI—Waupaca Muni, NDB RWY 30, Amdt. 2

* * * *Effective September 26, 1985*

Chicago, IL—Chicago Midway, NDB RWY 4R, Amdt. 12
Chicago, IL—Chicago Midway, NDB RWY 31L, Amdt. 10

* * * *Effective August 22, 1985*

Mekoryuk, AK—Mekoryuk, NDB/DME-A, Amdt. 1

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective November 21, 1985*

Clinton, OK—Clinton-Sherman ILS RWY 17R, Amdt. 5
Oklahoma City, OK—Wiley Post, ILS RWY 17L, Amdt. 7
Oklahoma City, OK—Will Rogers World, ILS RWY 35R, Amdt. 6
Oklahoma City, OK—Will Rogers World, ILS RWY 17R, Amdt. 8

* * * *Effective October 24, 1985*

Champaign-Urbana, IL—University of Illinois-Willard, ILS RWY 32, Amdt. 10
Gulfport, MS—Gulfport-Biloxi Rgnl, ILS RWY 13, Amdt. 10
Toledo, OH—Toledo Express, ILS RWY 7, Amdt. 20
Burlington, VT—Burlington Intl, ILS RWY 15, Amdt. 19

* * * *Effective September 26, 1985*

Chicago, IL—Chicago Midway, ILS RWY 4R, Amdt. 9
Chicago, IL—Chicago Midway, ILS RWY 13R, Admt. 38
Chicago, IL—Chicago Midway, ILS RWY 31L, Amdt. 1
Memphis, TN—Memphis Intl, ILS RWY 36L, Amdt. 10
Mosinee, WI—Central Wisconsin, ILS RWY 8, Amdt. 9

* * * *Effective August 22, 1985*

New Orleans, LA—Lakefront, ILS RWY 18R, Amdt. 9

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective November 21, 1985*

Oklahoma City, OK—Wiley Post, RADAR-1, Admt. 1
Oklahoma City, OK—Will Rogers World, RADAR-1, Amdt. 19

* * * *Effective October 24, 1985*

Washington, DC—Washington National, RADAR-1, Amdt. 25
Champaign-Urbana, IL—University of Illinois-Willard, RADAR-1, Amdt. 5
Toledo, OH—Toledo Express, RADAR-1, Amdt. 14

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective November 21, 1985*

Elk City, OK—Elk City Muni, RNAV RWY 17, Amdt. 2
Norman, OK—University of Oklahoma Westheimer Airpark, RNAV RWY 3, Amdt. 3, Cancelled
Norman, OK—University of Oklahoma Westheimer Airpark, RNAV RWY 3, Orig
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 17, Amdt. 2, Cancelled
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 17R, Orig
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 35, Amdt. 2, Cancelled
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 35L, Orig
Oklahoma City, OK—Sundance Airpark, RNAV RWY 35, Orig, Cancelled
Oklahoma City, OK—Sundance Airpark, RNAV RWY 35, Orig
Shawnee, OK—Shawnee Muni, RNAV RWY 17, Amdt. 2

* * * *Effective October 24, 1985*

Washington, DC—Dulles Intl, RNAV RWY 1R, Amdt. 5
Washington, DC—Dulles Intl, RNAV RWY 12, Amdt. 8
Washington, DC—Dulles Intl, RNAV RWY 19R, Amdt. 7
Mt. Vernon, IL—Mt. Vernon-Outland, RNAV RWY 5, Amdt. 5, Cancelled
College Park, MD—College Park, RNAV RWY 15, Orig
Coshocton, OH—Richard Downing, RNAV RWY 22, Orig

[FR Doc. 22143 Filed 9-16-85; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22397; File No. S7-5-85]

Confirmation Disclosure for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to its rule governing customer confirmation disclosure to require more complete disclosure for principal transactions in reported securities. The amendments require broker-dealers to report on confirmations, the trade prices and markups in principal transactions with customers, thus providing customers with additional information regarding the quality and costs of broker-dealer services.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Leland Goss II, Esq. (202) 272-2827, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Rule 10b-10 [1] under the Securities Exchange Act of 1934 ("Act") [2] requires a broker-dealer executing a transaction with a customer to provide a written confirmation at or before completion of the transaction disclosing information concerning the transaction. The confirmation provides customers [3] the

[1] 17 CFR 240.10b-10.
[2] 15 U.S.C. 78a *et seq.*
[3] The term "customer" as used in Rule 10b-10 excludes broker-dealers.

terms of trades executed by broker-dealers. For trades in which the broker-dealer acts as agent for the customer, the confirmation must disclose both the transaction price and the commission.[4] In trades in which the broker-dealer acts as principal, however, other than "riskless principal" transactions,[5] Rule 10b–10 currently permits the transaction to be confirmed at a single "net" price to the customer.

On February 12, 1985, the Commission issued a release requesting comment on a proposed amendment to Rule 10b–10 ("Release").[6] The amendment would require a broker-dealer to disclose on customer confirmations the trade price and resulting mark-up in principal transactions in reported securities. These "reported securities" include listed securities meeting New York or American Stock Exchange listing requirements and over-the-counter ("OTC") National Market System ("NMS") Securities.[7]

Specifically, under the amendment a broker-dealer executing a trade as principal must disclose on the customer confirmation the customer's reported trade price, which for trades in OTC/NMS Securities would be the price the broker-dealer reported pursuant to the NASD's real-time last sale reporting requirements,[8] and for listed securities would be the price reported pursuant to exchange requirements and the CTA Plan. The amendment also requires the broker-dealer to disclose on the confirmation the dealer mark-up or commission equivalent, calculated by subtracting the reported trade price from the net price to the customer.[9]

The Commission received 24 comments in response to the Release. After reviewing those comments and evaluating the proposed amendment in light of those comments, the Commission has determined to adopt an amendment to Rule 10b–10 substantially similar to that proposed. In addition, the Commission has determined to provide a phase-in period before the effective date of the amendment of 180 days from the date of publication of this release, to allow broker-dealers time to adapt to the new requirements.

II. Comments

The Commission received 24 comments: five from investors,[10] seven from broker-dealers,[11] eight from law firms and bar associations,[12] the American Stock Exchange ("Amex") and Midwest Stock Exchange ("Midwest"),[13] the Securities Industry Association ("SIA"),[14] and the NASD.[15]

The commentators generally were divided over the desirability of the proposed amendments with a majority of the comment letters supporting adoption of the amendment. All of the investors as well as two broker-dealers submitting comments favored, and one broker-dealer did not oppose adoption of the amendment. Three broker-dealer commentators, on the other hand, generally opposed the amendment.[16] The Amex, Midwest, two law firms and one bar association supported the amendment, while the NASD, one law firm and three bar association committees opposed the amendment. The SIA supported the goal of the amendments but questioned whether the anticipated benefits would result.

Commentators that supported the amendment argued that it would increase the efficiency of the market as a whole. One commentator noted:

> [w]hile [the amendment] clearly should have a positive effect on best execution and the ability of customers to make informed decisions regarding the brokerage commissions they pay, disclosure of trade

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[4] 17 CFR 240.10b–10(a)(7)(i).

[5] *See* 17 CFR 240.10b–10(a)(8)(i).

[6] Securities Exchange Act Release No. 21708 (February 4, 1985), 50 FR 5766.

[7] "Reported securities" are defined in Rule 11Aa3–1 under the Act (17 CFR 240.11Aa3–1(a)(4)) as securities covered by an effective transaction reporting plan adopted pursuant to Rule 11Aa3–1. Listed securities meeting New York or American Stock Exchange listing requirements are reported pursuant to the Consolidated Tape Association ("CTA") Plan. OTC securities designated as NMS Securities pursuant to Rule 11Aa2–1 under the Act (*see* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992, adopting this rule) are reported pursuant to the National Association of Securities Dealers, Inc.'s ("NASD") Transaction Reporting Plan.

[8] To comply with the last sale reporting requirements applicable to OTC/NMS Securities, OTC market makers must determine, pursuant to NASD rules, a trade price for each trade in an NMS Security and report this price to the NASD within 90 seconds of execution of the trade. Last sale reporting requirements are contained in Rule 11Aa3–1 under the Act, the NASD's Transaction Reporting Plan adopted pursuant to Rule 11Aa3–1 (*see* Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617, and the NASD's transaction reporting rules (NASD By-Laws, Article VII Schedule D, IV(2)(d)(3)).

[9] The amendment does not, however, require a broker-dealer to disclose the price at which it acquired the securities. For example, assume an OTC broker-dealer buys a stock for its own account at 8. A week later the inside market for the stock is 10 bid and 10¼ ask. After executing a sale to a customer at 10¼, the broker-dealer adds a ¼ point mark-up charge to the customer, with a resulting net price of 10½. Under these circumstances the broker-dealer would report the trade price of 10¼ to the NASD, excluding the ¼ point mark-up. *See* NASD By-Laws, Article VII, Schedule D, IX(2)(d)(3).

Under the amendment, the broker-dealer would be required to disclose on the customer confirmation the customer's net price, which is 10½, the customer's trade price, which is 10¼, and the difference between the two, which is the mark-up of ¼. The broker-dealer need not disclose that he acquired the stock at a price of 8.

[10] Letter from Arthur F. Peterson, to John Wheeler, Secretary, SEC (February 7, 1985); letter from Frank S. Moran, Plante & Moran, to John Wheeler, Secretary, SEC (February 27, 1985); letter from Joseph C. White, Revere AE Capital Fund, Inc. ("Revere Fund letter"), to John Wheeler, Secretary, SEC, (March 20, 1985); letter from Joseph and Marion Oravec, to John Wheeler, Secretary, SEC (March 22, 1985); letter from Alan R. Silberman, President, Quantum Pharmics, Ltd., to John Wheeler, Secretary, SEC (March 22, 1985) ("Pharmics letter").

[11] Letter from John E. Herzog, President, Herzog, Heine Geduld, to John Wheeler, Secretary, SEC (March 11, 1985) ("Herzog letter"); letter from Frederic J. Reif, Vice President, Operations Division, A.G. Edwards & Sons, Inc., to John Wheeler, Secretary, SEC (March 22, 1985) ("A.G. Edwards letter"); letter from Norman J. Wechsler, President, Wechsler & Krumholz, Inc., to John Wheeler, Secretary, SEC (March 22, 1985); letter from Glenn E. Anderson, Chairman, Carolina Securities Corporation, to John Wheeler, Secretary, SEC (March 27, 1985) ("Carolina Securities letter"); letter from Joseph R. Hardiman, Alex. Brown & Sons, Inc., to John Wheeler, Secretary, SEC (March 28, 1985); letter from Kathy Miller, Treasurer, Charter Investment Group, Inc., to John Wheeler, Secretary, SEC (April 10, 1985) ("Charter letter"); letter from Samuel E. Hunter, Senior Vice President and Division Director, Securities Trading Division, Merrill Lynch Capital Markets, to John Wheeler, Secretary, SEC (May 6, 1985) ("Merrill letter").

[12] Letters from Richard D. Greenfield, Greenfield, Chimicles & Lewis, to the Division of Market Regulation (February 5, 1985 and April 25, 1985) ("Greenfield letter"); letter from Milton H. Cohen, to John Wheeler, Secretary, SEC (February 8, 1985) ("Cohen letter"); letter from Sullivan & Cromwell, to John Wheeler, Secretary, SEC (March 29, 1985) ("Sullivan & Cromwell letter"); letter from Raymond L. Aronson, Committee on Securities & Exchanges, New York County Lawyers' Association, to John Wheeler, Secretary, SEC (April 4, 1985); letter from Arnold S. Jacobs, Chairman, Association of the Bar of the City of New York, to John Wheeler, Secretary, SEC (March 28, 1985); letter from Richard M. Phillips, Chairman, Committee on Federal Regulation of Securities and Robert C. Lewis, Chairman, Subcommittee on Broker-Dealer Matters, Section on Corporation, Banking, and Business Law, American Bar Association, to John Wheeler, Secretary, SEC (May 1, 1985); letter from Richard R. Howe, Chairman, Committee on Securities Regulation, New York State Bar Association, to John Wheeler, Secretary, SEC (May 28, 1985).

[13] Letter from Richard O. Scribner, Executive Vice President, Legal and Regulatory Affairs, Amex, to John Wheeler, Secretary, SEC (March 28, 1985) ("Amex letter"); letter from J. Craig Long, Vice-President-Legal and Secretary, Midwest, to John Wheeler, Secretary, SEC (July 9, 1985) ("Midwest letter").

[14] Letter from J. Patrick Campbell, Chairman, OTC Trading Committee, and William R. Harman, Chairman, Federal Regulation Committee, SIA, to John Wheeler, Secretary, SEC (April 26, 1985) ("SIA letter").

[15] Letter from Gordon S. Macklin, President, NASD, to John Wheeler, Secretary, SEC (May 24, 1985) ("NASD letter").

[16] Herzog, letter, *supra* note 11. A.G. Edwards letter, *supra* note 11. Alex Brown letter, *supra* note 11.

price and commission charges on confirmations on a consistent basis—regardless of whether the trade was executed in the OTC market or on an exchange—will have a beneficial impact on competition.[17]

Others indicated that the number of instances of abuse of customers (e.g., undisclosed excessive mark-ups), or the potential for such abuse, would be greatly reduced by the increased disclosure, which would "alert the investor to any abuse or suggest the benefit of shopping around with other brokers."[18] One commentator who urged adoption of the amendment reported that he had observed numerous instances of customers misled by brokers who had indicated that "net" transactions were commission-free, and stated that customers often have no idea as to what commission or mark-up has been factored into the net price, nor realize the incentives brokers have in promoting and recommending certain securities.[19]

Some commentators advocated adoption of the amendment to achieve consistency in the reporting and confirming of OTC transactions, and to obtain greater comparability of quotations and transaction reports in the exchange and OTC markets.[20] Others suggested that the amendment would act to reduce the bid-ask spread, increase efficiency in the OTC market,[21] and benefit the public by making trading in the OTC market a fairer and more efficient process.[22] One large integrated firm stated that the amendment "would enable customers better to evaluate transaction costs and execution quality, would provide certain regulatory benefits, and, limited to reported securities, would not impose significant incremental costs on broker-dealers."[23]

Commentators opposing adoption of the amendment raised several arguments. First, they suggested that the additional disclosure would create confusion and mislead customers.[24] While some other commentators agreed that customers would benefit by the ability to better monitor execution costs, they concluded that customers would fail to understand the reason for a high mark-up printed on the confirmation.[25] This would in turn cause misunderstandings between customers and brokers,[26] with the latter being "open to criticism by the client, suspicion and possibly loss of the account to a competitor."[27] Commentators also argued that because of the "flexibility" and "subjective considerations" in last sale reporting under NASD guidelines, customers would not always receive useful information from which to evaluate execution quality.[28]

Several commentators, including the NASD, questioned whether the amendment would be beneficial as applied to transactions with institutional customers. In their view, because many institutions have ready access to real-time quotation and last sale information and enjoy a strong bargaining position, disclosure of the information required by the amendment would provide them little benefit or protection.

Some commentators stated that the language of the proposed amendment required clarification.[29] They pointed out that the amendment as drafted only called for disclosure of the "mark-up, mark-down, or similar remuneration," while the discussion in the Release made clear that disclosure of the trade price would be required as well. It was suggested that the language of the rule be revised to indicate specifically that the rule required disclosing the reported trade price and the mark-up or mark-down, together with the presently disclosed net price. In addition, because the proposed rule amendment did not define "mark-up," some felt the words could be misconstrued as meaning the entire difference between the broker-dealer's acquisition cost of the security and the price to the customer.[30]

The Commission requested in the Release that commentators address the issue of the potential costs of the proposed amendment. Although a number of comments discussed this issue, none provided any numerical data estimating the costs of compliance for broker-dealers. A number of commentators favoring adoption of the amendment either questioned whether the amendment would result in significant costs to broker-dealers or believed that any costs could be minimized or eliminated.[31] These commentators doubted that reporting trade prices and mark-ups would impose much operational burden on broker-dealers because the amendment would apply only to reported securities and the information is already computed internally and made available to the registered representative.[32] They further argued that the value of the amendment would outweigh any additional burden that might result for brokerage firms. Merrill Lynch, which has voluntarily disclosed mark-ups in principal transactions in the over-the-counter market since 1968, stated that disclosure of this information had been beneficial to its customers without being unduly burdensome to the firm.[33]

Comentators opposing the amendment argued that the amendment would place an additional burden on broker-dealers by consuming more time in providing the additional information required by the amendment. Two broker-dealers noted the additional responsibility the amendment would place on personnel who already must capture and enter quantity, description, account number, and price data,[34] at least for smaller broker-dealers who do not have internal automated execution and confirmation systems.[35] The NASD concluded, however, that if the proposal is adopted an exemption for small broker-dealers who do a limited number of principal trades is not warrented "because competitive considerations require that

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[17] Midwest letter, *supra*, note 13.

[18] Revere Fund letter, *supra* note 10.

[19] Greenfield letter, *supra* note 12.

[20] *See, e.g.*, Cohen letter, *supra* note 12 at 12; Amex letter, *supra* note 13.

[21] Revere Fund letter, *supra* note 10.

[22] Pharmics letter, *supra* note 10.

[23] Merrill letter, *supra* note 11.

[24] Commentators expressed concern that a customer would conclude, inappropriately, that he was better off in a trade with a low mark-up, compared to another trade with a higher mark-up and a slightly better execution price. *See, e.g.*, Alex. Brown letter, *supra* note 11.

[25] For example, some commentators noted that higher mark-ups were warranted for "difficult" trades than routine ones, but that customers would mistakenly interpret such higher mark-ups as evidence of over-reaching by their broker. *Id.*

[26] Alex Brown letter, supra note 11.

[27] Herzog letter, *supra* note 11.

[28] The ABA offered the following example: The trader's inside spread for a stock is 10 bid and 10¼ ask. Because the trader has a sizeable inventory of this stock which he wants to reduce, he gives his retail broker a price of 10; ¼ point below the lowest ask price of any other market maker. The ABA stated that if the retail broker-dealer added a ⅜ point mark-up "the customer's confirmation would show execution at 10 and a relatively high mark-up of ⅜. Since [the confirmation] would not inform the customer of the inside spread . . . at the time the transaction was executed, the confirmation would not inform the customer that he received a good price in relation to the market or that the retail broker's ⅜ mark-up, set in contemplation of the good price from the trader, could have been less without the very favorable wholesale price."

[29] *See, e.g.*, Merrill, SIA letters, *supra* notes 11 and 14.

[30] *See, e.g.*, Charter letter, *supra* note 11.

[31] *See, e.g.*, Greenfield, Revere Fund, Merrill, and Midwest *supra*.

[32] *See, e.g.*, Greenfield letter, *supra* note 12.

[33] Merrill letter, *supra* note 11.

[34] A.G. Edwards argued that even for firms that have automated systems, the amendment could impose operational burdens where those firms' confirmation and transaction reporting functions are not integrated. Thus, costs would be imposed by having to duplicate reporting information on confirmation systems, or from integrating trade reporting and confirmation systems. A.G. Edwards letter, *supra* note 11.

[35] Alex Brown letter, *supra* note 11.

similar transactions be reported in a similar fashion by all broker-dealers."

Some commentators said that the Commission had effectively avoided placing any significant burden on broker-dealers by limiting the proposal to securities for which last sale information is already being reported to the consolidated system, e.g., OTC/NMS Securities.[36] Moreover, the NASD stated that the actual costs of complying with the Rule amendment would depend a great deal on its effective date. Thus, the NASD and one other broker-dealer requested a deferred effective date and phase-in period for the amendments so that with sufficient time existing supplies of confirmation forms could be exhausted and new ones re-ordered, thereby making these costs negligible.[37]

III. Discussion

After careful consideration the Commission has determined to adopt the proposed amendment to Rule 10b-10 with certain non-substantive revisions to provide definitional clarity.

A. Benefits of the Amendment

The Commission believes that disclosure of the reported trade price and mark-up on customer confirmations provides significant tangible benefits to investors and will encourage market efficiency.

1. Ability to Evaluate Transaction Costs

First, the Comission has concluded that disclosure of the trade price and mark-up will provide investors with important information regarding the investor's transaction costs. This disclosure will allow an investor over a period of time to assess the charges of his broker-Dealer in principal transactions and may permit comparison of those costs to similar charges of other firms. Investors currently can make these evaluations and comparisons in agency and riskless principal trades, where commissions, mark-ups, or commission equivalents must be disclosed. An investor's knowledge of his transaction costs is equally as important in other principal transactions; an investor's ability to negotiate or obtain competitive transaction charges is limited, absent this knowledge.

Disclosure of the trade price and mark-up may also discourage excessive charges by broker-dealers by permitting customers to police the handling of their accounts.[38] By simply disclosing to investors their transaction costs, the amendment will enable investors to take a larger role in protecting against unreasonable mark-ups, instead of relying solely on Commission or self-regulatory organization inspection and enforcement efforts to control mark-ups.[39] Providing this information will place investors in a more informed bargaining position with broker-dealers in principal transactions, a position which customers have enjoyed since at least 1937 in agency transactions. Customers who feel they are not being charged reasonable mark-ups will be able to shift their brokerage business immediately to broker-Dealers willing to charge more competive mark-ups. In this way, the market will be able to operate more fairly and efficiently.

2. Ability to Evaluate Execution Quality

In addition to increasing the investor's ability to evaluate his transaction costs, disclosure of trade prices and mark-ups on customer confirmations would afford an additioinal major benefit by enhancing the ability of the investor to monitor execution quality. Disclosure of trade prices and mark-ups on customer confirmations will inform the customer for the first time of the actual price at which his trade occurred. The customer then can compare this trade price to the best available price for the security being purchased or sold, either by monitoring a real time display, obtaining quotes for the security from his registered representative at the time he enters the order, or by comparing this price to the high and low prices for the day reported in newspaper stock tables. At present, an investor cannot ascertain his trade price from the single net price disclosed on his confirmation or readily determine whether the execution was favorable.

While achieving the most favorable net price is the rational goal of investors, disclosure of the separate components of this price allows the investor to assess each component of an execution and determine where improvement can be achieved. Thus, with disclosure of trade prices and resulting mark-ups, the investor can seek to obtain both the best trade price *and* a competitive mark-up.

3. Trade Reporting Benefits

The Commission also believes that the amendments will have a beneficial effect on trade reporting, especially in the OTC market. For the first time, OTC market makers will be required to disclose to customers the price at which the trade was reported; if this reported price differs from the trade price understood by the customer, customers can be expected to bring this disparity to the attention of the broker-dealer, and where necessary, regulatory authorities. Thus, customer monitoring will provide a safeguard strengthening the integrity of the trade reporting process.[40]

The Commission recognizes that some comments have suggested that the NASD last sale reporting requirements [41] do not provide clear rules for the determination of reported trade prices, and as a result, trade prices and resulting mark-ups or mark-downs are largely hypothetical,[42] and of little use in evaluating transaction costs and execution quality. As an initial matter, it should be noted that the amendment directly addresses the issue of the lack of reliability of OTC trade reporting by causing broker-dealers to take greater care in determining a trade report price to avoid questions from their customers about an unrepresentative trade price or an unexpectedly large resulting mark-up shown on the customer's confirmation.

Moreover, the Commission believes that the NASD last sale reporting rules do not grant reporting parties the degree of flexibility that some commentators have suggested. The NASD reporting rules clearly state that where principal transactions include a mark-up, mark-down, or service charge, the price reported shall exclude that mark-up, mark-down or service charge.[43] Thus, where an integrated firm has an established mark-up schedule that the firm's OTC trading desk routinely adds to the trade price to obtain the net price to the customer, it is clear that the price

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[36] *See, e.g.*, Revere Fund, and Merrill Letters, *supra* notes 10 and 11.

[37] *See* Carolina Securities letter, *supra* note 11.

[38] Confirmation disclosure of mark-ups obviously will deter the possibility for fraud or confusion by registered representatives who might suggest to their customers that principal transactions are "commission-free," thereby implying that transaction costs have not been factored into the price of the trade to the customer.

[39] Although the Commission recognizes that the enforcement of the NASD's mark-up policy has been valuable in reducing incidents of excessive mark-ups, observers have long noted that improving investor disclosures concerning these mark-ups would be an important adjunct to self-regulatory organization activity. *See The Special Study of the Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 95, Pt. 2, 88th Cong., 1st Sess., 673 (1963).

[40] In this connection, the Midwest argued in its comment that because "NASD rules do not provide any enforceable objective standard for determining the reported price * * * the best method of providing an independent check against the possibility of abuse in this area is the customer himself." Midwest letter, *supra* note 13.

[41] *See* Article IX of Schedule D of the NASD By-Laws, section 2(d)(3).

[42] *See generally*, Sullivan & Cromwell letter, *supra* note 12.

[43] NASD By-Laws Schedule D, Article IX, section (2)(d)(3).

reported must be the net price minus the added mark-up.[44] Furthermore, in those circumstances composing the majority of trades where there is an objectively determinable trade price, the NASD rule anticipates that that trade price will be reported.[45] Accordingly, the NASD rules stating that the reported price must be "reasonably related" to the market and providing guidance on factors bearing on this price only come into play in those relatively few trades where there is no clear benchmark which dictates the appropriate reported price.

The Commission is of the view that present rules governing last sale reporting in the OTC market are sufficiently reliable to ensure that disclosure of the trade price and resulting mark-up to customers is meaningful. From these items the customer can evaluate the proximity of the reported trade price to the prevailing market price, and the portion of the net price disclosed as the mark-up. Moreover, by requiring that the trade price disclosed on a customer confirmation be the same as that already determined and disseminated for real-time public reporting purposes, the rule avoids the potential arbitrariness of calculating a trade price for confirmation purposes alone. For these reasons, the Commission finds that the disclosure provided by the amendment is of substantial value.

B. Minimal Costs

The Commission specifically requested that commentators address the issue of costs with regard to the disclosure required by the amendment. Based on these comments and its own consideration, the Commission has determined that the amendment would impose relatively few costs on broker-dealers, and these costs would be substantially outweighed by the benefits of the amendment.

None of the comments received presented numerical cost data. Although several firms said that the amendment would result in direct costs of recording the trade price, it appears that, given the existing trade reporting, bookkeeping, and confirmation obligations of broker-dealers, disclosing the additional information the amendment requires is relatively simple. The Commission understands that traders at many firms already record the reported trade price for bookkeeping and compliance purposes, and this information can be provided to customers on confirmations by an adjustment of existing computer programs.[46] In addition, the increased use of internal computerized order tracking and execution systems simplify these processes even further. The Commission finds it significant that Merrill Lynch commented that the proposed disclosure requirement "would not impose significant incremental costs on broker-dealers."[47]

Smaller firms that do not have automated systems and have employees manually enter and report last sale price data would at most be burdened by the incremental task of transferring that same data onto the confirmation form. This function would not differ from the existing task of identifying a commission on each agency confirmation.

One regional broker-dealer[48] commented that "the simplest procedure would be to handle principle transactions in the same way that we handle agency transactions by changing the heading on our confirmations which now reads "Commission" to read "Commission or Markup." This firm also suggested that a period of time be allowed to exhaust existing supplies of printed confirmation forms. Furthermore, comments received from one firm and the NASD indicate that transition costs can be minimized by deferring the effective date of the amendment. Accordingly, the Commission has determined to defer the effective date of the amendment for a period of 180 days.

C. Institutional Orders

The NASD and some other commentators argued that, because institutional investors generally conduct business with OTC market makers on a "net" basis, disclosure of the reported trade price and mark-up would not be of significant value to these institutional customers. Thus, these commentators suggested that transactions for institutions should be exempted from the amendment's provisions.

The Commission agrees with the commentators who stated that institutional investors generally deal with OTC market makers on a net basis without charging a separate mark-up; in these circumstances, the reported trade price should equal the net price, *i.e.*, the price the customer pays the broker. In such situations the amendment would help ensure, through institutional monitoring, that OTC institutional trades executed on a net basis are reported at the trade price. Furthermore, if, in the future, institutions increasingly begin to pay mark-ups on OTC transactions, the amendment will provide institutional customers benefits similar to those received by retail customers in monitoring transaction costs. In addition, institutional investors do pay mark-ups in listed securities trades executed by broker-dealers as principal. While institutions and money managers often have access to real time quotation information, they may be trading a number of stocks simultaneously and may not be able to monitor the quality of a particular execution without the aid of additional confirmation disclosure. Accordingly, the Commission believes there are significant benefits, and no additional costs, from including institutional OTC transactions within the scope of the amendment.[49]

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[44] Some commentators raised questions concerning the relation between mark-ups and internal sales credits under the amendment. Specifically, it was claimed that the traders will at times offer a larger sales credit to retail salespersons, providing an extra incentive to sell securities the firm wishes to liquidate from its inventory, by lowering the trade price while keeping the net price to the customer the same. Commentators suggested that if these prices were disclosed as the trade price, customers would be confused by the appearance of higher mark-ups without understanding that they received a superior execution price in relation to the market.

The Commission believes that this problem is overstated. If in these circumstances the firm wishes to allocate an extra sales credit to the salesperson without reducing its interdealer price, the firm can use internal systems to credit the salesperson without reducing the reported trade price and hence increasing the mark-up—the difference between the prevailing market price and the price to the customer—charged by the firm and displayed on the confirmation.

[45] For instance, in small trades executed routinely at the inside NASDAQ quote, the appropriate reported price would be the NASDAQ quote price. Given that the NASD's automated Small Order Execution System ["SOES"] provides automated executions in all NASDAQ stocks at the quote for orders up to 500 shares (with a proposal to increase that ceiling to 1,000 shares), and other automated execution systems already provide quote executions up to 1,000 shares, there is little question that at least the inside NASDAQ quote price would be the objectively determinable market price for OTC orders of this size. Moreover, for OTC institutional orders executed on a net basis without any retail mark-up, the appropriate reported price for these trades is obvious.

[46] In addition, standardized confirmation forms currently used by many integrated broker-dealers already provide column space for printing the commission charged in agency transactions, and would require little alteration to also provide mark-up information.

[47] See Merrill letter, *supra* note 11, at page 2.

[48] See Carolina Securities letter, *supra* note 11.

[49] Indeed, it would appear that greater costs would be imposed on brokers by having to earmark institutional transactions for exclusion from the disclosure requirement than simply providing confirmation disclosures across the board. In the absence of comments suggesting any harms from providing confirmation disclosure of mark-ups to institutions, the Commission believes that the actual benefits provided to institutions in instances where mark-ups are currently charged, coupled with the potential benefits provided should that practice expand, warrant extending the rule to cover institutional transactions.

Moreover, the amendment also requires confirmation disclosure of the reported trade price and mark-up in principal block transactions in exchange listed securities, transactions in which institutions generally do pay mark-ups. The Commission believes that the disclosure provided by the amendment would allow customers engaging in principal block trades in listed securities a further means of monitoring their mark-ups, and would help to prevent the practice known as "tape dancing."[50] Tape dancing occurs, for example, when a broker-dealer dealing with an institutional customer on a net basis charges an unusually high mark-up equivalent or mark-up in a block trade, and reflects that mark-up or a portion of it in the sale price reported to the consolidated tape to make that reported price higher than the previous sale price. The Commission believes that artificially inflating a block's reported price in this manner to create an "uptick" violates the antifraud and possibly other provisions of the federal securities laws.[51] In addition, the New York Stock Exchange ("NYSE") has indicated that tape dancing violates its reporting rules. Providing institutional customers and money managers or advisors (who have fiduciary obligations to their institutional investors) the opportunity to observe on confirmations the reported price in block trades in listed stocks, should help reduce tape dancing concerns.

D. Revisions to the Proposed Amendment

The Commission received a number of comments indicating that the proposed language of the amendment was inadequate to achieve the goals asserted in the Release. Specifically, by requiring disclosure of the "mark-up, mark-down, or other remuneration", the amendment, it was argued, did not expressly require disclosure of the reported trade price. The Commission generally is in agreement with these comments and accordingly is modifying the text of the amendment in the Release to require disclosure of "the trade price reported," "the price to the customer in the transaction" and the "difference, if any, between this reported trade price and the price to the customer in the transaction."[52] The Commission believes that this modified language will provide disclosure to the customer of the "wholesale" price (reported trade price), the "retail" price (net price to the customer), and the commission equivalent or mark-up, which is the difference between the two.[53]

IV. Conclusion

Confirmation disclosure of trade prices and mark-ups for principal transactions in reported securities offers substantial benefits to public investors. In addition, such disclosure does not appear to present significant calculation difficulties or significant costs to broker-dealers. Because market makers presently must determine and report a last sale price for each trade, that same price can be used to determine and report a trade price on the customer confirmation. Consequently, the Commission has determined to adopt the amendments requiring disclosure on customer confirmations of the reported trade price, the net price, and the difference, if any. This disclosure approach is predicated on the belief that, through such disclosure, customers will be better able to monitor the quality and cost of their securities transactions. It will also provide for equivalent disclosure to all customers effecting transactions in reported securities, whether executed on an agency or principal basis.

V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act[54] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has examined the amendment to Rule 10b–10 in light of the standards set forth in section 23(a) and concludes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as discussed above, the Commission believes the amendments will further competition by providing investors important additional information to evaluate and compare the transaction costs imposed by their broker and the overall quality of the executions they receive. The Commission believes that the amendment will substantially benefit the markets for reported securities, and will further the development of aspects of the NMS, in accordance with the Act.

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[55] regarding the amendment to the Rule. The FRFA indicates that the amendment requires broker-dealers to disclose any mark-up, mark-down, or similar remuneration on customer confirmations for principal transactions in reported securities. The FRFA states that the proposed new disclosure does not entail significant increases in costs for small broker-dealers, and that any minimal costs resulting from the new disclosure may be offset by benefits to market makers, investors, and the securities markets.

The Commission in the Release and Initial Regulatory Flexibility Analysis requested comment on exempting certain small broker-dealers who transact a limited number of trades from the requirements of the amendment. The NASD has concluded that such an exemption is not warranted because competitive considerations require that similar transactions be reported in a similar fashion by all broker-dealers. The Commission agrees with the NASD. Further, no smaller firms suggested that the amendments would place a disproportionate burden on them. Accordingly, the Commission has determined not to create an exemption for small broker-dealers which transact a limited number of principal trades from the requirements of the amendment.

A copy of the FRFA may be obtained by contacting Leland H. Goss, (202) 272–2827, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

List of Subjects in 17 CFR Part 240

Reporting and record keeping requirements, Securities.

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[50] *See Big Block Trading Pits Institutions, Dealers in Fast Tough Game*, Wall Street Journal, December 20, 1984, at 1.

[51] A similar scenario involving mark-downs could also be utilized by a trader to create an artificial decline in the reported price of a security.

[52] *See infra* page 10.

[53] The Commission notes that the definition of "mark-up" as used in the amendment is not intended to control traditional determinations of whether a broker-dealer has charged an illegally excessive mark-up to a customer. Generally, determining mark-ups for compliance with the NASD's mark-up policy or the antifraud provisions of the federal securities laws involves comparing the price charged to the customer with the prevailing market price at the time of the transaction, as determined in a variety of ways. *See, e.g., In re*, Alstead, Dempsey & Company, Incorporated, Securities Exchange Act Release No. 20825 (April 15, 1984).

[54] 15 U.S.C. 78w(a)(2).

[55] 5 U.S.C. 604.

VI. Statutory Basis and Text of Amendment

The Commission proposes to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w,* * * section 240.10b–10 is also authorized under sections 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78o, 78q) * * *

2. § 240.10b–10 is amended by revising paragraph (a)(8)(i) and adding (e) (7) and (8) as follows:

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(8) If he is acting as principal for his own account (i)(A). If he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, the amount of any mark-up, mark-down, or similar remuneration received in an equity security; or

(B) In any other case of a transaction in a reported security, the trade price reported in accordance with an effective transaction reporting plan, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

* * * * *

(e) * * *

(7) "Reported security" shall have the meaning provided in Rule 11Aa3–1 under the Act.

(8) "Effective transaction reporting plan" shall have the meaning provided in Rule 11Aa3–1 under the Act.

* * * * *

By the Commission.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR. Doc. 85–22247 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 270

[Release No. 14711; Filed No. S7–25–85]

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: The Securities and Exchange Commission is adopting amendments to clarify a rule that gives investment companies exemptive relief to maintain their assets outside the United States under certain circumstances.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney, or Elizabeth K. Norsworthy, Chief, Office of Regulatory Policy (202) 272–2048, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

After the effective date, questions should be directed to the Office of Chief Counsel, (202) 272–2030, Division of Investment Management, Securities & Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 17f–5 [17 CFR 270.17f–5] under section 17(f) [15 U.S.C. 80a–17(f)] of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*]. Rule 17f–5 makes exemptive relief from section 17(f) available to registered management investment companies to maintain their assets outside the United States under certain circumstances. The amendments clarify the rule with respect to: (i) The extent to which an investment company must monitor the eligibility of its foreign custodians; and (ii) the length of time which an investment company may have to make alternative arrangements after the company's board of directors has determined that an existing arrangement no longer complies with the rule.

Background

Rule 17f–5 was adopted in September, 1984.[1] At that time, investment companies that had established foreign custody arrangements in reliance upon the exemptive orders granted to Chase Manhattan Bank ("Chase") [2] and the Bank of New York ("BONY"),[3] or upon the staff's no-action position,[4] were given until March 1, 1985 to bring those arrangements into compliance with the conditions of the rule or of the orders as modified.[5] The Commission twice extended the date by which investment companies were required to comply with rule 17f–5 or the amended orders. The first extension set the date as June 1, 1985.[6] The second and final extension designated September 1, 1985 as the compliance date.[7]

In addition to requests for additional time to comply with rule 17f–5, the Commission staff received several questions from industry representatives with regard to the meaning of certain requirements contained in the rule. In order to resolve the issues raised by these inquiries, the Commission proposed amendments to clarify the rule.[8]

Discussion

Rule 17f–5 gives registered management investment companies exemptive relief to place and maintain their assets in the care of eligible foreign custodians under certain circumstances. The rule defines eligible foreign custodians to include foreign banking institutions and trust companies that have at least $200 million in shareholders' equity (U.S. $ or the equivalent of U.S. $). Under the rule, a majority-owned foreign subsidiary of a

[1] *See* Investment Company Act Release No. 14132 (September 7, 1984).

[2] *See* Investment Company Act Release No. 12053 (November 20, 1981).

[3] *See* Investment Company Act Release No. 12658 (September 14, 1982) [49 FR 36080].

[4] The staff had taken the position that enforcement action would not be recommended with regard to investment company foreign custody arrangements that conformed to the conditions contained in the Chase order and in rule 17f–5 as initially proposed. *See* response of the Division of Investment Management to the request of the Mitsubishi Bank of California [pub. avail. September 1, 1982]; *See also* response of the Division of Investment Management to the request of State Street Bank and Trust Company [pub. avail. January 16, 1984].

[5] *See* Release 14132, cited *supra* note 1. Notice of the Commission's intention to modify the Chase and BONY orders to bring those orders into conformance with rule 17f–5 was given in Investment Company Act Release Nos. 14133 and 14134 (September 7, 1984) [49 FR 36183 and 36182]. The orders were amended in Investment Company Act Release Nos. 14183 and 14184 (October 9, 1984).

[6] *See* Investment Company Act Release No. 14347 (February 4, 1985) [50 FR 5234].

[7] *See* Investment Company Act Release No. 14556 (May 31, 1985) [50 FR 24506]. The Division of Investment Management has taken the position that this compliance date applies to foreign custody arrangements made after the rule's adoption as well as to foreign custody arrangements existing at the time of the rule's adoption. *See* letter from the Division of Investment Management to IDS International Fund, Inc. (pub. avail. May 10, 1985).

[8] *See* Investment Company Act Release No. 14548 (May 31, 1985) [50 FR 24540].

qualified [9] U.S. bank or bank-holding company is considered an eligible foreign custodian if it has at least $100 million in shareholders' equity (U.S. $ or the equivalent of U.S. $). An investment company may place and maintain assets in the care of eligible foreign custodians so long as a majority of the company's board of directors has approved each custody arrangement as consistent with the best interests of the company and its shareholders and so long as the directors re-evaluate those arrangements at least once a year.[10]

The proposed amendments to rule 17f-5 were intended to clarify the rule in several respects. First, the amendments would relieve investment company directors of the obligation of monitoring the eligibility of their foreign custodians. Second, the amendments would give the directors a ninety-day grace period in which to make alternative custodial arrangements where necessary. Finally, the amendments would require the eligibility of foreign custodians under the rule's shareholders' equity requirements to be determined in accordance with U.S. generally accepted accounting principles ("GAAP").

In response to the proposed amendments, the Commission received five comment letters. One of the commenters approved of the proposal in its entirety, while the other commentators agreed with certain aspects of the proposal and disagreed with other aspects. As discussed below, on the basis of the comments received, the Commission is adopting two of the proposed amendments and deferring action on the third.[11]

The proposal stated that, to be considered an eligible custodian under the rule, a foreign custodian would have to meet the rule's minimum shareholders' equity requirements as of the close of the fiscal year most recently completed prior to the directors' evaluation of that custodian. Some commentators objected to the language of the proposed amendments, which could be read to mean that a custodian would become ineligible as of the close of its fiscal year, even though the fund's directors did not evaluate the arrangement until a later date. The amendments have therefore been reworded to make clear that a foreign custodian would become ineligible only after the board of directors of the investment company has made a determination that the custodian no longer satisfies the rule's requirements. This determination is to be made at the time that the custodial arrangements are periodically reviewed by the board, and should be based upon information current as of the close of the institution's most recently completed fiscal year. The amendments, as modified, should give the directors sufficient flexibility to schedule their periodic review of the arrangements at a time when the necessary financial information regarding the custodian may be obtained.[12]

The Commission is also adopting in final form those provisions of the proposed amendments that would allow an investment company a period of time in which to make alternative custodial arrangements after the board of directors finds that a foreign custodian is no longer eligible under the rule or that continuance of the custody arrangement is no longer in the best interests of the company and its shareholders for other reasons. In response to the suggestions of the commentors, the maximum grace period has been expanded from the ninety days originally proposed to one hundred and eighty days, in order to ensure that investment companies will have sufficient time in which to negotiate alternative arrangements. The proposed amendments have also been modified to make clear that the grace period runs from the date of the director determination.

As noted above, the proposed amendments would have amended the rule to state explicitly that the shareholders' equity of foreign banks should be calculated in accordance with U.S. GAAP for purposes of determining whether those foreign banks would be considered eligible foreign custodians under the rule. This proposal, which was issued in response to inquiries from several investment companies and their U.S. bank representatives, was intended to provide a uniform, objective method of calculating compliance with the rule's shareholders' equity requirements.

Three of the commentators on the proposed amendments objected to this aspect of the proposal. These commentators felt that such a requirement would impose an undue burden upon investment companies because the compliance costs would be excessive. In light of these cost estimates, the Commission believes that final action on the U.S. GAAP proposal should be postponed until the issue can be more closely examined.

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments to rule 17f-5 will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Part 270

Investment companies, reporting and recordkeeping requirements, securities.

Text of Rule Amendments

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by revising § 270.17f-5 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a-37, * * * Section 270.17f-5 also issued under sec. 6(c) (15 U.S.C. 80a-6(c)).

2. Section 270.17f-5 is amended by adding paragraph (b)(4) and revising paragraphs (c)(2)(i) and (c)(2)(ii) as follows:

§ 270.17f-5 Custody of investment company assets outside the United States.

* * * * *

(b) * * *

(4) Where a majority of directors has determined that a foreign custodian may no longer be considered eligible under the rule or that continuance of the arrangement would not otherwise be consistent with the best interests of the company and its shareholders, the company must withdraw its assets from the care of that custodian as soon as reasonably practicable, and in any event within 180 days of the date when the directors made the determination.

(c) * * *

(2) * * *

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[9] The term "Qualified U.S. Bank" is defined in rule 17f-5(c)(3) and generally tracks the definition of "bank" contained in section 2(a)(5) of the Act [15 U.S.C. 80a-2(a)(5)] and the qualifications prescribed in paragraph (1) of section 26(a) of the Act [15 U.S.C. 80a-26(a)] for the trustees of unit investment trusts.

[10] The Chase and BONY exemptive orders were amended to require investment companies relying on the orders to conform to these requirements. *See* Investment Company Act Release Nos. 14183 and 14184 cited *supra*.

[11] In adopting the amendments, the Commission does not propose to modify the Chase and BONY orders again to reflect the amendments. However, the clarifications contained in the amendments are equally applicable to the rule requirements as incorporated in the amended orders.

[12] As stated in the proposed release, the directors may rely upon information obtained from the foreign custodian's annual report or chief financial officer.

(i) A banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the data when the directors approve the written contract as provided in paragraph (a)(1)(iii) of this section, and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review and approve the continuance of those arrangements as provided in paragraph (a)(3) of this section; or

(ii) A majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the date when the directors approve the written contract as provided in paragraph (a)(1)(iii) of this section, and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review the continuance of those arrangements as provided in paragraph (a)(3) of this section; or

* * * * *

By the Commission.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22179 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the disapproval of a proposed amendment to the Kentucky Permanent Regulatory Program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 26, 1982, Kentucky submitted a proposed amendment to its approved program to modify its requirements concerning regulation of operations involving the crushing, screening or loading of coal. After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director of OSM has determined that the amendment does not meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is disapproving the amendment. The Federal rules at 30 CFR Part 917, which codify decisions concerning the Kentucky program, are being amended to implement this action. Under a separate notice appearing in today's **Federal Register**, the Director is proposing to preempt and supersede the changes to the Kentucky statute.

EFFECTIVE DATE: September 17, 1985.

ADDRESSES: Copies of the Kentucky program and the Administrative Record for the Kentucky program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW, Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 **Federal Register** notice.

Proposed Amendment

By a transmittal dated May 26, 1982, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to revise its requirements for regulation of operations involving the crushing, screening or loading of coal.

The amendment consisted of language in Senate Bill 218 adding paragraph 22 to the Kentucky Revised Statute (KRS) 350.060 1980 Acts Chapter 62, Section 5, to read: "All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter." Kentucky also submitted on October 28, 1983, as part of its program amendment, Reclamation Advisory Memorandum (RAM) No. 33 and a legal opinion to clarify the definitions for coal processing operations and loading facilities, and to clarify which loading facilities were required to be permitted under the Kentucky program. The RAM had been in effect since April 27, 1982.

RAM No. 33 confines "coal processing operations" to those where coal "is subjected to chemical or physical processing *and separated from its impurities* (waste is generated)." All coal processing operations would be regulated regardless of location. RAM No. 33 defines "loading facilities" to be a collection of facilities, including associated support facilities and operations, at which coal is placed in carriers for the purpose of transporting it, and may include coal processing facilities that do *not* separate the coal from its impurities. Loading facilities at or near the mine site with which they are associated must be permitted.

Kentucky also submitted numerous other program changes which have since been acted upon by OSM. The decision to approve or disapprove the amendment concerning coal processing and loading facilities has been deferred by OSM for various reasons a number of times since Kentucky's May 1982 submission. The following is a chronology of events related to the amendment.

On May 26, 1982, Kentucky submitted various amendments to its program including the subject amendment (coal processing and loading facilities) contained in Senate Bill 218. OSM published a notice in the **Federal Register** on July 23, 1982, announcing receipt of the amendments and inviting public comment thereon (47 FR 31890).

The public comment period ended August 23, 1982. A public hearing was held August 12, 1982. On January 4, 1983, OSM published a **Federal Register** notice which deferred action on the pertinent paragraph of Senate Bill 218 (48 FR 245). On May 5, 1983, OSM published a **Federal Register** notice, effective June 6, 1983, amending the Federal rules concerning support facilities and coal preparation plants (48 FR 20392). On June 13, 1983, OSM reopened the public comment period on the subject Kentucky amendment to allow the public an opportunity to review and comment on the Kentucky amendment in light of the related Federal rule changes (48 FR 27101). On July 11, 1983, OSM reopened the comment period for an additional 15 days (48 FR 31668). On October 28, 1983, Kentucky submitted additional material in response to concerns raised by OSM on the amendment. The material consisted of a legal opinion and Reclamation Advisory Memorandum No. 33 (dated April 27, 1982). On November 30, 1983, OSM reopened the comment period for 30 days for consideration of the new material (48 FR 54080). On July 6, 1984, in a Round I decision in the suit entitled *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C. 1985), the U.S. District Court for the District of Columbia remanded the Federal rules at 30 CFR 700.5 and 701.5 pertaining to the definitions of a surface coal mining operation and coal processing and coal preparation plants. The court found that the Secretary has jurisdiction under SMCRA to regulate these offsite facilities including processing plants and remanded the pertinent definitions for reconsideration and correction. On October 3, 1984, OSM published a notice in the **Federal Register** which deferred action on the Kentucky amendment concerning coal processing and loading facilities until OSM could evaluate fully the impacts of the court's order (49 FR 39053).

On July 10, 1985, OSM published an interim final rule (effective September 9, 1985) amending certain Federal rules pertaining to coal preparation plants and other offsite facilities (50 FR 28186). The action was taken as a result of and in compliance with the District Court's July 6, 1984 ruling. The revised Federal rules: bring additional coal preparation plants and other surface coal mining operations under the permanent program regulations; allow persons operating facilities not previously subject to the Federal rules time to obtain a permit; and make certain performance standards immediately applicable to such operations.

In view of this interim final rule, the Director has decided to disapprove the Kentucky amendment, because it is inconsistent with the court decision and Federal rule.

II. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the proposed amendment concerning regulation of coal processing and loading facilities submitted on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and RAM No. 33 submitted on October 28, 1983, fail to meet the requirements of SMCRA and the Federal regulations.

The Director finds that the Kentucky amendment to add paragraph 22 to KRS 350.060, 1980 Acts Chapter 62, Section 5, is inconsistent with the SMCRA definition of "surface coal mining operations" at section 701(28), in that it exempts from regulation under the Act, "all operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site." The U.S. District Court for the District of Columbia, in a Round I decision in the case entitled *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C. 1985), held that facilities which in any way leach, chemically process, or physically process coal should be regulated even when located away from a mine site and even if they do not separate the coal from its impurities.

The Director finds also that the Kentucky statutory amendment is less effective than the Federal interim final rules published July 10, 1985, 50 FR 28186, concerning the definition of "surface coal mining operations" at 30 CFR 700.5 and the definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5. The revision to the definition of "surface coal mining operations" at 30 CFR 700.5 means that "leaching, chemical or physical processing" no longer would be limited by the phrase "in situ." Therefore, these operations will be regulated wherever they occur. The revisions to the definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5 make it clear that facilities for chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal, even if they do not separate coal from its impurities, are included in the definition of coal preparation plant, and are regulated under SMCRA and OSM regulations.

The Director finds that the Kentucky statutory revision would exclude some of these facilities from jurisdiction under Kentucky's program and, therefore, finds the amendment less effective than the Federal interim final rules at 30 CFR 700.5 and 701.5 which were published July 10, 1985 to become effective September 9, 1985 (50 FR 28186).

The Director finds that Kentucky's RAM No. 33, dated April 27, 1982, submitted to OSM on October 28, 1983, to further explain and clarify its statutory amendment, is less stringent than section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5, insofar as the RAM clarifies KRS 350.060(22) which the Director is disapproving. The RAM specifies that loading facilities "may include facilities for the physical processing of coal such as crushing, screening, sizing, or blending, which does not separate coal from its impurities." The RAM further says that loading facilities must be permitted under KRS Chapter 350 only if located at or near a coal mining operation or a coal processing operation with which it is associated. This conflicts with the Round I decision of the District Court in *In Re: Permanent Surface Mining Regulation Litigation II*, wherein the court held that facilities which in any way leach, chemically process or physically process coal should be regulated even when located away from a mine site and even if they do not separate the coal from its impurities. The RAM is also less effective than the Federal definitions for "surface coal mining operations" at 30 CFR 700.5 and for "coal preparation" and "coal preparation plant" at 30 CFR 701.5 published in an interim final rule on July 10, 1985 to reflect the Court's decision. This decision does not affect mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site.

Under a separate notice appearing in today's **Federal Register**, the Director is proposing to preempt and supersede KRS 350.060(22), since that amendment is currently in effect in Kentucky.

III. Public Comment

Public comments were received in response to the July 23, 1982 **Federal Register** notice announcing receipt of the amendment, at the August 12, 1982 hearing on the amendment and in response to the various reopenings of the comment period. Comments were submitted by Thomas J. FitzGerald, representing the Appalachian Research and Defense Fund of Kentucky, Inc., and by the Kentucky Coal Association.

At the August 12, 1982 hearing, Mr. FitzGerald commented that KRS 350.060(22) is directly inconsistent with the Federal Act because it excludes processing plants that crush and screen coal from coverage under the Act. Mr. FitzGerald said that the definition of surface coal mining operations in the Act reflects Congress' intent to regulate all coal processing.

In January 1983, Mr. FitzGerald commented that OSM cannot legally approve Kentucky's statutory revision to KRS 350.060(22) because it establishes an "at or near the mine site" test for coverage of off-site preparation facilities in conflict with Federal rules and the Act. In comments dated January 23, 1983, Mr. FitzGerald said that Kentucky's statutory revision to KRS 350.060(22) is "directly inconsistent with the rules promulgated by the Office, and with the controlling statutory interpretation of the pertinent provisions of the Federal Act." Mr. FitzGerald said the impact of the revision would be to exclude a vast number of processing and preparation plants that crush and screen coal, from coverage under the Act. He said that the Act is expansive in its coverage of coal processing, as reflected in the definition in section 701(28) of SMCRA which includes as surface coal mining operations, activities for chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal. Mr. FitzGerald said that the definition in 30 CFR 700.5 and the preamble language explaining the definition of "surface coal mining operations" clarify that OSM considered crushing of coal to be a distinct process from loading of coal (March 13, 1979, 44 FR 14914). He stated that OSM further clarified this in a June 1980 rulemaking, in stating that the loading of coal does not include the crushing or sizing of coal, for purposes of the definition of "surface coal mining operations" (45 FR 42334).

Mr. FitzGerald objected to the January 17, 1983, reopening of the comment period on this rule, and said that OSM was delaying action on the issue until the Federal rules could be revised, so that the Kentucky rule could be approved.

In comments dated June 22, 1983, Mr. FitzGerald stated that OSM cannot legally approve KRS 350.060(22) because it establishes a test of "at or near the mine site" for off-site coal crushing and screening facilities which is contrary to provisions in the Federal Act. The commenter said that the language of the Act, legislative history and judicial interpretation all support broad coverage of crushing and screening activities regardless of whether they involve coal cleaning.

Mr. FitzGerald submitted comments on December 12, 1983, saying that "any limitation on jurisdiction over independent coal crushing facilities . . . is illegal" and conflicts with SMCRA. Mr. FitzGerald said that as soon as OSM became aware that the Kentucky statutory revision excluding coverage of off-site, independent coal crushing, screening and sizing activities had been made effective without OSM approval, OSM should have immediately implemented Federal permitting, inspection and enforcement of these sites. Mr. FitzGerald said that OSM delayed a decision on Kentucky's amendment in order to allow new Federal rules to be promulgated. He said that OSM's new final rule was patently illegal. Mr. FitzGerald submitted segments of the Plaintiff's brief challenging the Federal rule and asked that they be considered as comments on the Kentucky amendment.

Mr. FitzGerald discussed the legal opinion and Reclamation Advisory Memorandum (RAM) No. 33 submitted by Kentucky on October 28, 1983, to clarify its amendment. He said that RAM No. 33 and the legal opinion cannot be approved because they improperly limit coverge of activities "at or near the mine site" and unduly limit coverage of activities conducted "in connection with" mining. Mr. FitzGerald said that RAM No. 33 was unacceptable also because it restricted coverage to coal loading facilities that were at or near a mine site *and* under common control of the same person or persons or family. Mr. FitzGerald said this was narrower than and inconsistent with even the new Federal rules.

The Kentucky Coal Association also submitted comments on Kentucky's amendment, but supported the amendment to KRS 350.060(22) saying that it correctly interprets the SMCRA section 701(28), definition of "surface coal mining operations." In comments dated January 11, 1983, the commenter stated that the loading of coal is regulated only if it occurs at or near the mine site and in connection with a coal mine. The commenter said that crushing and screening of coal occur routinely at many loading sites and that, since these activities do not produce waste, no significant environmental harm results. Therefore, the commenter said, these facilities should not be regulated.

In comments dated July 8, 1983, the Kentucky Coal Association supported the Kentucky Amendment saying that the statutory revision is consistent with OSM's definition. The commenter said that "under OSM's new definition, 'coal loading, crushing, sizing and other such activities' do not constitute coal preparation unless they result in the separation of coal from its impurities." The commenter said that Kentucky's rule is virtually identical to the Federal rule and should be approved.

On December 29, 1983, the Kentucky Coal Association commented further on the proposed amendment. The commenter stated that although OSM and Kentucky were both interpreting SMCRA section 701(28) too narrowly, the Association would comment only on whether the amendment was in conformance with Federal requirements.

The commenter said that KRS 350.060(22) and RAM No. 33 are clearly in accordance with the Federal Act and regulations. The commenter said that the requirements of the Federal regulations and the Kentucky law are virtually identical, and that restriction of coverage to facilities at or near the mine site and associated with the mine site is proper and consistent with Federal requirements.

The commenter said that SMCRA was not intended to cover pure loading facilities if they are not at or near the mine site, and that there are no adverse environmental impacts from such facilities. The commenter also stated that Kentucky's "at or near" test of one half mile is a logical physical distance and is not inconsistent with the Federal rule even though the Federal rule does not contain an "at or near" test.

All comments have been considered by the Director, but most of the comments have been either confirmed or invalidated by the decision of the U.S. District Court for the District of Columbia in the case entitled *In re: Permanent Surface Mining Regulation Litigation II* (D.D.C., 1985). In its Round I decision in that case, the court held that facilities which in any way leach, chemically process, or physically process coal should be regulated even when located away from a mine site and even if they do not separate coal from its impurities. Since Kentucky's amendment is contrary to the court's decision, OSM cannot approve the amendment and is proposing to set aside the statutory provision KRS 350.060(22).

OSM recognizes that there have been numerous delays in this decision process. Initial decisions were delayed because OSM was considering revising its rules in a manner similar to the Kentucky revisions. On May 5, 1983, OSM did publish new rules. Subsequently, OSM asked for additional

material from Kentucky to clarify its amendment in light of the Federal rules. On June 24, 1984, the District Court decision remanded the Federal rules back to the Secretary. OSM's publication of interim final rules on July 10, 1985, has clarified OSM's position and resulted in the decision that Kentucky's amendment must be disapproved.

IV. Director's Decision

The Director has considered Kentucky's amendment in light of all information and comments submitted and in light of the District Court's decision and subsequent modifications to the Federal requirements, and has determined that the amendment does not meet the requirements of SMCRA and the Federal regulations. Therefore, the Director, based on the above findings, is disapproving the Kentucky amendment to the Kentucky Revised Statute 350.060(22) submitted May 26, 1982, and the legal opinion (insofar as it relates to this issue) and Reclamation Advisory Memorandum No. 33, submitted October 28, 1983. The amendment and explanatory material fail to meet the requirements of SMCRA and the Federal regulations. The Director is proposing, in a separate notice appearing in today's **Federal Register**, to preempt and supersede KRS 350.060(22).

V. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.17 is amended by adding a new paragraph (b) to read as follows:

§ 917.17 State program provisions disapproved.

* * * * *

(b) The amendment at Kentucky Revised Statute 350.060(22) submitted by Kentucky on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and Reclamation Advisory Memorandum No. 33 submitted by Kentucky on October 28, 1983, are hereby disapproved effective September 17, 1985.

[FR Doc. 85-22157 Filed 9-12-85; 11:32 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 201

Grants to States for Public Assistance Programs; Adjustment of Federal Share for Uncashed or Cancelled Checks

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final regulation provides that the Federal share of cancelled (voided) checks must be refunded quarterly to the Federal government since there has been no expenditure made by the State. The final regulation also requires States to refund to the Federal government the Federal share of all checks that remain uncashed beyond a period of 180 days from the date of issuance, i.e., the date of the checks, since these will no longer be considered amounts expended. A 1979 report by the General Accounting Office (GAO) recommended that uniform requirements be established for States to credit the Federal government for its portion of uncashed Aid to Families with Dependent Children (AFDC) assistance payments checks. This regulation implements that recommendation.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering, Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245-2637.

SUPPLEMENTARY INFORMATION: On February 22, 1983, a notice of proposed rulemaking was published in the **Federal Register** (48 FR 7479-7461).

A 1979 GAO report recommended that uniform requirements be established for the States to credit the Federal government for its portion of uncashed AFDC assistance checks. Even though the GAO recommendations focused solely on uncashed AFDC assistance checks under a State's AFDC program, we have extended the scope of this regulation to apply to: (1) Uncashed or cancelled (voided) checks to or on behalf of AFDC recipients, (2) uncashed or cancelled (voided) checks to or on behalf of recipients under titles I, X, XIV, or XVI (AABD) being administered in Guam, Puerto Rico, and the Virgin Islands, and (3) uncashed or cancelled (voided) checks for administrative costs under titles I, IV-A, X, XIV, and XVI (AABD). Since some States make payments in the form of warrants, the term "check" is defined in the regulation to include warrants as well.

The final regulation requires that the Federal share of checks outstanding for more than 180 days and the Federal share of cancelled checks be refunded to the Federal government each quarter. It is a generally accepted banking practice to consider 180 days as a reasonable time period for checks to be presented to be cashed, and banks often will not accept checks which are presented after that time frame.

Moreover, this regulation is consistent with the statutory provisions for the Supplemental Security Income Program (SSI) in section 1631(i) of the Social Security Act that apply a 180-day time period to outstanding SSI checks. Under this provision, the portion of Federal SSI checks that represents State supplementary payments made by the

Federal government on behalf of the States must be refunded to the States for checks that have not been cashed for 180 days from date of issuance although the SSI checks may still be negotiated thereafter.

Similarly, we are not requiring that AFDC checks be voided 180 days after issuance. To do this would cause unwarranted administrative expense to States. Thus, in the event that a check is honored for payment after the Federal share has been refunded to the Federal government, we are allowing a State to file a new claim.

The regulation also codifies a longstanding policy that the Federal share of a cancelled check must be refunded to the Federal government in the quarter in which the check is cancelled.

Because this requirement is a part of the grants process to States, we amended 45 CFR 201.5 to add a cross reference to 45 CFR 201.67, the new section where this rule will be set out.

Response to Public Comments on Notice of Proposed Rulemaking

A 60-day comment period was provided in the February 22, 1983, notice of proposed rulemaking. We received comments from 14 States. Responses to these comments follow.

State Authority for Check Cancellations in Excess of 180 Days

Comment: Nine States were concerned that the regulations conflicted with State statutes which allow checks to remain outstanding in excess of 180 days before cancellation action is required.

Response: This regulation does not require States to cancel checks after 180 days. It requires States to refund the FFP for checks which remain uncashed after 180 days of the date of issuance by adjusting their claims. Therefore, no conflict exists between State statutes and this Federal regulation.

Federal Matching Rate Applicable to a Claim for FFP After Refund of FFP is Completed

Comment: Two States asked which Federal matching rate would be applicable to a claim for FFP after a State has already refunded the FFP of an outstanding check which subsequently is cashed. One State agency noted that the claim for the check should not be a new claim, but instead it should be an adjustment increasing the claim for a prior period.

Response: The matching rate to use is the one in effect for the quarter when the check is eventually cashed. As the new claim pertains to a check which remained uncashed for an extended period of time, the FFP was refunded and the original claim was treated as if no expenditure occurred. When the check was subsequently cashed it resulted in a payment being made thereby providing a basis for a new claim for the quarter when that occurred. This policy seems more consistent with provisions at sections 3, 403, 1003, 1403, and 1603 of the Act and 45 CFR § 95.13 than a position under which an expenditure is held to occur a full 6 or more months before the check was actually cashed.

When a check remains uncashed for an extended period of time, there would seem to be little justification for a State to expect the Department to continue considering it to be an expenditure for the quarter in which the check was issued. Therefore, the more appropriate manner to file this claim is as a new claim.

Conformity of the 180-Day Rule with Generally Accepted Banking Practices for Uncashed Checks

Comment: Two States disputed that it is a generally accepted banking practice to consider 180 days as a reasonable time period for checks to be presented to be cashed.

Response: We contacted the American Bankers Association and were informed that most banks follow the general rule of a 180-day time frame and do not honor checks that are over six months old. This is consistent with section 4–404 of the Uniform Commerical Code which provides that a bank is under no obligation to pay a check, other than a certified check which is presented for payment more than six months after its date. Furthermore, it is our understanding that all States have adopted this provision.

Legal Basis for this Regulation

Comment: One State questioned the legal basis for this regulation and asserted that this regulation would appear to change the point in time that an expenditure is recognized.

Response: Sections 3, 403, 1003, 1403, and 1603 of the Social Security Act provide for Federal matching of State agency expenditures. 45 CFR 95.13(a) sets out the criteria under which an expenditure for an assistance payment is considered to have been made. According to that section, "[w]e consider a State agency's expenditure for assistance payments under title I, IV–A, IV–E, X, XIV, or XVI(AABD) to have been made in the quarter in which the payment was made to the assistance recipient. . . ." Thus, an expenditure does not occur until the recipient presents his assistance check for payment.

Accordingly, we believe that it is a reasonable application of section 1102 of the Act (which provides broad authority to promulgate regulations necessary for the efficient administration of the Social Security Act) to require States to return FFP that they have received for checks that they themselves voided by requiring them to adjust the quarterly statement of expenditures pertaining to the quarters in which they voided the checks; obviously, these checks will never be cashed. In the case of outstanding checks, we believe that payees should be given a resonable time to cash them before States are required to return the FFP. Since 180 days following issuance is generally accepted by the banking community to be the period of time for checks to be presented for payment, it would seem to be a reasonable standard for us to follow in determining when States must refund FFP for uncashed checks.

Applicability of the 180-Day Rule to these Programs

Comment: One State asked why the 180-day rule is being applied to the programs noted in this regulation and not to other programs run by HHS.

Response: As previously stated, the impetus for this regulation is the GAO report. That report indicates that the Federal government should establish uniform requirements for States to credit the Federal government for its portion of uncashed checks in the AFDC program. Since assistance payments and administrative payments are handled in a similar manner for the adult programs as they are for the AFDC program, we concluded that it is appropriate to apply the same regulation to these programs as well.

Other components of the Department outside of the Social Security Administration will be reviewing our experience to determine whether this regulation would also be appropriate in the programs that they administer.

Prior Agreements On Outstanding Checks

Comment: One State noted a negotiated agreement it had with an HHS component responsible for audit resolutions which exceeded the 180-day rule. It allowed the State to retain FFP for uncashed AFDC assistance checks for up to one year.

Response: No Departmental policy existed regarding the refund of the Federal share of outstanding checks when the resolution noted by the State agency was reached. In the absence of

any established and written policy on this subject, the HHS component, during the negotiation process, agreed to the time period used by the State. This regulation now establishes a written policy which applies to all States and supersedes any such agreement.

Cost Effectiveness

Comment: Four States indicated that applying the 180-day rule would not be cost effective in their respective States. One State requested a waiver from implementing this regulation on grounds that its cost is not justified.

Response: The Federal government has lost the use of funds to which it is legally entitled resulting in the need to borrow these monies at substantial interest rates. We estimate that the current backlog of Federal funds due from uncashed checks is $14.4 million. In addition, we estimate that this total is increased by $1 million each year. This regulation would result in restoring the funds to the Federal government and would decrease the amount of monies the Department of the Treasury would otherwise have to borrow. In light of the sum of money involved, we believe that the 180-day rule is cost-effective from the perspective of the overall program costs.

Of course we are sensitive to the problems that are incurred by States in the administration of the AFDC and adult assistance programs. We intend to monitor State experience in implementing these regulations and will propose changes that appear to be needed.

In the meantime, to the extent that a State is able to demonstrate to the agency that Federal funds due from uncashed checks are minimal and that the administrative cost of returning these funds is excessive, a State may apply for approval of a demonstration project in accordance with section 1115 of the Social Security Act.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order (EO) 12291 and do not meet the criteria for a major regulation. These regulatory changes will result in the Federal government collecting approximately $1 million annually. Since these changes will not have a $100 million effect on the national economy, they are not a major rule within the definition of E.O. 12291 and no regulatory impact analysis is required.

Paperwork Reduction Act

States will use the Quarterly Statement of Expenditures (SSA–41) to report adjustments to Federal matching funds granted for past periods for uncashed and cancelled checks. OMB has approved the present format of this report (OMB Number 0960–0294). Sections 45 CFR 201.5, 201.67(c)(2), and 201.67(d)(2) of this final rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) has approved the collection requirements contained in the regulation provisions cited. This approval is valid until April 30, 1988 (OMB Number 0960–0333).

Regulatory Flexibility Act

We certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because it affects only the transfer of funds between the Federal government and the States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.808—Public Assistance—Maintenance Assistance (State Aid).)

List of Subjects in 45 CFR Part 201

Aid to Families with Dependent Children, Family assistance office, Grant programs, Social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands.

Dated: July 23, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 11, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 201 is amended as follows:

The Table of Contents in Part 201 is revised to read as follows:

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Sec.
201.0 Scope and applicability.
201.1 General definitions.

Subpart A—Approval of State Plans and Certification of Grants

201.2 General.
201.3 Approval of State plans and amendments.
201.4 Administrative review of certain administrative decisions.
201.5 Grants.
201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.
201.7 Judicial review.

Subpart B—Review and Audits

201.10 Review of State and local administration.
201.11 Personnel merit system review.
201.12 Public assistance audits.
201.13 Action on audit and review findings.
201.14 Reconsideration under section 1116(d) of the Act.
201.15 Deferral of claims for Federal financial participation.
201.66 Repayment of Federal funds by installments.
201.67 Treatment of uncashed or cancelled checks.

Part 201 of Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The Authority citation for 45 CFR Part 201 continues to read:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.02.

2. Section 201.5 is amended by revising paragraph (a)(3) to read as follows:

§ 201.5 Grants.

* * * * *

(a) *Form and manner of submittal.*

* * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed or cancelled checks as described at 45 CFR 201.67 in this part, or which have been revealed in the course of an audit.

* * * * *

3. A new § 201.67 is added to read as follows:

§ 201.67 Treatment of uncashed or cancelled checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the Federal portion of uncashed or cancelled (voided) checks under titles I, IV–A, X, XIV, and XVI (AABD).

(b) *Definitions.* As used in this section—"Check" means a check or warrant that the State or local agency uses to make a payment.

"Cancelled (voided) check" means a check issued by the State agency or local agency which prior to its being cashed is cancelled (voided) by State or local agency action, thus preventing disbursement of funds.

"Uncashed check" means a check issued by the State agency or local agency which has not been cashed by the payee.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued, i.e., the date of the check, it will no longer be regarded as an amount expended because no funds have actually been disbursed. If the State agency has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP that it received for uncashed checks. Once reported on the Quarterly Statement of Expenditures for a quarter, an uncashed check is not to be reported on a subsequent Quarterly Statement of Expenditures. If an uncashed check is cashed after the refund is made, the State agency may submit a new claim for FFP.

(d) *Refund of FFP for cancelled (voided) checks*—(1) *General provisions.* If the State agency has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP received by the State agency for these checks. Once reported on the Quarterly Statement of Expenditures for a quarter, a cancelled (voided) check is not to be reported on a subsequent Quarterly Statement of Expenditures.

[FR Doc. 85-22251 Filed 9-16-85; 8:45 am]

BILLING CODE 4190-11-M

Proposed Rules

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

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

Agricultural Marketing Service

7 CFR Part 54

Change in the Form of Official Certificates for Meat and Meat Products Graded and Certified Under the Meat Grading and Certification Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service proposes to convert its daily agricultural products grading and acceptance certificates and biweekly agricultural products grading certificates to weekly agricultural products grading and acceptance certificates. These new weekly certificates will reduce certificate preparation and processing costs and will faciliate computer processing.

DATES: Comments must be submitted on or before October 17, 1985.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, DC 20250. (For further information regarding comments, see "Comments" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin (202/382–1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to sections 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C., 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities. The change to weekly agricultural products grading and acceptance certificates is expected to reduce certificate preparation time, certificate processing costs, and interface with the planned implementation of the Agency's updated automated data processing (ADP) program. This change will result in cost savings which, in turn, will enable the Agency to provide more cost-effective service to the industry.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Washington, DC, Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The Act also provides the Secretary of Agriculture with the authority to promulgate such orders, rules, and regulations that the Secretary deems necessary to carry out the provisions of the Act. Under this authority, the Agricultural Marketing Service prepares and issues agricultural products grading and acceptance certificates. These certificates serve as official documentation that meat and meat products were officially graded and/or certified in compliance with applicable standards, specifications, and regulations. Additionally, these certificates are the basic documents for assessing charges for grading and certification services and for sources of data on the scope and volume of grading and certification work performed. The Agency currently uses three types of certificates: (1) Biweekly agricultural products grading certificates, (2) daily agricultural products grading and acceptance certificates, and (3) weekly agricultural products acceptance certificates.

The Agency has successfully used the daily and biweekly certificates for many years. The continued use of daily certificates would be inconsistent with the Agency's cost-reduction efforts and its efforts to reduce paperwork. Additionally, in those situations where daily certificates are required, the weekly certificate can and will be used as a daily certificate. Further, the present design of the daily certificate makes its adaptation to the new ADP system difficult. Even though the use of the biweekly certificate has reduced the number of certificates meat graders prepare and the related preparation time and processing costs, the certificate restricts revenue flow and causes other delayed billing problems. These delayed billing problems are caused by the mailing time required for the certificate to reach the initial processing office (main station office) and from the main station office to the National Finance Center (NFC) for billing. This situation occurs when the end of the biweekly period coincides with NFC's closing date for the monthly billing period. This situation results in a 6-week delay in receipt of income for services. Additionally, these delayed billings do not facilitate prompt corrections of billing errors. Further, since the biweekly certificate is mailed every other week, clerical workload is heavy every other week, rather than being evenly distributed. Finally, the biweekly certificate does not lend itself for use as a products acceptance certificate because of the limited space available for written product descriptions and/or required special statements.

Therefore, the Agency is proposing to eliminate biweekly and daily certificates, replacing them with weekly agricultural products grading and acceptance certificates. The weekly acceptance certificate has been used successfully on a test basis. The Agency's reason for converting all certificates to weekly certificates is threefold. First, the weekly certificates will significantly reduce the number of certificiates meat graders must prepare and the related amount of preparation time. This reduced number of certificates is expected to decrease the

Agency's certificate processing costs. The anticipated decrease in certificate preparation time will directly reduce the Agency's charges to the industry. Second, with only minor changes, the format of the weekly certificate will be compatible with the Agency's ADP system, which is scheduled for implementation in the near future. The new ADP system is expected to reduce the Agency's certificate processing costs, improve billing accuracy, and facilitate billing adjustments. Third, the weekly certificate provides a more evenly distributed clerical workload in the Agency's field offices, which will result in more efficient utilization of field clerical personnel.

In conclusion, Federal meat graders prepare about 170,000 agricultural products certificates to cover the approximately 14 billion pounds of meat graded and certified annually. The Agency's proposal is expected to reduce the number of agricultural products certificates prepared from 170,000 to approximately 40,000 per year. This reduction is expected to save nearly $300,000 in certificate preparation and processing costs. Equally important, the new weekly certificates will be compatible with the planned ADP system and will eliminate the need to revise the daily and biweekly certificates to facilitate computer processing. This proposed rule will be acted upon after evaluations of comments received in response to this notice.

Accordingly, it is proposed that the section in 7 CFR Part 54 relating to official certificates for Federal grading and certification of meats, prepared meats, and meat products, be amended as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.14(b) is revised to read as follows:

§ 54.14 Official certificates.

* * * * *

(b) *Form.* The following forms (Figures 1 and 2) constitute forms of official certificates for products under the regulations. Where weight is certified, the word "Not" shall be deleted from the phrase "Wts. Not Verified."

* * * * *

Done at Washington, D.C.: September 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

BILLING CODE 3410-22-M

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

AGRICULTURAL PRODUCTS GRADING CERTIFICATE

WEEK BEGINNING — CY | MONTH | DAY

APPLICANT (Name, City and State)

CERTIFICATE NO. G-

SUB C. NO. 3 3 5 0 0 7 2

APPLICANT NO. 4 4

DESCRIPTION OF PRODUCT

CODES ON REVERSE: SPECIES | CAR./CUT | QUALITY | YIELD

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statement therein contained. *(This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U. S. Department of Agriculture.)*

DAILY PIECES GRADED (SLAUGHT.)	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	TOTAL

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

AGRICULTURAL PRODUCTS ACCEPTANCE CERTIFICATE

WEEK BEGINNING: CY | MONTH | DAY

APPLICANT (Name, City and State)

CERTIFICATE NO. A-

SUB C. NO. 3 3 2 0 0 7 2

APPLICANT NO. 4 4

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statement therein contained. *(This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture.)*

SHIPPER OR SELLER (Name, City and State)

RECEIVER OR BUYER (Name, City and State)

LOCATION (City and State)

DESCRIPTION OF PRODUCT ☐ ACCEPTED ☐ REJECTED ☐ OTHER	SPECIFICATION & ITEM NO.	WEIGHT RANGE	GRADE OR OTHER QUALITY	CODE	SUNDAY Units	SUNDAY Lbs.	MONDAY Units	MONDAY Lbs.	TUESDAY Units	TUESDAY Lbs.	WEDNESDAY Units	WEDNESDAY Lbs.	THURSDAY Units	THURSDAY Lbs.	FRIDAY Units	FRIDAY Lbs.	SATURDAY Units	SATURDAY Lbs.	TOTAL

Food and Nutrition Service

7 CFR Part 235

Child Nutrition Programs; Allocation of State Administrative Expense Funds for State Commodity Processing Activities

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to amend the regulations governing the use of State Administrative Expense (SAE) funds to change the manner in which discretionary funds are allocated to State agencies. Under this proposal, some of the discretionary SAE funds would be allocated to State distributing agencies for State commodity processing activities. These funds would assist State distributing agencies to establish or expand State commodity processing efforts in order to encompass commodity processing currently conducted under the FNS administered National Commodity Processing (NCP) System. This proposed rule would also amend the sanction provisions of the SAE regulations to allow FNS to withhold a distributing agency's SAE funds for failure to comply with the Food Distribution Program regulations (7 CFR Part 250).

DATE: To be assured of consideration, comments must be postmarked on or before November 18, 1985.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101, Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

The propose rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has 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 will not have a significant adverse economic impact on a substantial number of small entities.

Although this rule proposes a number of changes to Part 235, the reporting and recordkeeping requirements remain unchanged. These requirements were approved by the Office of Management and Budget (OMB) for use through January 1, 1986. (OMB No. 0584-0067 and 0584-0319).

This activity (SAE) is listed in the Catalog of Federal Domestic Assistance under No. 10.560 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

Background

Section 203 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c *note*) directed the Secretary of Agriculture to encourage the consumption of certain commodities through the use of processing agreements with private companies. In response to the Congressional directive to encourage processing agreements, the Department established the NCP System through an interim rule that amended 7 CFR Part 250 and was published on June 23, 1983 at 48 FR 28609. Under that interim amendment, FNS entered into agreements with commercial food processors for the processing and distribution of designated donated foods to eligible recipient agencies. All agreements under the NCP were scheduled to terminate on June 30, 1985 since the program expired on that date. However, a one year extension of this program is contained in the Second Supplemental Appropriations Act for Fiscal Year 1985 (Pub. L. 99-88).

After 2 years of operation, the Department believes that the NCP System should be phased out. Evaluations of the system have disclosed several problems which support this conclusion. Specifically, sales under NCP were less than anticipated; the majority of sales were concentrated among a few processors and a small number of schools in only a few States; the Federal cost of administering NCP has exceeded any reductions in Federal food storage costs; and NCP has primarily displaced rather than supplemented State processing. Moreover, the Department has determined that the NCP system lacked adequate accountability.

In spite of NCP's shortcomings, the Department continues to support the concept of commodity processing as a way to increase the utilization of donated foods that are in abundant supply. The Department feels that most of the problems associated with NCP stem from the fact that NCP is a centralized approach that lacks State involvement and support. This centralized approach is in marked contrast to the traditional Federal/State/local approach that is used in administering other FNS programs. The Department believes that a more effective and efficient commodity processing system would result if States assumed primary responsibility for the negotiation and management of processing agreements and if the Department supported State commodity processing efforts with financial and technical assistance as necessary. In keeping with this position, the Department, under separate rulemaking (50 FR 33470, August 19, 1985) has proposed to amend the Food Distribution Program regulations to require States to implement commodity processing programs in order to continue receiving donated foods which are provided in addition to the State's authorized level of assistance. Under that proposal, these commodities will be made available only to States that participate in commodity processing. Such donated foods, which include butter, cheese and nonfat dry milk, are currently made available to State distributing agencies for distribution to eligible recipient agencies to the extent that they can be used without waste. These foods are available in bulk and lend themselves to processing into a variety of desirable menu items that can be used in child nutrition programs and other federally assisted food programs.

Under this rulemaking action, the Department is proposing to direct SAE funds to State distributing agencies to assist them in the expansion of State commodity processing programs. States that are not currently participating in commodity processing would be able to establish processing systems in order to continue receiving donated foods which are provided in addition to the State's authorized level of assistance. However, these SAE funds would not be provided to distributing agencies where FNS has determined that commodity processing is not feasible. The Department believes

that commodity processing may not be feasible in some remote areas, particularly in the Pacific, where commercial food processing and distribution facilities are limited.

Under this proposal, the total amount of SAE funds to be made available for commodity processing would be determined annually by FNS and would be allocated to appropriate State distributing agencies through application of a two-part formula. Initially, FNS proposes to designate approximately 2 million dollars for allocation under this formula. These funds would be considered one-time start-up funds and would come from available SAE recoveries and reserves. This is in keeping with the current FNS practice of providing start-up SAE funds to State agencies that assume responsibility for the operation of child nutrition programs that have been previously administered by FNS. However, for following years, commodity processing would be considered along with other discretionary SAE fund uses in determining annual allocation levels. Decisions regarding these levels would reflect program needs and priorities as identified by the Department and would involve redirecting available funds among the various discretionary provisions. To provide maximum flexibility to shift funds between these provisions, the Department is proposing to remove the requirement that the SAE allocation level for AIMS be at, or above, the Fiscal Year 1980 level.

The proposed two-part formula for allocating SAE funds for commodity processing is designed to provide each eligible distributing agency with an equitable amount of funds. If 2 million dollars in SAE funds is designated for commodity processing, each eligible distributing agency would receive an equal share of 1 million dollars under the first part of the formula. Under the second part of the formula, amounts provided to distributing agencies would depend upon each State's proportionate share of reimbursable meals served under the National School Lunch and School Breakfast Programs and meals and supplements served under the Child Care Food Program in child care centers. Breakfasts and supplements would be weighted in this part of the formula to reflect their approximate share of processed commodity usage. Two breakfasts or four supplements would be counted as one lunch or supper. The total amount of funds allocated to each distributing agency under the two-part formula would range from approximately $20,000 to somewhat more than $100,000. While the Department believes that this formula provides an equitable method for initially allocating funds to eligible distributing agencies, changes in the formula may be proposed in the future to reflect the actual level of commodity processing in each State.

It should be noted that the second part of the formula considers only meals served under those child nutrition programs that SAE funds are intended to support. Futhermore, only child care meals and supplements served in child care centers, not day care homes, are considered since day care homes generally do not receive donated commodities or benefits from commodity processing.

However, since day care homes are eligible to receive certain designated commodities and processed commodity products through their sponsoring organizations, the Department would appreciate receiving comments on this proposed exclusion of day care meals and supplements. Commenters who feel that such meals and supplements should be counted are requested to provide suggestions on how this might be accomplished without providing an undue advantage to States where commodity benefits are not generally available to day care homes.

SAE funds for commodity processing would be made available only to those distributing agencies which distribute USDA donated commodities to public and private schools as defined in § 235.2(o)(1) of the SAE regulations and which currently receive SAE funds under § 235.4(b)(2). Other distributing agencies would not receive SAE funds. Distributing agencies receiving SAE funds are expected to use those funds for activities that support the distribution of USDA donated commodities to schools, residential child care institutions and child care centers. Thus, State commodity processing activities funded with SAE funds must be for the principal benefit of those recipients. The Department recognizes that processing agreements often benefit a broader range of food distribution recipient agencies, such as charitable institutions, and would endorse the use of SAE funds to negotiate and administer such agreements if the principal beneficiaries are schools, residential child care institutions and child care centers. For example, a distributing agency's review of a processor's operations would constitute an allowable use of SAE funds, even though the review would indirectly benefit other recipient agencies. Processing activities that solely or principally benefit other categories of recipient agencies should not be funded with SAE funds. An example of this type of activity would be a review of a charitable institution's ordering, use of, and payment for processed commodity products. Distributing agencies with activities that fit this description should plan to fund them from State sources or assessments. If the amount of SAE funds provided for commodity processing exceeds the amount required to fund processing activities principally for the benefit of schools, residential child care institutions and child care centers, distributing agencies should use the additional funds for other activities attributable to the administration of the Food Distribution Program for these categories of recipient agencies.

This proposed rule would also amend the SAE sanction provisions to allow FNS to recover, withhold or cancel payment of SAE funds for failure to comply with the requirements of the Food Distribution Program regulations. Under this authority, FNS would not make SAE funds for commodity processing available to a distributing agency after the start-up year unless the agency were participating in commodity processing.

Finally, this proposal makes several nonsubstantive revisions in § 235.4, paragraphs (a), (b)(2) and (b)(3) for the sake of consistency and clarity.

List of Subjects in 7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, it is proposed that Part 235 be amended as follows:

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 325 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779).

2. In § 235.4:

a. Paragraph (a) is amended by revising the first sentence.

b. Paragraph (b)(2) is amended by removing the words "and any Food Distribution Program allocation provided for in paragraph (b)(4) of this section";

c. Introductory paragraph (b)(3) is revised;

d. Paragraph (b)(3)(iv) is amended by revising the last sentence;

e. Paragraph (b)(4) is redesignated as paragraph (b)(5), a new paragraph (b)(4)

is added, and the first sentence of newly redesignated paragraph (b)(5) is amended by changing the words "For the fiscal year ending September 30, 1980, and for each succeeding fiscal year," to the words "For each fiscal year," and by changing the words "(b)(2) and (b)(3)" to the words "(b)(2), (b)(3), and (b)(4)".

The revisions and addition specified above read as follows:

§ 235.4 Allocation of funds to States.

(a) For each fiscal year, FNS shall allocate to each State agency which administers the National School Lunch, School Breakfast or Special Milk Programs and amount equal to one (1) percent of the funds expended by the agency within the State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. * * *

(b) * * *

(3) For each fiscal year, FNS shall allocate to each State agency which is allocated funds under paragraph (a) of this section amounts derived by application of the following four-part formula:

* * * * *

(iv) * * * The amount of State Administrative Expense funds designated by FNS for AIMS and subject to allocation under paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall be determined annually by FNS.

(4) For each fiscal year, FNS shall allocate amounts derived by application of the following two-part formula to each State agency which distributes foods donated by the Secretary to schools as defined in § 235.2(o)(1) of this part except in States where FNS has determined that State commodity processing is not feasible:

(i) One equal share of fifty (50) percent of the funds designated by FNS for State commodity processing activities under Part 250 of this title.

(ii) The ratio of the weighted number of meals served under the National School Lunch and School Breakfast Programs and meals and supplements served under the Child Care Food Program in centers within the State during the second preceding fiscal year to the weighted number of such meals and supplements served in all States times fifty (50) percent of the funds designated by FNS for State commodity processing activities under Part 250 of this title. For weighting purposes, two breakfasts or four supplements shall be counted as one lunch or supper.

§ 235.6 [Amended]

3. In § 235.6, the first sentence of paragraph (c) is amended by changing the words "(b)(2) and (b)(4)" to the words "(b)(2), (b)(4) and (b)(5)" and by changing the words "(b)(4), and (f)" to "(b)(5), and (f)".

§ 235.11 [Amended]

4. In § 235.11:

(a) Paragraph (b)(1) is amended by removing the word "and 226 of this title." from the end of the paragraph, inserting a comma after 220 and adding the words "226 and 250 of this title."

(b) Paragraph (b)(3) is amended by changing the reference "§ 235.4 (b)(4)" to "§ 235.4(b)(5)."

(c) Paragraph (b)(5)(vi) is amended by changing the words "school nutrition programs" to "programs for which SAE funds were made available."

Dated: September 11, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-22231 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida; Avocados Grown in South Florida; Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreements and Orders 911 and 915, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on proposed amendments to the marketing agreements and Marketing Orders 911 and 915 (7 CFR Parts 911 and 915), covering limes grown in Florida and avocados grown in South Florida. The proposals would: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production area; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels.

DATE: Written exceptions to this recommended decision must be filed by October 17, 1985.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1079, South Building, Washington, D.C. 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to insure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business. Such evidence was considered in arriving at the findings and conclusions contained in this decision.

During the fiscal year ending April 30, 1984, 26 handlers shipped limes under M.O. 911 for fresh market with an estimated crop value of $16.0 million, and 34 handlers shipped avocados under M.O. 915 for fresh market with an estimated crop value of $12.4 million. The average value per handler for limes and avocados was $615,365 and $384,706, respectively. Given the applicable definition of a small business concern almost all of the handlers of limes and avocados would fall within that definition. Thus, few handlers can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 911 and 915 are predominantly small businesses, the orders themselves are tailored to the size and nature of small businesses.

Further, while the amendments recommended herein would impose some requirements on affected small businesses, any added burden should

not be significant in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing indicated that the proposal to broaden handler representation on the lime and avocado committees would benefit smaller handlers as it would afford them a greater opportunity to serve on these committees and participate in decision making. Adding a requirement to each order that a referendum be conducted every six years beginning in 1990 to ascertain if the orders continue to have the support of growers, would benefit lime and avocado growers and handlers, most of whom are small businesses. The testimony indicated that adding authority to the order to require the dyeing of undersize limes would benefit lime growers and handlers, as such requirements would tend to prevent the sale of small, immature, unpalatable limes which bring low returns and fail to provide consumer satisfaction, thus damaging the market for good quality fruit. Such requirements should assure marketing of acceptable sizes of limes which would benefit retail food stores, restaurants, and other outlets, many of which are small businesses that sell fresh limes to the public in various forms.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreements and Orders Nos. 911 and 915, regulating the handling of limes grown in Florida and avocados grown in South Florida, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from William J. Doyle.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), hereinafter referred to as the "act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

On January 15, 1985, a public hearing was held on proposed further amendment of the marketing agreements, as amended, and Order Nos. 911 and 915, as amended (7 CFR Parts 911 and 915). The hearing was held in Homestead, Florida, pursuant to the provisions of the act and the applicable rules of practice. Notice of this hearing was published in the **Federal Register** on December 31, 1984 (49 FR 50731). The notice of hearing contained proposals submitted by the Florida Lime Administrative Committee and Avocado Administrative Committee which administer the orders. These proposals would amend the orders to broaden handler representation on each administrative committee by limiting each handler organization to one member and alternate from each district and provide for periodic referenda. In addition, the Florida Lime Administrative Committee submitted a proposal to add authority to the lime order to require marking of undersize limes. The Fruit and Vegetable Division, Agricultural Marketing Service, USDA, submitted a proposal to make any necessary conforming changes.

Material Issues

The material issues of record addressed in this decision are to: (1) Broaden handler representation of the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production areas; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertion if producers favor continuation of the lime and avocado marketing orders; (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels; and (4) make conforming changes.

Findings and conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, as as follows:

(1) Section 911.20 and 915.20 of the lime and avocado marketing orders should be amended to provide that no handler may be represented on the Florida Lime Administrative Committee (FLAC) and the Avocado Administrative Committee (AAC) by more than one handler member and alternate from each district within the respective production area. Presently, there are two districts for both limes and avocados. The hearing record indicates that two problems exist as to handler representation on the respective committees. Under the present order provisions, a single handler or its employees may occupy more than one member and alternate position on each committee. The order language also permits handlers, who own a number of packinghouses or entities, to have a member and alternate from each packinghouse or entity.

Instances have recently occurred where more than one handler member and alternate on such committees have been affiliated with the same handler entity. For example, in the 1984–85 season, four handler members of AAC and one handler member and three alternates on the FLAC were all employees of one handler. This was made possible because in voting for nominees to serve as handler members on these committees, the votes of handlers are weighted by the volume of limes and avocados, as the case may be, shipped by the handler during the preceding calendar year. At the present time, two handlers are predominant in the handling of fresh limes and avocados grown in Florida. The current provision of the orders which allows for weighting of votes of handlers in the nomination process is to assure that the interests of the major handlers are represented in committee recommendations and deliberations. However, it was not the intent of the orders that a handler or handler organization could dominate representation on these committees by virtue of the fact that it controls a majority of the fresh shipments of limes and avocados handled. Providing that no handler may be represented by more than one handler member and alternate for each district should rectify this situation. The amendment should also broaden handler representation on the committees, and permit more handlers to participate in the decision making process.

It is not uncommon in the Florida lime and avocado industry for a single handler organization to own, have substantial interest in, or control an number of packinghouses. Thus, a limitation on the number of handler members representing a single packinghouse would not necessarily accomplish the purpose of the proposed amendments. It would therefore be appropriate and consistent with record evidence to have such limitation apply to each handler organization, regardless of the number of packinghouses or entities owned, controlled by, or in which such organization has a substantial interest. Information available to the committees from reports filed by handlers is considered to be adequate to determine the officers and employees of corporations and other business units owned or controlled by these handlers.

The production areas for limes and avocados are divided into two districts for purposes of representation on these committees. The orders currently provide that no handler shall participate in the election of nominees in more than one district in any one fiscal year. The

proponents testified that a handler should be allowed to be represented on the committees by one handler member and alternate in each district. If the proposed amendments regarding limiting handler representation are adopted, which would assure that handlers who have interests in each of the producing districts are adequately represented in each district, it would be appropriate that the orders should be amended to remove the current restriction on participation in election of nominees in more than one district.

At the present time, there are a sufficient number of handlers to fill all the handler member and alternate positions on each committee. However, the situation may change is the future and, though not likely, it is possible that the number of handlers could decline to the point where there is an insufficient number of handlers to fill handler member positions. To provide for that contingency, the orders should provide for waiving by the Secretary the requirement that no handler or handler organization may be represented on the committee by more than one handler member and alternate from each district if an insufficient number of handlers are available to fill all handler member positions on these committees.

(2) The orders should be amended to require periodic referenda beginning in 1990. Periodic referenda would provide the lime and avocado industries with a means of regularly reassessing the level of producer support for these orders.

At present, the Secretary is required to terminate the provisions of the orders at the end of any fiscal year, whenever the Secretary finds that continuance is not favored by a majority of the producers. Such termination must be announced on or before March 15 of the then current fiscal year.

When the orders were originally established, they provided for one referendum and a poll of handlers to be held two years after the programs began. The proposed language submitted would remove this obsolete language and provide for a continuance referendum by producers every sixth year beginning in 1990. Holding such referendum is in keeping with the Departments guidelines for marketing orders.

Testimony at the hearing concluded that continuance referenda held on the lime and avocado orders would allow the producers to express their views regarding continuance of the orders. These referenda will enable the industries to determine the effectiveness of marketing orders. Currently it is felt that there is strong support for the orders, but, as the market may change in the next six years, a vote on continuance would show if support within the industries for the orders still exists.

There were two objections to this proposed amendment. Both objections were aimed at the six-year interval between the referenda. Apparently since it takes an avocado tree 12 to 15 years to fully mature, some opponents felt six years is too short of a time period in order to protect their capital investments. Testimony revealed that some producers favor a longer time period between referenda to better reflect the time required for avacados to reach maturity. They also felt that current provisions in the orders allow the industries to ask for referenda if the need arises.

Based on evidence and testimony submitted at the hearing relative to periodic referenda, the orders should be amended to include periodic referenda every six years. A period of time greater than a six-year period is too long an interval between regular referenda. Regardless of the length of time for an avocado or lime tree to mature, the market for such commodities can change drastically in six years due to changing market conditions. A longer time period would not protect their capital investments, since new plantings are occurring every year. A period of six years between referenda appears to be reasonable. Thus, the orders should be amended to provide that a continuance referenda be held every six years beginning in 1990. Of course, in the event there is a demonstrated reason, the order provides that the Secretary can hold a continuance referenda at any time.

(3) Section 911.48 of the lime marketing order should be amended to add authority to require that handlers mark undersize limes with a food dye approved by the Food and Drug Administration (FDA) to prevent such fruit from entering regulated marketing channels.

The record indicates that there have been instances of shipments of fresh limes which have not met minimum size regulations in effect. This has generally occurred at certain times during the year, particularly in the winter and spring months, when prices for limes are relatively high. Undersized limes tend to have very low juice content and may be immature and unsuitable for fresh consumption. The presence of undersized limes in the marketplace has a price depressing effect on shipments of better quality larger size limes and weakens consumer confidence in the overall quality of limes.

The marketing order authorizes establishment of minimum grade and size regulations to promote orderly marketing conditions for fresh shipments of limes. Those limes failing to meet such minimum requirements are customarily processed into limeade, lime oil and other lime products. The marketing order also requires Federal or Federal-State inspection and certification that limes for the fresh market meet applicable grade and size regulations in effect prior to shipment. Minimum grade and size regulations are currently in effect for Florida lime shipments.

Undersize limes are separated from marketable size limes during the packing process prior to being offered for inspection and certification as meeting marketing order size requirements. Undersize limes are customarily held for later processing into juice or conversion to other uses. The record indicates, however, that in some instances undersize limes are placed into fresh market channels contrary to marketing order requirements.

It was asserted by proponents that marking undersize limes with an approved food dye could inhibit movement of such limes to fresh market destinations because it would be readily apparent to inspectors, handlers, and prospective buyers that any such limes so marked did not meet minimum requirements. Such marking of limes should take place at the handler's packinghouse and only undersize limes should be so marked.

The record indicates that procedures for marking undersize limes with a FDA approved food dye have been developed, and equipment for marking such limes is commercially available. Two methods of marking limes were discussed. One involves marking the limes with cord wicks as the fruit moves along a conveyor belt, and another involves rolling the fruit over a dye pad. However, the record also indicates that handlers should be able to select either of these methods or any other committee-approved method to mark undersize limes. Any such approval would be contingent on use of a FDA-approved food dye. It is anticipated that any method which may be used in marking the fruit can be integrated into handlers' existing packing lines without any appreciable difficulty. Disposition of undersize limes which are marked with dye into any of the outlets which customarily use such fruit would not be adversely affected by the use of such dye.

One major handler of limes conducted a research project in 1984, under the auspices of the Florida Lime Administrative Committee, to determine the feasibility of marking undersize limes with food dye meeting FDA criteria. The results of the project were reported to the committee at the FLAC meeting on August 8, 1984. The results of the project indicates that marking such limes is practical and could be carried out at minimal cost.

One witness commented that the lime dyeing requirements may be needed throughout the shipping season for limes to accomplish the stated purposes. Another witness indicated that the diversion or undersize limes to fresh market tends to occur only during part of the season and any marking requirements should be made effective only during designated periods. In order that such marking requirements may be implemented when needed, the committee, with the approval of the Secretary, should prescribe the periods when limes must be marked with an approved dye and the terms and conditions under which such marking shall be performed.

The Dade County Supervisor of the State and Federal Inspection Service, testified that that agency does not anticipate any problems with the proposal to dye undersize limes.

(4) A proposal in the notice of hearing by the Department was that consideration be given to making such other changes in the orders as may be necessary to make the orders conform to any amendments that may result from this proceeding. This proposal was supported at the hearing without opposition, and such changes as are necessary are incorporated into the order.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed February 4, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

No briefs were filed.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreements and orders and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(2) The marketing agreements and orders as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreements and orders as amended, and as hereby proposed to be further amended, regulate the handling of limes grown in Florida and avocados grown in South Florida, in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreements and orders upon which hearings have been held;

(4) The marketing agreements and orders, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production areas would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area;

(6) The marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of avocados grown in the production area; and

(7) All handling of limes and avocados grown in the production areas defined in the marketing agreements and orders, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Florida, Limes, Avocados.

Recommended Amendment of the Marketing Agreements and Orders

The following amendments of the marketing agreements and orders, as amended, are recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Parts 911 and 915 continues to read as follows:

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

PART 911—LIMES GROWN IN FLORIDA

2. Section 911.20 would be amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided*, That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

3. Section 911.22 would be amended by revising paragraph (b)(3) to read as follows:

§ 911.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles limes. Each vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve-month period, January through December.

4. Section 911.64 would be amended by revising paragraph (c), adding a new paragraph (d), and redesignating current paragraph (d) as paragraph (e) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds the referendum or otherwise that such termination is favored by a majority of the producers: *Provided*, That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the limes, produced within the production area: *Provided further*, That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the

producers voting in such referendum as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

5. Section 911.48 would be amended by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48 Issuance of regulations.

* * * * *

(a) * * *

(1) * * * *Provided,* That such regulation may require that limes not meeting minimum size requirements established under this section be marked with a Food and Drug Administration approved food dye, as a necessary and incidental safeguard to insure that such limes do not enter fresh marketing channels for regulated limes.

* * * * *

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

6. Section 915.20 would be amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 915.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

7. Section 915.22 would be amended by revising paragraph (b)(3) to read as follows:

§ 915.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles avocados. Each vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve-month period, January through December.

8. Section 915.64 would be amended by revising paragraph (c), adding a new paragraph (d), and redesignating current paragraph (d) as paragraph (e) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds the referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados, produced within the production area: *Provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the producers voting in such referendum as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

Dated: September 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-22230 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 85-019]

Paratuberculosis in Domestic Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to remove 9 CFR Part 80, "Paratuberculosis in Domestic Animals," and certain regulations in 9 CFR Part 71, and thereby delete federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. These regulations were established for the purpose of preventing the spread of paratuberculosis. Funding is not available for activities to detect paratuberculosis infected animals, to review and amend the regulations as changing program conditions would require, or to otherwise administer a paratuberculosis program.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85-019. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to remove 9 CFR Part 80, "Paratuberculosis in Domestic Animals," and corresponding regulations in 9 CFR Part 71, and thereby delete federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. Paratuberculosis, also known as Johne's disease, is a chronic infectious disease of cattle and other ruminants.

The regulations were established for the purpose of preventing the spread of paratuberculosis. Funding is not available for activities to detect paratuberculosis infected animals, to review and amend the regulations as changing program conditions would require, or to otherwise administer a paratuberculosis program. Accordingly, it appears that the regulations regarding paratuberculosis should be deleted.

Executive Order 12291 and Regulatory Flexibility Act

This proposal is issued in conformance with executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

It appears that the removal of the regulations as proposed by this document would not significantly affect marketing patterns and would not have a significant economic impact on those persons affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 80

Animal diseases, Livestock and livestock products, Transportation, Paratuberculosis Johne's Disease.

Accordingly, it is proposed to amend 9 CFR Subchapter C, Interstate Transportation of Animal (Including Poultry) and Animal Products, as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for Part 71 would be revised as set forth below and the authority citations following all sections in Part 71 would be removed:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 127, 134b, 134c, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 71.3 [Amended]

2. In § 71.3, paragraph (a) would be amended by deleting "paratuberculosis,".

3. In § 71.3, paragraph (c)(1) would be amended by deleting "or paratuberculosis," and "in the case of brucellosis reactors and with the provisions of Part 80 of this subchapter in the case of paratuberculosis reactors".

PART 80—[REMOVED]

4. Part 80 would be removed and reserved.

Done at Washington, D.C., this 12th day of September 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–22158 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Notice No. 85–16]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes future requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S Transponders in U.S.-registered civil aircraft. Proposed is the mandatory use of either the ATCRBS or Mode S Transponder as well as automatic pressure altitude reporting equipment within all terminal control areas (TCA) (specifically to include Group II TCA's), and above 12,500 feet mean sea level (MSL) within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet above ground level (AGL). Also, transponder installation requirements are proposed which would result in a gradual phase-in of Mode S in the National Airspace System (NAS). After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft would be required to meet requirements of the technical standard order (TSO) for airborne Mode S Transponder equipment. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the proposed Mode S and automatic pressure altitude reporting reporting equipment requirements.

Those requirements are an essential component of the NAS Plan. This notice also proposes test and inspection requirements for the Mode S Transponder and a new output power test requirement for the ATCRBS transponder.

DATES: Comments must be received on or before December 16, 1985.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–204), Docket No 23799, 800 Independence Avenue, SW, Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW, Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, environmental, and energy aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23799." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking any future action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 426–8058). Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also requests a copy of Advisory Circular No. 11–2, "Notice of Proposed Rulemaking Distribution

System," which describes the application procedures.

Background

On October 18, 1983, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing the proposed use of Mode S Transponders in the NAS (48 FR 48364, Notice No. 83-16). The preamble of the advance notice contained discussions on—

1. The NAS Plan.
2. The role of Mode S in the new NAS.

The advance notice proposed that the following actions take effect by 1992 or earlier, as noted:

1. Issuance of a TSO for airborne Mode S Transponder equipment. It was proposed that with issuance of the TSO for Mode S, TSO authorization to manufacture ATCRBS transponders would be terminated effective in 1986.
2. Amendment of Part 43 of the Federal Aviation Regulations (FAR) to set forth appropriate tests and testing procedures to ensure the continuance of correct functioning of the Mode S transponders.
3. Amendments to Part 91 of the FAR as follows:

a. Newly installed transponders in U.S.-registered civil aircraft would meet requirements of the new TSO for airborne Mode S Transponder equipment.

b. Either a Mode S or ATCRBS Transponder, as well as automatic pressure altitude reporting equipment, would be necessary to operate in TCA's.

c. Either an operable Mode S or ATCRBS Transponder, as well as automatic pressure altitude reporting equipment, would be necessary above 12,500 feet MSL within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet AGL. It was further proposed to retain the current exception for gliders above 12,500 feet MSL but below the floor of positive control areas, and also retain provisions in current effect for helicopters and air traffic control (ATC) authorized deviations.

d. Automatic pressure altitude reporting equipment would be required for operations in Group II TCA's.

(d) Amendments to FAR Sections 121.345(c), 127.123(b), and 135.143(c) to be consistent with the amendments to Part 91.

Comments

Comments were generally favorable to the introduction of Mode S in NAS. Twelve (12) comments were received which, though generally supportive, expressed some concern in several areas.

The International Air Transport Association (IATA) expressed its concern over the U.S. withdrawal of its TSO for the manufacture of ATCRBS Transponders. IATA said that U.S. TSO's were used by many civilian aviation agencies outside the U.S. for their own regulatory purposes. These agencies, representing other countries throughout the world, are most likely to experience a continuing demand for new/replacement transponders conforming to International Civil Aviation Organization (ICAO) standards after 1986. The problem, as IATA saw it, was that even though ICAO is considering implementation of the new Mode S, it is likely that implementation will lag behind U.S. plans. IATA suggested that some alternative procedure be examined to preserve the existing TSO while achieving the U.S. objective. One suggested alternative was that proposed rulemaking be directed at aircraft installations made after 1986 with exemptions for installations in aircraft manufactured in the U.S. to be delivered to foreign countries.

The Bendix Corporation, General Aviation Avionics Division, basically agreed with the principles of the notice saying that a long-range plan for updating the traffic control system along with the benefits of data link definitely warranted industry support. Although in general agreement with the plan for Mode S, Bendix registered its belief that the termination date for ATCRBS production should be delayed to at least 3 years after formal issuance of the new TSO, rather than the proposed specific year of 1986. In addition, it further suggested that exceptions should be permitted for foreign sales to be determined by foreign acceptance and implementation of Mode S. Bendix believed this action would allow more of a planned obsolescence to the ATCRBS rather than require the abrupt disruption in production of what it termed a technically mature unit.

The Collins Air Transport Division, Rockwell International, made the following points:

1. Many countries certify avionics equipment on the basis of U.S. FAA TSO approvals.
2. Approximately 50 percent of Collins ATCRBS Transponder production is based on orders received from non-U.S. customers.
3. Many non-U.S. aircraft operators have no requirement to operate within the U.S. airspace.
4. Implementation of Mode S in other countries may not be on the U.S. schedule.
5. The regulatory actions of other countries are not known regarding existing certifications based on the current ATCRBS TSO.

Collins concluded that avionics manufacturers will continue to have requirements to supply ATCRBS transponders, manufactured under TSO authorization, to non-U.S. customers after the proposed termination date. Under the proposal, a U.S. manufacturer's only means of competing in the international market would be to supply transponders meeting the requirements of the Mode S TSO. This would place U.S. manufacturers at a competitive disadvantage due to the added costs of the unique Mode S capability.

Rather than terminate the ATCRBS TSO in 1986, Collins recommended that the manufacture of TSO-approved ATCRBS Transponders be permitted as long as a valid market potential exists. It recommended that a schedule requiring Mode S Transponders in all new installations, and ultimately, in all installations intended for operation within U.S. airspace, would accomplish the desired transition.

The Department of Defense (DOD) advised it was still in the process of making a detailed evaluation of the operational and economic impact of Mode S as well as DOD's need for Mode S. When the comments were submitted, DOD had not completed the need analysis. DOD considered the need analysis a necessary step considering the nature of its worldwide operations, the configuration of its aircraft, and the cost of equipping the fleet with Mode S. Due to the configuration and space limitations in some of the unique military aircraft, DOD believed installation costs would be considerably higher than those for the civil sector. DOD said that the costs associated with Mode S had to be balanced with national defense needs. Therefore, Mode S costs would be a significant consideration which may point toward the need for other alternatives to meet DOD requirements.

Of further concern to DOD was the proposed 1986 termination date for the manufacture of ATCRBS Transponders. The Department expects that new aircraft will be added to the aircraft weapons inventory beyond that date but still prior to the determination of new equipment that could accommodate full or partial Mode S. Accordingly, DOD recommended that the present TSO authorization for the ATCRBS Transponder be continued for installation in military aircraft until such

time as the military needs for the data link feature are determined.

The Air Transport Association of America (ATA) commented that for many years it has supported and encouraged the upgrading of ATCRBS and the addition of data link services to provide for automation of ATC functions. Also, FAA's proposal was in keeping with the general objective to improve system safety and capacity through more accurate and more complete surveillance. While endorsing the use of Mode S in NAS, ATA urged that the scope of the proposal be expanded to include widespread installation of altitude reporting transponders where radar surveillance and ATC services are provided. ATA also endorsed a requirement for improved accuracy of the altitude data reported. ATA's concern was that all aircraft sharing airspace where radar surveillance and ATC services are provided should carry operating altitude reporting transponders to enable ATC to perform its primary role of aircraft separation. In addition, the proposal should address the potential for improved surveillance accuracy in the vertical dimension. The Association said the ATC system would benefit and that the ultimate success of the Traffic Advisory and Collision Avoidance System as a backup to the system is dependent upon the accuracy of reported aircraft altitude data. The ATA also felt that FAA must make a firm commitment to provide services that the purchaser will recognize as a return on the investment in new avionics. In reference to original implementation of altitude reporting equipment, ATA stated that the airlines were equipped for years before the ground surveillance facilities could use the information.

Aerospace Industries Association of America, Inc. (AIA) described implementation of Mode S as a welcome development if properly implemented. AIA did note what it believed were problem areas. One such area was traffic awareness. AIA noted that ATC clearances and traffic advisories are now communicated on common very high frequency channels, comparing it to a "party line." Although inefficient in use of controller and pilot time, AIA said the "party line" provides all an awareness of the overall traffic situation. The awareness helps pilots to detect inappropriate clearances and otherwise helps them execute clearances more effectively. AIA maintains that traffic awareness will be reduced by the silent digital transmission of messages to particular aircraft. Monitoring and error detection will be lost and the pilot's ability to stay ahead of the aircraft will be reduced.

Another concern of AIA was that Mode S not create new cockpit workload. AIA noted there will be concurrent introduction of many other digital systems; i.e., flight management, flight guidance, electrical, etc. Often, such systems have resulted in added workload in the cockpit. AIA cautioned that Mode S should not merely reduce work at the centers at the expense of the cockpit.

AIA's third concern was that automated control systems will be more dependent upon and vulnerable to errors in altitude reporting than the present manual system. It was stated that substantial errors are known to exist in many classes of aircraft which will be required to report altitude. The Association's position was that these errors are not well controlled by current regulations and that new standards for altitude reporting will be needed for successful implementation of Mode S.

The Air Traffic Control Association (ATCA) supported the planned implementation of Mode S. The Association's main concern was that while range and azimuth accuracy is improved significantly with Mode S, the precision of altitude reporting was not. ATCA contended that accuracy of ground-based altitude tracking would be improved if the quantization of aircraft reported altitude was reduced from the current 100 feet to 25 feet. ATCA said it believed this would result in performance increases, as viewed by the air traffic controller, for several functions that rely on tracking of the Mode C data. Those functions included En Route and Terminal Conflict Alert, Minimum Safe Altitude Warning, and Automated En Route ATC.

The Aircraft Owners and Pilots Association (AOPA) stated that the benefits derived from Mode S would accomplish its acceptance and that it should not be mandated by regulation. Specifically, AOPA asked if there would be tangible benefits to users equipped with Mode S and would those benefits be available only to turbojet aircraft operating in the jet route structure. AOPA also questioned how FAA intended to allow low-altitude traffic to use Mode S Data Link. The Association would be opposed if, as written in the preamble to the proposal, carriage of Mode S would be mandated above 6,000 feet.

With respect to the proposal that newly-installed transponders be Mode S, AOPA suggested that there would be less user opposition if the word "installed" were changed to "manufactured." If the requirement were applicable to newly-installed transponders, AOPA argued that aircraft owners could not sell an ATCRBS to another owner for installation in another aircraft. According to AOPA, this would make thousands of ATCRBS's obsolete overnight.

In final comment, AOPA noted that FAA did not justify the proposed requirement for altitude reporting equipment (Mode C) in Group II TCA's.

The Soaring Society of America (SSA) agreed with the FAA proposal to continue to except gliders from transponder/altitude encoder requirements when operating above 12,500 feet MSL. The Society also agreed with the proposal that altitude reporting equipment be required for operations in Group II TCA's. However, the Society took the position that gliders should have the same exemption as helicopters with regard to the need for very high frequency omnirange receivers, noting the relatively low demand gliders make on ATC and their sensitivities to weight, balance, power demand, and space.

The Air Line Pilots Association concurred in the proposal.

One private citizen believed that the Mode S system was premature considering that a satellite-based navigational system with its combined transponder and data link capabilities would obviate the need for Mode S.

Discussion of Comments

From review and analysis of comments received, the areas of concern centered on:

1. The ramifications to U.S. manufacturers, foreign governments, and various international users regarding cutoff of the TSO authorization to manufacture ATCRBS Transponders in 1986.

2. The need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude in the Mode S environment.

3. The impact of the proposed installation requirement on DOD and on general aviation aircraft owners and operators.

4. The impacts on pilot cockpit workload, awareness of other air traffic, and the vulnerability to errors in altitude reporting in an automated system.

5. The extent of U.S. airspace within which Mode S would be required.

6. The bottom-line services and benefits that Mode S offers users.

particularly general aviation users, in NAS.

The FAA appreciates the concerns of manufacturers, the international community, and the U.S. defense establishment relative to the originally proposed 1986 withdrawal of the ATCRBS TSO. An early U.S. withdrawal of the ATCRBS TSO authorization is likely to have an unnecessarily disruptive and adverse economic effect on U.S. manufacturers' international sales of the ATCRBS Transponder. In addition, it may adversely affect the regulatory and certification processes of foreign countries that base their requirements on the U.S. TSO. In particular, it is likely to have a penalizing impact on the ICAO community of nations whose Mode S implementation schedule is likely to be behind that of the U.S. The FAA believes DOD would be subject to similar effects with regard to the equipage and use of Mode S on its aircraft inventory.

Upon consideration of the views expressed in these areas, the agency has determined that a modification of the originally proposed 1986 ATCRBS TSO cutoff date is warranted. Accordingly, the FAA proposes to permit continued manufacture of ATCRBS Transponders for such purposes as foreign sales, installation in aircraft destined for foreign countries, and to coincide with DOD transition to correspond to the Mark XV implementation schedule. The FAA is confident that the manufacture and sale of ATCRBS Transponders can be continued for foreign and DOD needs while, concurrently, there is accomplished an orderly phase-in of the Mode S Transponder within the U.S. NAS. To achieve the dual objective, the FAA proposes a phasing in of new installations of ATC transponder equipment applicable to all U.S.-registered civil aircraft. The intent of the phase-in is to permit continued use of ATCRBS in designated airspace areas while also permitting gradual yet positive integration of Mode S into NAS. The essence of this proposal is as follows:

All ATC transponder equipment installed in U.S.-registered civil aircraft, except equipment reinstalled in an aircraft from which it was removed for maintenance, would be required to meet TSO performance and environmental requirements in accordance with the following schedule:

1. *Through December 31, 1986:*
   Any class of TSO-C74b or any class of TSO-C74c as appropriate; or any class of TSO-C112 (Mode S).
2. *January 1, 1987, through January 1, 1992:*
   Any class of TSO-C75b or TSO-C74c if the equipment was manufactured before January 1, 1987; or any class of TSO-C112 (Mode S).
3. *After January 1, 1992:*
   Any class of TSO-C112 (Mode S).

If adopted, this proposal would permit a U.S. civil aircraft operator to use a previously installed ATCRBS Transponder as long as it can be properly maintained. Through December 31, 1986, the operator would also have several other options without restriction. For example, the owner/operator of a U.S.-registered civil aircraft would be able to replace a previously installed transponder or install a newly manufactured or used ATCRBS Transponder that meets appropriate ATCRBS TSO requirements. As another option, the operator may elect to install a Mode S Transponder meeting the appropriate Mode S TSO requirements. After January 1, 1987, the owner/operator may elect the same options with one restriction, if he/she elects to install a new or different ATCRBS Transponder, it must have been manufactured prior to that date. The third and last phase of the schedule begins on January 1, 1992. After that date, all newly installed ATC transponder equipment (i.e., all equipment except equipment reinstalled in an aircraft from which it was removed for maintenance) would be required to meet Mode S TSO requirements.

There were concerns that overall pilot traffic awareness and pilot workload in the cockpit would be adversely affected. Traffic awareness would be reduced because the silent digital transmission of messages would replace the "party line" radio frequency environment. In addition, digital systems, such as Mode S, could result in added pilot cockpit workload. Moreover, automated control systems would be more vulnerable to error in altitude reporting.

The Mode S System has data link capability for carrying digital messages back and forth between aircraft and ground. The messages could contain weather data, air traffic control requests or instructions, NOTAMS, etc. Some messages—air traffic control instructions requiring near term action, for example—may benefit from the party line over which they are heard today, while other messages—such as weather data—would be of interest only to a single aircraft. Some messages, if transmitted over data link could increase cockpit workload compared with voice link, while with others—weather reports and forecasts, or long air traffic control route clearances, for example—a considerable reduction of cockpit workload would result. In its implementation of data link, FAA will involve the public in its studies of these and other factors for each kind of message being considered for data link.

All of the above concerns are more closely associated with an advanced stage of ATC which would employ the benefits of an operationally tested and proven data link system. Concerns in these areas will be addressed through the appropriate procedures as evaluation data become available. This notice is limited to the use, testing, and installation of ATCRBS/Mode S Transponders. It contains no proposals as to the uses, systems, practices, or procedures involving data link or automated control systems. Concerns in these areas are, therefore, not addressed here since they will be the subject of future FAA evaluation and implementation procedures.

The initial Mode S coverage is planned to be provided above 12,500 feet MSL in en route airspace, within TCA's, and down to the surface at qualifying airports. Under the NAS Plan, additional systems will extend surveillance/data link operation down to 6,000 feet MSL by the year 2000. This coverage area is similar to airspace areas within which ATCRBS is now utilized. Services will be available to anyone in this coverage area equipped with Mode S.

We believe that the concerns related to the bottom-line benefits, the scope of airspace wherein Mode S is proposed, and the service capabilities of Mode S, are best addressed in a summary of the benefits of the NAS Plan. The goals of the NAS Plan are to meet the pressures of increased demands for aviation services, limit costs, and provide and improve facilities. The plan for Mode S is incorporated in the NAS Plan because it is considered to be the airborne link to NAS.

The NAS Plan

Essentially, the NAS Plan is a comprehensive plan supported by large increases in automation to yield significant improvements in service and cost savings to the airspace user, the taxpayer, and the ATC system. Cost savings are expected through reductions in delays and fuel consumption due to improved traffic handling capabilities and the increased ability of the ATC system to accommodate direct, pilot-preferred routings.

The new NAS will make extensive use of automation in terminal and en route

ATC, flight services, and subsystems that support and provide radar surveillance and communications. Closely associated with increased automation are the programs and improvements designed to achieve state-of-the-art ATC separation and advisory services. The end products of these programs will help ATC to integrate, separate, meter, and otherwise provide air traffic services. They include programs to organize and manage the systemwide flow of air traffic.

The effectiveness of NAS will be dependent, in great part, upon a surveillance system which can provide accurate position information, relatively interference-free aircraft identity through selective addressing, and automatic pressure altitude reporting equipment. The Mode S Transponder, coupled with its associated automatic pressure altitude reporting equipment, is considered a key piece of avionics necessary to participate fully in and receive the benefits of the NAS.

The Mode S system is an evolutionary advancement of the ATCRBS. The capability for an evolutionary transition from ATCRBS to Mode S has been achieved by providing a high degree of compatibility between Mode S and ATCRBS. Mode S uses the same interrogation and reply frequencies as ATCRBS. In addition, the Mode S ground station performs the ATCRBS functions. The ground station will interrogate using ATCRBS, intermode, and Mode S formats. "Intermode" is the generic term for interrogations that elicit replies from both ATCRBS and Mode S Transponders. This degree of compatibility permits a smooth transition in which Mode S ground stations provide surveillance of ATCRBS-equipped aircraft and Mode S Transponders reply to ATCRBS ground station. Mode S can, therefore, be introduced into the present ATCRBS environment without impacting present services.

A principal feature of the Mode S system is that each aircraft is assigned a unique address code. Using this unique code, interrogations can be directed to a particular aircraft and replies can be identified without ambiguity. Channel interference is minimized because a sensor can limit its interrogation to targets of interest. In addition, by proper timing of interrogations, replies from closely spaced aircraft can be received without mutual interference.

The discrete addressing and digital encoding of Mode S transmissions also permit their use as a digital data link. The interrogation and reply formats of the Mode S system have been designed to contain sufficient coding space to permit the transmission of data. In support of data link functions, the Mode S Transponder will serve much the same purpose as a modem (modulator/demodulator) which connects a computer to other computers by telephone lines. The Mode S Transponder and additional data link equipment (including appropriate input/output devices) will be necessary for full use of data link services. With the data link capability provided by Mode S and complementing equipment, the Mode S system could provide a computer to cockpit message medium for nonverbal transmission and confirmation of ATC clearances, traffic advisories, and weather information. Permanent copies of messages could be provided by system equipment when appropriate.

The Mode S data link capability to deliver the most currently available weather information may well be considered as the most promising flight safety and efficiency benefit to the pilot/operator. The potential value of weather data products that become readily accessible via Mode S is apparent. Some of the weather products currently considered as candidates for data link transmission are surface observations, digital weather maps, terminal forecasts, alert weather watches, winds aloft forecasts, convective significant meteorological reports, and pilot reports. Some weather information via data link is expected to be available beginning in 1988 with enhanced services available in later years.

To summarize the role of Mode S in NAS, Mode S is an advanced secondary radar system expected to provide improved accuracies in the surveillance of aircraft position and more interference-free identity and altitude reports to ATC. Through its inherent capabilities, Mode S will:

1. Aid in providing the enhanced surveillance and communication capabilities necessary for effective operation of the automated ATC system.
2. Provide a basis for a supporting ground-air-ground data link.
3. Help accommodate future user demand with increased efficiency.
4. Support automated functions of the NAS.
5. Provide dynamic advisory and flight safety information to the pilot.
6. Enhance ATC services while helping to increase controller productivity.

The first Mode S/Data Link ground site is expected to be operational and providing surveillance services and data link services in 1988. By 1992, 137 systems are expected to provide surveillance coverage and data link services at selected high density terminal, support, and en route sites.

The 137 sensors with associated interface equipment are planned for 108 terminal sites, (automated radar terminal systems, or "ARTS II/III"), 25 en route sites, two at FAA's Technical Center, one training, and one at FAA's depot.

Benefits of improved ATC coverage and services will be available to any aircraft equipped with the Mode S transponder and within coverage of a Mode S ground site.

Automatic Pressure Altitude Reporting Equipment

In addition to the sue of the Mode S Transponder, the FAA proposes that associated automatic pressure altitude reporting equipment be required for operations in Group II TCA's as well as Group I TCA's as now required. The Mode S Transponders and automatic pressure altitude reporting equipment together form the key aircraft avionics components necessary to fully participate in and benefit from the automated NAS. TCA's were established around large air transportation hubs to help reduce the midair collision potential between aircraft operating in accordance with an ATC clearance and other aircraft operating within the same airspace without the knowledge of the air traffic controller. The requirements associated with a TCA provide for a positive separation assurance to afford the greatest safety and protection for the greatest number of people. The use of automatic pressure altitude reporting equipment in conjunction with use of the Mode S Transponder provides ATC an increased efficiency and capability to provide aircraft separation service. Automatic pressure altitude reporting equipment has been in use in the NAS for many years. Experience has shown that its use can help to—

1. improve ATC system safety by automatically displaying the altitude of all aircraft operating in selected airspace;

2. reduce the midair collision potential through provision of constant and current aircraft altitude data;

3. reduce volume of communication and controller workload by eliminating the need for oral altitude reports;

4. improve use of airspace through continuous altitude data on climbing and descending aircraft;

5. increase ATC effectiveness through greater controller selectivity in viewing targets;

6. reduce number of traffic advisories or avoidance vectors during the provision of radar service; and

7. improve ATC system safety by enhancing participation in automated safety systems such as Conflict Alert and Minimum Safe Altitude Warning.

In further support for use of automatic pressure altitude reporting equipment, a task group of the National Airspace Review (NAR) also recommends its use in all TCA's as proposed by the task group. The NAR was established as a large scale combined FAA/industry program to review airspace use and procedural aspects of the ATC system. In June of 1982 NAR Task Group 1–2.1 convened to review terminal airspace, particularly TCA's. Among other recommendations, the task group supported continuance of TCA's but proposed that there be only a single class of TCA. The group's proposed establishment criteria, primarily enplaned passenger and aircraft operations, generally were somewhat lower than current Group I TCA criteria, and somewhat higher than current Group II criteria. The FAA published the recommendation as an ANPRM on February 5, 1985 (50 FR 5055). The task group associated the recommended need for automatic pressure altitude reporting equipment with the proposed single-class TCA criteria.

In consideration of the high density environment of a TCA and the need to ensure the safe and efficient movement of air traffic within its bounds, Task Group 1–2.1 considered Mode C automatic pressure altitude reporting equipment necessary to reduce radio frequency congestion. This reduction was considered necessary to create more efficiency within the system, thereby increasing capacity while providing an increased level of safety over operations with non-Mode C aircraft. In particular, the group pointed to weather conditions which cause pilots of visual flight rules (VFR) aircraft to change altitude to maintain appropriate separation from clouds. In a high density environment, this altitude change is not immediately forwarded to the controller; however, the Mode C readout on the controller's radar display does provide this information. The task group's majority view was that in busy complex areas with high concentrations of traffic, a continuous readout of aircraft altitude is a necessity for maintaining a continuous three-dimensional (range, azimuth, altitude) view of the traffic picture. It was the task group's finding that sufficient justification exists in the form of traffic volume, complexity, aircraft mix, controller/pilot workload, and frequency congestion to warrant a requirement for use of automatic pressure altitude reporting equipment in all TCA's.

The benefits from use of automatic pressure altitude reporting equipment within the single class of TCA's envisioned by NAR are similarly expected from its use in the airspace environment of today's current Group II TCA's. The U.S. NAS is the busiest and most complex in the world. Projections are for continued growth in the number of aircraft operations, diversity of operations, number of aircraft, and sophistication of aircraft. Many of our key metropolitan areas, which include the Group II locations, are either experiencing or will experience congestion from concentrated air traffic demand, along with overburdening of airport facilities and passenger handling capacities. To further the aviation safety and system efficiency goals of the NAS Plan, and in light of the experienced benefits of automatic pressure altitude reporting equipment, the FAA proposes mandatory use of this equipment in Group II TCA's. Consistent with the Mode S schedule, it is proposed that automatic pressure altitude reporting equipment be required in Group II TCA's after January 1, 1992.

This proposal, which would be effective in 1992, would apply to a current Group II classification of TCA's. It is made with full awareness of other possible airspace actions which may make the Group II classification obsolete by that date. For example, the FAA has under consideration a separate NAR recommendation, previously referred to, which would classify all appropriately designated TCA's as Group I TCA's. Future terminal airspace classifications notwithstanding, it is the higher density metropolitan air traffic airspace environment, with its attendant pilot and ATC equipment needs, and which are now classified as Group I and Group II TCA's, for which the FAA proposes mandatory use of this equipment. The FAA will amend its proposal and/or rule if future terminal airspace reclassification actions or airspace safety and efficiency indicate a different requirement for the equipment.

The comments concerning the need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude in the Mode S environment all suggest certain refinements in equipment or procedures used in altitude reporting. The FAA agrees that there would be benefits from greater precision in automatic altitude reporting. However, each of the proposals urged by the commenters would require a period of development of the technology or procedures, and in each case the FAA would seek public and industry input on the proposal. Moreover, existing equipment and procedures are fully adequate to support the additional reporting requirements proposed in this notice. For these reasons, the FAA is not incorporating the above suggestions in this rulemaking. However, the agency will consider the institution of separate rulemaking for adoption of the requested improvements.

ATC Transponder Tests and Inspections

To assist in providing for the surveillance and communication capabilities necessary for the safe effective operation of the ATC system, amendments to FAR Part 43, Appendix F, are proposed which include:

1. *Power output measurements for ATCRBS Transponders.* This is a new measurement which would be incorporated in existing periodic test requirements for ATCRBS Transponder equipment.

2. *Mode S Transponder tests.* Test procedures and standards are proposed which are similar to the existing test for ATCRBS equipment but which reflect the technical characteristics of Mode S equipment.

Also proposed are editorial changes to correct misspellings and change the reference from § 91.177 to § 91.172.

Economic Evaluation

The following is a summary of the draft regulatory evaluation associated with this proposal. The complete evaluation is in the public docket for inspection. The FAA invites comments on all aspects of this evaluation.

The proposals outlined in this NPRM involve some costs and benefits. There are three aspects of the NPRM which may have potential economic impacts:

1. The requirements for use of automatic pressure altitude reporting equipment in Group II TCA's after January 1, 1992.

2. The basic Mode S Transponder and maintenance requirements.

3. The change to maintenance testing of the ATCRBS Transponder.

Group II TCA Requirement

The proposal for automatic pressure altitude reporting equipment within Group II TCA's has an effective date of January 1, 1992. Due to the delayed compliance date and because of voluntary equipping trends, the FAA believes there will be virtually no

additional costs above those voluntarily assumed by the general aviation fleet. By 1992, FAA projects that over 90 percent of the general aviation fleet will be equipped with transponders, and almost 70 percent will have automatic pressure altitude reporting capability (Mode C). This equipping continues a trend which is clear in reviewing historical data. In 1977, 60 percent of the general aviation fleet had ATCRBS Transponders, and 39 percent of these had Mode C capability. By 1983, the percentage of the fleet with transponders grew to 81 percent and 51 percent had Mode C capability. The recent growth in these percentages has been continual, and FAA believes the equipping rates for aircraft with transponders and Mode C capability will continue to increase, even without a regulatory requirement. By 1992, FAA expects 92 percent of the general aviation fleet will have transponders, and 69 percent will have automatic pressure altitude reporting equipment.

Benefits will accrue in the form of improved ATC services to all NAS participants as aircraft equip with automatic pressure altitude reporting equipment.

By far, the major application effects of this propopsal are to general aviation. The air carrier/commuter fleet is a small fraction of the general aviation fleet. The FAA believes that given the above consideration, the voluntary equipping trend that includes air taxis, the delayed compliance date, and the fact that all major-size carriers and many commuters now carry Mode C equipment, there will be virtually no added costs to air carriers/commuters from this proposal. In addition, if some users of Group II TCA's lack a transponder and automatic pressure altitude reporting equipment, regulations will still permit the pilot to request a deviation from ATC.

There are benefits associated with automatic pressure altitude reporting equipment specifically, improved aircraft control within Group II TCA's. However, since FAA believes that the equipment trend will generate the benefits rather than regulation, the benefits are not assignable to regulation.

Mode S Transponder Requirements

The regulatory cost of the Mode S proposal can be developed by estimating Mode S installations and multiplying this forecast by an estimate of the net cost of compliance.

Forecast of Installations

Installations of Mode S Transponders are forecast to begin in 1987, with only 10 percent of new installations being Mode S that year, but increasing to 100 percent in 1992. Total transponder installations are estimated as the net annual increase in active aircraft in forecast years, plus 3 percent of the previous year's active aircraft. Using FAA forecasts for future years (FAA Aviation Forecast, February 1985), installations of Mode S Transponders would exceed 12,000 in 1990 and average approximately 10,000 a year for the decade from 1991 to the year 2000.

Net Cost of Installation

The added cost per unit for a Mode S Transponder, compared to projected transponder equipage in the absence of this proposed regulation, is expected to be approximately $600, installed. This cost estimate assumes installation of a Mode S surveillance transponder with data link connectors, but not the cost of data link processing or display capability. Data link capability could be integrated into the transponder or added later. The price for a Mode S Transponder will be about $1,000 more than for an ATCRBS Transponder for about 4 years to account for recovery of development costs.

Based on these assumptions, the regulatory cost of the Mode S proposal for the period 1987 thru 2000 is $33.2 million on a discounted cost basis.

Benefits of Mode S

Mode S is a major component of the NAS Plan. There are many benefits of Mode S, and all are associated with the benefits of the NAS implementation. The benefits of NAS implementation have been estimated at almost $20 billion in cost savings through the year 2000, due to system operations and maintenance costs, as compared to the "1981 equivalent" systems. There is no reasonable way to allocate a portion of the overall NAS benefits to the Mode S regulatory proposal but Mode S is considered necessary to successful implementation of the NAS Plan.

Transponder Maintenance Tests

There are proposed additions to Appendix F of Part 43 which provide for additional testing appropriate for Mode S Transponders. There is also an added power output test required for ATCRBS Transponders. This test should not involve notable additional costs. The Mode S inspection costs are expected to be moderately higher. Assuming the cost of the Mode S biennial test will be moderately higher than today's tests, any offsetting benefits are in the same general category of general NAS benefits and cannot be specifically allocated to Mode S.

For the reasons set forth in the preamble: (1) The FAA has determined that the proposal does not involve a major proposal under Executive Order 12991; (2) is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

Summary of Proposed FAA Actions

Consistent with FAA's plan to modernize the NAS, and the planned role of the Mode S surveillance system in the NAS, the FAA proposes to take the following actions:

1. Issue a TSO for Airborne Mode S Transponder Equipment.

Concurrently, TSO authorization to manufacture ATCRBS Transponders will continue in effect. The intent of continuing the ATCRBS TSO is to allow continued manufacture of ATCRBS Transponders for foreign sale and for installation in aircraft destined for foreign countries and to schedule DOD transition to correspond to the Mark XV implementation schedule.

Issuance of the TSO's is not accomplished through rulemaking and, therefore, the Mode S TSO is not a regulatory portion of this rulemaking package. However, consistent with FAA practice, the new TSO for Mode S has been published for comment.

2. Amend the Following FAR

FAR Part 43, Appendix F. ATC transponder test and inspection requirements would apply to both ATCRBS and Mode S Transponders. Test areas would include Radio Reply Frequencies, Suppression, Receiver Sensitivity, Radio Frequency, and Output Power. Those tests applicable only to Mode S Transponders include Mode S Diversity Transmission Channel Isolation, Mode S Address, Mode S Formats, Mode S All-Call Interrogations, ATCRBS-Only All-Call Interrogations, and Squitter. The reference to § 91.177 would be changed to § 91.172. The present requirement for recordkeeping will be retained.

FAR Part 91, § 91.24(a). All transponder installations, except equipment reinstalled in an aircraft from which it was removed for maintenance in U.S.-registered civil aircraft, would meet requirements of TSO's applicable

to ATCRBS or Mode S Transponder equipment in accordance with a phase-in schedule. The installation requirements specific to Part 91 would have basic application to:

a. All U.S.-registered civil aircraft.

b. All operations not conducted under Parts 121, 127, or 135.

c. All airspace.

Section 91.24(b). All aircraft operated in the airspace areas below would be required to have either a combination ATCRBS or a Mode S Transponder and automatic pressure altitude reporting equipment. The new requirement would apply essentially the same airspace areas as the current rule, namely:

1. In Group I TCA's;

2. In Group II TCA's; and

3. In all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

Apart from the fact that aircraft may be equipped with Mode S, the only new requirement is that automatic pressure altitude reporting (Mode C) equipment would be required in Group II TCA's.

The exceptions to the current rule would be retained, namely:

1. Operations of helicopters in TCA's at or below 1,000 feet AGL under a letter of agreement.

2. Operations of gliders above 12,500 feet MSL but below the floor of positive control area.

No Group III TCA's exist or are planned. FAA plans to delete the regulatory provisions for Group III TCA's by the time Mode S requirements are implemented.

An editorial change has been made to substitute the word "operating" for the word "operable" in § 91.24(b). Substitution of the word "operating" for the word "operable" is proposed to reflect the existing requirement that transponders must be turned on, as indicated by the language of the existing rule requiring that transponder equipment be "replying" to Mode 3/A interrogations.

Section 91.90(b)(2)(iii). To be consistent with the requirement of § 91.24(b), aircraft operating in Group II TCA's would be required to be equipped with automatic pressure altitude reporting equipment.

Consistent with the amended transponder installation requirements of Part 91, the following FAR sections would be amended:

1. FAR Part 121, § 121.345(c);

2. FAR Part 127, § 127.123(b); and

3. FAR Part 135, § 135.143(c).

List of Subjects

14 CFR Part 43:

Air transportation, Aircraft, Aviation safety, and Safety.

14 CFR Part 91:

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

14 CFR Part 121:

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, and Transportation.

14 CFR Part 127:

Aircraft, Airworthiness, Air Traffic control, Helicopters, and Airspace.

14 CFR Part 135:

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, and Airplanes

The Proposal

In consideration of the foregoing, it is proposed to amend Parts 43, 91, 121, 127, and 135 of the Federal Aviation Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising Appendix F to Part 43 to read as follows:

* * * * *

Appendix F—ATC Transponder Tests and Inspections

The ATC transponder test required by § 91.172 of this chapter may be conducted using a bench check or portable test equipment and must meet the requirements prescribed in paragraphs (a) through (j) of this appendix. If portable test equipment with appropriate coupling to the aircraft antenna system is used, operate the test equipment for ATCRBS Transponders at a nominal rate of 235 interrogations per second to avoid possible ATCRBS interference. Operate the test equipment at a nominal rate of 50 Mode S interrogations per second for Mode S. An additional 3 dB loss is allowed to compensate for antenna coupling errors during receiver sensitivity measurements conducted in accordance with paragraph (c)(1) when using portable test equipment.

(a) Radio Reply Frequency:

(1) For all classes of ATCRBS Transponders, interrogate the transponder and verify the reply frequency is 1090±3 Megahertz (MHz).

(2) For classes 1A and 2A Mode S Transponders, interrogate the transponder and verify that the reply frequency is 109±3 MHz.

(3) For classes 1A and 2A Mode S Transponders that incorporate the optional 109±1 MHz reply frequency, interrogate the transponder and verify that the reply frequency is correct.

(4) For classes IB, 2B, 3 and 4 Mode S Transponders, interrogate the transponder and verify that the reply frequency is 109±1 Mhz.

(b) Suppression: When Classes 1B and 2B ATCRBS Transponders, or Classes 1A and A Mode S Transponders are interrogated Mode 3/A at an interrogation rate between 230 and 1,000 interrogation per second; or when Classes 1A and 2A ATCRBS Transponders, or Classes 1B, 2B, 3 and 4 Mode S Transponders are interrogated at a rate between 230 and 1,200 Mode 3/A interrogations per second:

(1) Verify that the transponder does not respond to more than 1 percent of ATCRBS interrogations when the amplitude of P_2 pulse is equal to the P_1 pulse.

(2) Verify that the transponder replies to at least 90 percent of ATCRBS interrogations when the amplitude of the P_2 pulse is 9 dB less than the P_1 pulse. If the test is conducted with a radiated test signal, the interrogation rate shall be 235±5 interrogations per second unless a higer rate has been approved for the test equipment used at that location.

(c) Receiver Sensitivity:

(1) Verify that for any class of ATCRBS Transponder, the receiver minimum triggering level (MTL) of the system is −73±4 dBm, or that for any class of Mode S Transponder the receiver MTL for Mode S format (P6 type) interrogations is −73±4 dBm by use of a test set either:

(i) connected to the antenna end of the transmission line;

(ii) connected to the antenna terminal of the transponder with a correction for transmission line loss; or

(iii) utilizing a radiated signal.

(2) Verify that the difference in Mode 3/A and Mode C receiver sensitivity does not exceed 1 dB for either any class of ATCRBS Transponder or any class of Mode S Transponder.

(d) Radio Frequency (RF) Peak Output Power:

(1) Verify that the transponder RF output power is within specifications for the class of transponder. Use the same conditions as described in (c)(1)(i), (ii), and (iii) above.

(i) For Class 1A and 2A ATCRBS Transponders, verify that the minimum RF peak output power is at least 21.0 dBW (125 Watts).

(ii) For Class 1B and 2B ATCRBS Transponders, verify that the minimum RF peak output power is at least 18.5 dBW (70 Watts).

(iii) For Classes 1A and 2A Mode S Transponders, verify that the minimum RF peak output power is at least 18.5 dBW (70 Watts).

(iv) For Class 1B, 2B, 3, and 4 and those Class 1A and 2A Mode S Transponders that include the optional high RF peak output

power, verify that the minimum RF peak output power is at least 21.0 dBW (125 Watts).

(v) For any class of ATCRBS or any class of Mode S Transponders, verify that the maximum RF peak output power does not exceed 27.0 dBW (500 Watts).

Note.—The tests in (e) through (j) apply only to Mode S Transponders.

(e) Mode S Diversity Transmission Channel Isolation: For any class of Mode S Transponder that incorporates diversity operation, verify that the RF peak output power transmitted from the selected antenna exceeds the power transmitted from the nonselected antenna by at least 20 dB.

(f) Mode S Address: Interrogate the Mode S Transponder and verify that it replies only to its assigned address. Use the correct address and at least two incorrect addresses. The interrogations should be made at a nominal rate of 50 interrogations per second.

(g) Mode S Formats: Interrogate the Mode S Transponder with uplink formats (UF) for which it is equipped and verify that the replies are made in the correct format. Use the surveillance formats UF=4 and 5. Verify the altitude reported in the replies to UF=4 are the same as that reported in a valid ATCRBS Mode C reply. Verify the identify reported in the replies to UF=5 are the same as that reported in a valid ATCRBS Mode 3/A reply. If the transponder is so equipped, used the communication formats UF=20, 21, and 24.

(h) Mode S All-Call Interrogations: Interrogate the Mode S Transponder with the Mode S-Only All-Call format UF=11, and the ATCRBS/Mode S All-Call formats (1.6 microsecond P_4 pulse) and verify that the correct address and capability are reported in the replies (downlink format DF=11).

(i) ATCRBS-Only All-Call interrogation: Interrogate the Mode S Transponder with the ATCRBS-Only All-Call interrogation (0.8 microsecond P_4 pulse) and verify that no reply is generated.

(j) *Squitter:* Verify that the Mode S Transponder generates a correct squitter approximately once per second.

(k) *Records:* Comply with the provisions of § 43.9 of this chapter as to content, form, and disposition of the records.

PART 91—[AMENDED]

3. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

4. In section 91.24 paragraphs (a) and (b) are revised to read as follows:

§ 91.24 ATC Transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Parts 121, 127, or 135 of this chapter, ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within time periods indicated below must meet the performance and environmental requirements of the following TSO's:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate; or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–112 (Mode S).

(b) *Controlled Airspace: All aircraft.* Except for persons operating helicopters in TCA's at or below 1,000 feet AGL under the terms of a letter of agreement, and except for persons operating gliders above 12,500 feet MSL, but below the floor of the positive control area, no person may operate an aircraft in the controlled airspace prescribed in paragraphs (b)(1) through (b)(3) of this section, unless that aircraft is equipped with an operating coded radar beacon transponder having either a Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) In Group I TCA's governed by § 91.90(a);

(2) In Group II TCA's governed by § 91.90(b) except as provided therein; and

(3) In all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

* * * * *

5. In Section 91.90, paragraph (b)(2)(iii) is revised to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(b) *Group II terminal control areas.*

* * * * *

(2) *Equipment requirements.*

* * * * *

(iii) The applicable equipment specified in § 91.24, except that for operations conducted prior to January 1, 1992, automatic pressure altitude reporting equipment is not required for any operation within the TCA. A transponder is not required for IFR flights operating to or from an airport outside of but in close proximity to the TCA when the commonly used transition, approach, or departure procedures to such airport require flight within the TCA.

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PART 121—[AMENDED]

6. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

7. In § 121.345, paragraph (c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following technical standard orders:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate: or

(ii) Any Class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–C112 (Mode S).

PART 127—[AMENDED]

8. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. In § 127.123, paragraph (b) is revised to read as follows:

§ 127.123 Radio equipment.

* * * * *

(b) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following technical standard orders:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74 or any class of TSO C74c as appropriate; or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c4 if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992.* Any class of TSO–C112 (Mode S).

PART 135—[AMENDED]

10. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. In § 135.143, paragraph (c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate: or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through Jaunary 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–C112 (Mode S).

Issued in Washington, D.C., on September 9, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85–21878 Filed 9–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AAL–7]

Proposed Alteration and Designation of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice or proposed rulemaking.

SUMMARY: This notice proposes to amend the descriptions of several airways and also designate new airways in western Alaska. This action is proposed due to the installation of new navigational aids, and publishing instrument flight rule (IFR) approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

DATES: Comments must be received on or before October 29, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 85–AAL–7, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandlers, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AAL–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availabilty of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Comunications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of several airways and also designate new airways in western Alaska. This action is proposed due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic. Section 71.125 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated Janaury 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part

71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.125 is amended to read as follows:

V-319 [Amended]

By removing the words "to Bethel, AK." and substituting the words "Bethel, AK; to Hooper Bay, AK."

V-333 [New]

From Cape Newenham, AK, NDB via Kipnuk, AK; Hooper Bay, AK; Nome, AK; to Shishmaref, AK, NDB.

V-350 [New]

From Dillingham, AK, via Togiak, AK, NDB; to Bethel, AK.

V-401 [New]

From Ambler, AK, NDB via Kotzebue, AK, to Shismaref, AK, NDB.

V-452 [Amended]

By removing the words "From Nome, AK, via" and substituting the words "From Kakuliak, AK, via Nome, AK;"

V-453 [Amended]

By removing the period after "Bethel" and substituting the words "Anvik, AK; to Unalakleet, AK."

V-477 [New]

From Galena, AK, via Huslia, AK; Selawik, AK; to Ambler, AK, NDB.

V-480 [Amended]

By removing the words "From" and substituting "From St. Paul Island, AK, NDB via Kipnuk, AK;"

V-488 [Amended]

By removing the word "From" and substituting the words "From Hooper Bay, AK, via Unalakleet, AK;"

V-531 [New]

From Fairbanks, AK, via Tanana, AK; Huslia, AK; Selawik, AK; Kotzebue, AK; to Point Hope, AK, NDB.

Issued in Washington, D.C., on September 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22147 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-39]

Proposed Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V-15 between Neosho, MO, and Okmulgee, OK. This relignment would eliminate the dogleg which currently exists in that area. This action would improve flight planning and aid navigation by realigning this segment as a direct route. This shorter direct route would also save fuel.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-39, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430,800 Independence Avenue SW., Washington DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-15 segment located between Neosho, MO, and Okmulgee, OK. The realignment of this segment would eliminate the dogleg which now exists in that area. This action would improve flight planning and aid navigation by making this segment of V-15 a direct route which is a shorter distance, thereby saving fuel. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

V-15 [Amended]

By removing the words "Okmulgee, OK; INT Okmulgee 048° and Neosho, MO, 223° radials; to Neosho." and substituting the words "Okmulgee, OK, to Neosho, MO."

Issued in Washington, DC, on September 9, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22145 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-08]

Proposed Alteration of Transition Area; Abilene, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Abiline, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Abilene, Kansas, Municipal Airport utilizing the Salina, Kansas VORTAC as a navigational aid.

DATES: Comments must be received on or before October 21, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Abilene, Kansas. To enhance airport usage, an additional instrument approach procedure to the Abilene, Kansas, Municipal Airport is being established utilizing the Salina VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Abilene, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Abilene, Kansas

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Abilene Municipal Airport (Latitude 38°54'20" N; Longitude 97°14'06" W); within 2 miles each side of the 180° bearing from the MAIME waypoint (Latitude 39°02'36" N; Longitude 97°14'12" W) extending from the 5-mile radius area to 5.75 miles north of the airport; within 2 miles each side of the Salina VORTAC 086° bearing extending from the 5-mile radius area to 5.75 miles west of the airport.

Issued in Kansas City, Missouri, on September 4, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-22148 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 85-AWA-34]

Proposed Establishment of Jet Route J-599; Mullan Pass, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Jet Route J-599 from Mullan Pass, ID, USA, to Cranbrook, BC, Canada. Transport Canada has requested this route extension. The proposed route would support the Edmonton, Canada, Area Control Flow Management Program.

DATE: Comments must be received on or before November 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-34, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The offical docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8628.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application precedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to extend J-599 from Mullan Pass, ID to Cranbrook, BC, Canada. The establishment of this route will support the Edmonton, Canada, Area Control Center Flow Management Program and is proposed at the behest of Transport Canada. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

J-599 [New]

From Mullan Pass, ID, to Cranbrook, BC, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on September 9, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22146 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 832 3042]

Larry Brog; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent would be prohibited from excluding some distributors in computing "average" distributor

earnings without proper disclosures concerning the method of computation.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Larry M. Hodapp, FTC/H-238A, Washington, DC 20580, (202) 523-3860.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commision's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Powdered milk drinks, Trade practices.

Before Federal Trade Commission

[File No. 832-3042]

Agreement Containing Consent Order To Cease and Desist

In the matter of Larry Brog, individually and a former officer of Meadow Fresh Farms, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and his attorney, and counsel for the Federal Trade Commission that:

1. Meadow Fresh Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 391 South Orange Street, in Salt Lake City, State of Utah.

Proposed respondent Larry Brog is a former officer of said corporation. He, among others, formulated, directed and controlled the policies, acts and practices of said corporation and his address was the same as that of said corporation.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access of Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60 days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that the has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, a dairy-based drink called "Meadow Fresh" or any other food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, unless at the time of such representation respondent possesses and relied upon reliable and competent scientific evidence that substantiates any such representation, (a) any benefit to health to be derived from using any such product, (b) any nutritional or other health related attribute of such product, or (c) any expected shelf life of such product. "Reliable of competent" shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

II

It is further ordered that respondent Larry Brog, individually and as former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the

manufacturing, advertising, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

"Distributor" as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

III

It is further ordered that respondent shall, for at least three years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials relied upon to substantiate any representation covered by this order; and

2. All test reports, studies, surveys, or demonstrations in his possession or control, or of which he has knowledge, that contradict any representation covered by this order.

IV

It is further ordered that respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and of his affiliation with a new business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V

It is further ordered that respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Larry Brog, former Chief Executive Officer of Meadow Fresh Farms, Inc., South Orange Street, Salt Lake City, Utah, a multilevel marketer of powdered milk drinks.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Larry Brog has represented that "Meadow Fresh", a powdered, dairy-based drink, is associated with a reduction in the incidence of cardiovascular disease due to reduced levels of xanthine oxidase, that xanthine oxidase is a major contributor to cardiovascular problems, that Meadow Fresh has an expected storage life of up to ten years under reasonable storage conditions, and that he possessed and relied upon a reasonable basis for these representations. The complaint alleges that at no time has Larry Brog possessed and relied upon a reasonable basis for such representations.

In addition, the complaint alleges that Larry Brog has made false and misleading representations regarding the income being derived by distributors of Meadow Fresh. The complaint alleges that Larry Brog disseminated figures which purported to be average monthly income figures, but which were, in fact, computed by considering only the minority of distributors who actually earned some income during the applicable period. The complaint alleges that this manner of computation results in income figures which are substantially larger than those that would be found by including all distributors in the computation and providing the average of their income.

The proposed consent order prohibits Larry Brog from making any representation regarding any benefit to health to be derived from a food product, any nutritional or other health related attribute of such product, or any expected shelf life of such product, unless at the time of such representation he possesses and relies upon reliable and competent scientific evidence that substantiates such representation.

The proposed consent order also would prohibit Larry Brog from representing as an average any computation of earning or sales of distributors of any product or service which is based upon less than all distributors, unless he discloses the fact that some distributors are excluded and the basis for such exclusion at the same time.

Finally, the proposed order would require Larry Brog to retain any substantiation required by the proposed order for three years, to notify the Commission of any change in his business affiliation for a four year period, to provide all his distributors with a copy of the order, and to file a compliance report within 60 days after service of the order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-22171 Filed 9-16-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 85-5]

Emergency Relief

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA requests comments on proposed revisions to its regulation on Emergency Relief (ER). Emergency Relief is a program established by Congress to assist the States in the repair of serious damage to highways. The regulation specifies procedures for program and project administration and provides guidance on eligibility of work. The proposed revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program.

DATE: Comments must be receive by December 16, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85–5, Federal Highway Administration, Room 4205, HCC–10, 400 7th Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering, (202) 226–0450, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0762, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The clear purpose of the ER program is to assist State and local authorities in unusually heavy expenses associated with an emergency involving Federal-aid highways. The policies, procedures and requirements for administering the Emergency Relief program are set forth in 23 CFR Part 668. In carrying out the requirements of section 125 of Title 23, United States Code, to provide funds to pay for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations. This authority is delegated to the Federal Highway Administrator by 49 CFR 1.48. The regulation, 23 CFR 668, establishes the authority and responsibility of the Federal Highway Administrator to approve funds on the basis of an application by the State highway agency (SHA). It is necessary to have the parameters of emergency situations sufficiently defined to permit a clear determination of eligibility prior to approval. Furthermore, it is desirable to establish and maintain a national policy which assures a consistent application of criteria used to determine if an occurrence qualifies as a disastrous situation with regard to serious highway damage and which work may be included as necessary to repair such damage.

Upon submission of an application by the SHA, FHWA reviews the submitted information and approves or disapproves the application according to the information provided.

The FHWA allocates Emergency Relief funds to the States on the basis of estimates made by FHWA in conjunction with the SHA. Since eligible projects are on Federal-aid systems, appropriate classes of regular Federal-aid funds are available which permits greater flexibility in the development of repair projects. It is not the purpose of this program to provide funds for instances of isolated serious damage to road facilities which as a matter of normal road operations should be routinely budgeted and provided for by the States: nor is it the intent of this program to compensate for a lack of State assistance to local agencies within the State. States and local authorities (through the States) should not seek Emergency Relief funding for routine repairs or correction of normally expected road damage. This type of road damage should be provided for through regular road fund contingency planning. The Emergency Relief program should be considered as a "last resort" to be used when an emergency situation goes beyond that which could and should reasonably be accommodated by a State's emergency or contingency programs. Therefore, the inability of State or local authorities to pay is not in itself a warranting criterion in itself to justify the approval of ER funds.

There can be no nationwide definitive break point between routine and extraordinary repair expenses. However, as a general rule FHWA considers situations where the estimated cost of work necessary to correct potentially ER eligible sites is less than $500,000 for a single occurrence in a State to be of a nature which could be handled by a State under its routine procedures.

This is not an absolute threshold but it is a reasonable point where FHWA must more critically review proposals for lesser amounts and consider whether the situation meets the intent of the ER program.

Summary of Revisions

The proposed revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program. Generally, the proposed changes include (1) recent legislative provisions in the 1982 Surface Transportation Assistance Act [Pub. L. 97–424, 96 Stat. 2133–2134] (1982 STAA) (a) placing a $30,000,000 limitation on the amount of Emergency Relief funds which can be obligated on a particular disaster in a State, (b) establishing the Federal share at 100 percent, and (c) adding more definitive eligiblilty language, (2) simplifying program procedures, and (3) clarification of the wording of several sections to assure more consistent coordination and review of proposed projects. The following specific revisions are being proposed:

Definitions—The definition of "Catastrophic failure" would be clarified by emphasizing that a highway failure must result from an external cause as specified in 23 U.S.C. 125. The term "External cause" would be added as a definition. The term would be defined as: "An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions." The definition of "Natural disaster" would be clarified to include the conditions "sudden" and "unexpected." A definition for "Serious damage" would also be added.

Policy—This section would be amended to: (1) Add a paragraph to restate a longstanding policy that emergency funds are not intended to supplant other funds for correction of pre-existing, non-disaster related deficiencies; (2) add a paragraph providing for cost effectiveness that ER funds should be expended so as to reduce, to the greatest extent feasible, the cost of permanent restoration work; and (3) clarify the provision for prompt crediting when insurance or other compensatory proceeds are involved.

Federal Share Payable—This section provides that the Federal pro-rata share may amount to 100% of the eligible costs of Emergency Relief work. It is presumed that it will be a rare occurrence when a State would request a lesser Federal pro-rata share but it is permitted if the State so elects. It would most likely occur for projects covered by a disaster limited by the $30 million cap.

Eligibility—This section would be amended to: (1) Specifically list the activities which are not eligible for emergency funds and (2) clarify that the total cost of a project eligible for ER may not exceed the cost of repair or reconstruction of a comparable facility.

Application Procedures—This section would be amended to: (1) Simplify the application procedure by eliminating the need to specify the State's form of intent and (2) clarify the provision for the field report on the natural disaster or catastrophic failure by specifically outlining the content requirements.

Program and Project Procedures—This section would be amended to simplify the procedures for program implementation, including providing for alternative procedures, and to assure expeditious funding.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revisions proposed in this document are primarily technical in nature, provide language clarifications, and provide a more current delineation of legislative mandates. The revisions will impose no additional burdens on the States or local agencies and could reduce implementation burdens by providing a more current regulation and procedural simplifications. For these reasons, the anticipated economic impact, if any, will be minimal. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing and under the authority of 23 U.S.C. 101, 120(f), and 315; 42 U.S.C. 5155; 49 CFR 1.48(b); the FHWA proposes to revise Part 668, Subpart A of title 23, Code of Federal Regulations, to read as set forth below.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 668

Grant programs—transportation, Highways and roads, Emergency relief, Reporting and recordkeeping requirements.

Issued on: September 11, 1985.

R.D. Morgan,

Executive Director, Federal Highway Administration.

Part 668 is amended by revising Subpart A to read as follows:

PART 668—EMERGENCY RELIEF

Subpart A—Procedures for Federal-Aid Highways

Sec.

668.101 Purpose.
668.103 Definitions.
668.105 Policy.
668.107 Federal share payable.
668.109 Eligibility.
668.111 Application procedures.
668.113 Program and project procedures.

* * * * *

Subpart A—Procedures for Federal-Aid Highways

Authority: 23 U.S.C. 101, 120(f), and 315; 42 U.S.C. 5155; 49 CFR 1.48(b).

§ 668.101 Purpose.

To establish policy and provide program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads not on the Federal-aid system is contained in 23 CFR Part 668, Subpart B.

§ 668.103 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

(a) *Applicant.* The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highway system.

(b) *Catastrophic failure.* The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility becaues of imminent danger of collapse is not in itself a sudden failure.

(c) *Emergency repairs.* Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

(1) Minimizing the extent of the damage,

(2) Protecting remaining facilities, or

(3) Restoring essential travel.

(d) *External cause.* An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions.

(e) *Federal roads.* Public roads which are Forest highways, park roads, parkways, public lands highways, or Indian reservation roads.

(f) *Natural disaster.* A sudden, unexpected and unusual natural occurrence, such as a flood, hurricane, severe storm, tidal wave or earthquake, which causes serious damage.

(g) *Proclamation.* A declaration of emergency by the Governor of the affected State.

(h) *Serious Damage.* Heavy, major or unusual damage to a highway which severely impairs the usefulness of the highway or results in road closure. Serious damage would not result from routine road operations and would be beyond the scope of heavy maintenance. A proliferation of damage, minor in nature, does not constitute serious damage for the purpose of this section.

§ 668.105 Policy.

(a) The Emergency Relief program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) Emergency funds are not intended to supplant other funds for correction of preexisting, nondisaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The availability of emergency funds to repair or restore damaged highways resulting from a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads or where natural disaster or catastrophic damage is exacerbated by improperly controlled objects or events.

(f) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State must be promptly applied to the project or appropriately credited to Federal accounts upon receipt.

(g) The processing of Emergency Relief requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) Emergency Relief projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the Federal Highway Administration (FHWA).

(i) Permanent repair and reconstruction work shall be done by the contract method where feasible. Where the State determines that the public interest is best served, emergency repairs may be performed by force account or negotiated contract methods as necessary to protect public health and safety.

§ 668.107 Federal share payable.

(a) The Federal share payable generally will amount to 100 percent of the cost.

(b) Total obligations of Federal Emergency Relief funds in any State for all projects (including projects on both the Federal-aid systems and those on Federal roads and trails), resulting from a single natural disaster or a single catastrophic failure, shall not exceed $30 million per disaster or catastrophic failure except where Federal law specifically provides otherwise.

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for emergency funds and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) Emergency funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements within the right-of-way (ROW) limits, including necessary clearance of debris and other deposits in drainage courses;

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster; and

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.

(c) Emergency funds may not participate in:

(1) Heavy maintenance to repair damage not directly associated with serious damage to the road consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, minor slides, and slip-outs in cut or fill slopes which do not extend to the travelled way;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, unless such traffic was necessary for emergency repairs of seriously damaged sections of the road;

(3) Repair of damage not directly related to, and isolated away from, the pattern of the disaster;

(4) Maintenance of detours and temporary surfaces, upon completion of emergency repairs and prior to permanent reconstruction;

(5) Replacement of damaged or lost material not incorporated into the highway;

(6) Reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations such as flooding in basin areas or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other Federal-aid funds; and

(8) Other normal maintenance and operation functions on the highway system.

(d) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and are limited in Emergency Relief reimursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(e) The total cost of a project eligible for Emergency Relief may not exceed the cost of repair or reconstruction of a comparable facility. Emergency funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.

§ 668.111 Application procedures.

(a) *Notification.* As soon as possible after the disaster, the applicant shall notify the FHWA Division Administrator of its intent to apply for emergency funds.

(b) *Field report.* As soon as practical after the occurrence, the State will promtly make a preliminary field survey, working cooperatively with the FHWA Division Administrator and other governmental agencies with jurisdiction over eligible highways. The preliminary field survey should be coordinated with the Federal Emergency Management Agency work if applicable to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible highways for preparation of a field report.

(1) The purpose of the field report is to provide a factual basis for the Federal Highway Administrator's finding that serious damage to Federal-aid highways has been caused by a natural disaster over a wide area or a catastrophe. The report should include a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction for Federal-aid systems and other roads to the extent information is available. A description of the nature and characteristics of the disaster or catastrophe, and dates of occurrence (incident period) should be coordinated with the Federal Emergency Management Agency (FEMA) and included in the report. When the President has declared "a major disaster," detailed information on the extraordinary natural disturbance is not required, however, the seriousness of the road damage must be documented. Pictures showing the kinds and extent of damage and sketch maps detailing the damage areas should be included in the field report.

(2) Upon completion, the field report will be forwarded with the State's application to FHWA Headquarters. Unless very unusual circumstances prevail, receipt of the field report will be expected within 6 weeks following the applicant's notification.

(c) *Application.* Before funds can be made available, an application for Emergency Relief must be made to, and approved by, FHWA. The application shall be submitted to the FHWA Division Administrator, who will forward it through channels to FHWA Headquarters. The application shall include:

(1) A copy of the Governor's proclamation or request for a Presidential proclamation (neither is

required where Federal roads only are involved);

(2) A copy of the field report.

(d) *Approval of application.* The Federal Highway Administrator's finding of eligibility under 23 U.S.C. 125 shall constitute approval of the application.

(Information collection requirements approved by the Office of Management and Budget under Control No. 2125-0525.)

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program consistent with requirements of 23 CFR Part 630. The program should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification. The FHWA field office will assist the applicant and other affected agencies in preparation of the program. This work may involve joint site inspections to view damage and reach tentative agreement on type of permanent corrective work to be undertaken. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work. If the field report is determined by the FHWA Division Administrator to be of sufficient detail to meet these criteria, additional program support data need not be submitted.

(b) Project procedures:

(1) Projects shall be processed in accordance with regular Federal-aid procedures except as modified herein or with approved Certification Acceptance procedures where applicable.

(2) Simplified procedures, including abbreviated plans should be used where appropriate.

(3) The FHWA may approve a waiver of the advertising requirement if:

(i) Such procedures are authorized by State or local law; and,

(ii) Bids are solicited from a reasonable number of contractors or material supply companies.

(4) Program items for emergency repairs and PE will be reviewed promptly and funds obligated to cover the approved items.

[FR Doc. 85-22249 Filed 9-16-85; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 570]

Northern Neck Viticultural Area

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

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in the tidewater area of Virginia to be known as the Northern Neck. The proposed viticultural area is a five county peninsula or neck located to the east of Fredericksburg. This proposal is the result of a petition submitted by Mr. Carl F. Flemer, Jr., President of the Ingleside Plantation vineyards located in Oak Grove, Westmoreland County, Virginia. The petitioner proposed the name George Washington Brithplace for the viticultural area. However, the petition contains insufficient evidence to support that name. Rather, ATF believes the evidence more strongly supports another name, Northern Neck, and that is the name proposed in this notice.

The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable consumers to better identify the wines they may purchase.

DATE: Written comments must be received by November 1, 1985.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, Telephone (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR defines and American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

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

(a) Evidence that the name of the proposed viticultural area is locally or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural area from the surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S. maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing an American viticultural area to be known as George Washington Birthplace. The petitioner, Carl F. Flemer, Jr., is the owner of Ingleside Plantation Vineyards, a bonded winery located in Oak Grove, Westmoreland County, Virginia. This is the only bounded winery found within the boundary of the proposed viticultural area. The proposed 922 square mile viticultural area includes all the land in an area known locally and historically as the Northern Neck. The five counties in the area are Westmoreland, King George, Richmond, Northumberland and Lancaster. There are 16 established vineyards with a total of 92.5 acres planted in vitis Vinifera and French-

American hybrid grapes located within the boundary of the proposed viticultural area. According to the petitioner, there is considerable interest in establishing other vineyards in the proposed viticultural area. Another bonded winery is proposed for King George County. Also, newspaper articles indicate that there is local interest in grape growing in the proposed viticultural area.

ATF has reservations about the validity of the petitioned name George Washington Birthplace applying to the peninsula. Although the petitioner has provided some evidence for the name George Washington Birthplace, the evidence more strongly supports another name. The land area as proposed by the petitioner, encompassing the entire neck or peninsula separated by the Rappahannock and Potomac Rivers and the Chesapeake Bay, is supported by evidence indicating that a more appropriate name would be the Northern Neck.

Evidence That the Name George Washington Birthplace Is Locally or Nationally Known as Referring to the Area Specified in the Petition

The petitioner stated that the name George Washington Birthplace is the one name nationally associated with the Northern Neck. Although the petitioner acknowledges that the petitioned area is locally known as the Northern Neck, he claims that the name Northern Neck is not very well known throughout the rest of the State of Virginia and is almost unknown regionally or nationally. The petitioner said that in order to utilize fully the advantages in having a viticultural area established, the name, if appropriate and fitting, should be one that is recognizable to the general public not only in the State but also in the region and the nation.

George Washington was born in Westmoreland County at the Pope's Creek Plantation (later called Wakefield Plantation) home of his father Augustine, on February 22, 1732. George Washington's Birthplace National Monument, now encompassing a portion (538 acres) of the original Pope's Creek farm, as well as the birthplace site, has been since 1932 open to the public as a national landmark and maintained by the U.S. National Park Service under the supervision of the U.S. Department of the Interior. Today, a memorial house stands near the site of the original plantation home which accidentally burned down in the winter of 1779/1780. A U.S. Postal Station is located here, using the official postmark designation "Washington Birthplace, Virginia 22575." According to the petitioner, this land of the Northern Neck, as epitomized by this national monument, is widely and properly known and recognized as "The Birthplace of George Washington."

H. Ragland Eubank in his 1934 *Guidebook of the Northern Neck*, states that the Historic Northern Neck of Virginia is the Land of George Washington. Further, he states that Mary Ball, the mother of Washington, was closely identified and associated with each of the five Northern Neck Counties, having been born in Lancaster, having lived in Northumberland, Westmoreland and King George, and having owned property in Richmond County. The Mary Ball Washington Museum and Library located at Lancaster, Lancaster County, contains mementos relating to the Washington family.

The Westmoreland Association, Inc., formed in the 1920's, states that the Northern Neck is the Land of George Washington and Robert E. Lee and that "From its four corners came the blood that flowed in their veins."

The Northern Neck Historical Society was established in 1950 to collect and preserve data peculiar to the region and to publish a magazine called *Northern Neck Historical Magazine* to disseminate such information. Its organizational meeting is held each year at the County Seat of Westmoreland, the Birthplace of George Washington.

According to the petitioner, the *Northern Neck News*, published in Warsaw, Richmond County, is probably the most widely distributed and most widely read of all weekly newspapers of the Northern Neck. This publication claims to serve the "Heart of Historyland—In the land of Lee and Washington."

According to newspaper articles submitted by the petitioner, the Virginia Division of Tourism has appropriated funds and has been promoting tours of the Virigina wineries and nearby historical areas. One of these promotions features the Fredericksburg and Northern Neck areas, including the National Park Service facilities at the site of George Washington's Birthplace (Wakefield), the Ingleside Plantation Winery located within a few miles of the National Park Service site, Stratford Hall (the ancestral home of the Lee family) and other places of interest on the Northern Neck.

The petitioner summarized his arguments supporting the name George Washington Birthplace viticultural area by saying the following: George Washington's family, both father and mother, for three generations before his birth were either residents, land owners, or intimately connected in some way with each of the five Northern Neck counties of the proposed viticultural area. The petitioner felt that the name George Washington Birthplace was appropriate for this area of land, based on the previous information submitted by the petitioner.

Evidence That the Name Northern Neck is Locally or Nationally Known as Referring to the Area Specified in the Petition

There are many references to the name Northern Neck as indicated in the foregoing paragraphs. These references and the following evidence support ATF's position that the name Northern Neck is more appropriate than that of George Washington Birthplace proposed by the petitioner.

According to information gathered by the petitioner from various written references, no more history attaches to any small geographical area in the United States than to that of the peninsula between the Rappahannock and Potomac Rivers known as the Northern Neck of Virginia. According to U.S. Senator Robert O. Norris, Jr., who wrote the foreword in the *Northern Neck Historical Magazine* in December 1951, "It may truthfully be said that this section was the birthplace of the nation."

In the book titled *The Stronghold (A Story of the Historic Northern Neck of Virginia and Its People)* written by Miriam Haynie (1959), there is included a map which depicts the five county petitioned area of land. The map specifically identifies that land area as the Northern Neck of Virginia. The book states that on the western shore of the Chesapeake Bay there are three peninsulas or necks carved out of Virginia's shoreline by the tidal rivers. The third and northernmost of the peninsulas, the Northern Neck, lies between the Rappahannock and the Potomac Rivers. According to the author, the name Northern Neck appeared in print as early as 1677 on an official document reading "Ye Northern Neck."

In the book titled *Land Grants of Virginia 1607–1699* by W. Stitt Robinson, Jr., it is said that separate provisions for the Northern Neck land area went back as far as the days of King Charles II in 1649. At that time parts of tidewater Virginia were given as payment in the form of land grants to faithful followers of the King of England (Charles II).

The book entitled *George Washington's Country* written by Marietta M. Andrews, says that the

Northern Neck is remarkable for having been the birthplace of many of the principal characters who distinguished themselves in American History.

The Northern Neck Planning District Commission is located at Callao, Northumberland County. This commission encourages tourism to the various attractions on the Northern Neck.

Historical and Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

The Northern Neck is an elongated land area bounded on the north by the Potomac River and Potomac Creek, on the east by the Chesapeake Bay, on the south by the Rappahannock River and on the west by the King George County/Stafford County line. The land in the proposed viticultural area includes all of the counties of Westmoreland, King George, Richmond, Northumberland and Lancaster. The total area of the proposed Northern Neck viticultural area is 922 square miles or 590,080 acres.

Evidence Relating to the Geographical Characteristics Which Distinguish the Proposed Northern Neck Viticultural Area From the Surrounding Areas

General Geographical Evidence

The Northern Neck extends approximately 100 miles from the Chesapeake Bay westward to within a few miles of the city of Fredericksburg, Virginia. The distance on land from north to south between the Potomac and Rappahannock Rivers varies from 10 to 20 miles, making the area a long narrow neck or peninsula between the two tidal rivers. The climate begins to change throughout the proposed viticultural area, from the gentle influence of the Chesapeake Bay and the Potomac and Rappahannock Rivers to the more harsh influences of Piedmont Virginia.

The Northern Neck is entirely within the Northern Coastal Plain with topography running into two general agricultural types called neckland and upland. Neckland, located along the river flats, is nearly level with a gently sloping plateau along the center of the Northern Neck with elevations beginning at 50 feet above sea level and reaching 190 feet above sea level in the western areas of Westmoreland and King George Counties.

All of the parent material that has given rise to the soils of the Northern Neck is transported material that has been moved by marine and stream action. The soils have a wide range in age. Those of the upland ridges are older and well developed while soils of the necklands are considered younger soils.

According to the petitioner, a ridge with elevations up to 190 feet extends generally through the center of King George County and eastward through Westmoreland County with sandy clay and well drained soil types. Other excellent agricultural soils are found along each of the rivers in what is generally called the river flats with excellent air drainage and a moderating climate influenced by the huge bodies of surrounding water.

Historical evidence of growing conditions conducive to grape growing found within the proposed viticultural area is documented in references presented by the petitioner.

In addition, since 1960 wine grape production has increased steadily throughout the proposed viticultural area with approximately 16 vineyards now in production. Today, general agriculture predominates the farming communities in the proposed viticultural area with small grains, corn and soybeans being the leading cash crops. French-American hybrids and vitis Vinifera grapes are being used for wine production in the proposed viticultural area.

According to the petitioner, in recent years national awards have been won by the Ingleside Plantation Vineyards for their wines. In 1983, Ingleside won medals at the Eastern Wineries Association and the Governor's Cup of Virginia. Awards were also earned in 1984 at the 3rd Annual Virginia Wine Competition in Washington, DC, and at the San Francisco Fair and Exposition. 1984 Virginia State Department of Agriculture records indicate that Ingleside Plantation Vineyards is Virginia's largest Farm Winery with a finished production of over 23,000 wine gallons in 1983.

"With proper management grape growing has economic potential for the Northern Neck," said Westmoreland County Agricultural Extension Agent Sam Johnson in a recent newspaper article. According to the petitioner, this is good news for local farmers and business people who seek grape growing as an additional income in the proposed viticultural area.

Elevation

The petitioner claims that there is a significant difference in topography and elevation, ranging from flat, near sea level land found in the proposed Northern Neck viticultural area, to that of mountainous elevations of Louisa County located to the west. Part of these mountainous lands are within the Piedmont Plateau.

Climate and Rainfall

According to the following climate and rainfall statistics, based on climatic summaries of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, three different locations are compared during some specific years:

The periods 1941–1970 at Louisa, Virginia, 1946–1970 at Orange, Virginia (Piedmont Research Station) and 1941–1971 at Warsaw, Virginia (located within the boundaries of the proposed viticultural area) are compared as follows:

At the Virginia Research Station at Warsaw (located in the proposed viticultural area) in central Richmond County, some distinct evidence is found. This research station lies in the Coastal Plain. The topography within the area is low and relatively flat. Elevations range from near sea level to about 170 feet above sea level. The mountains to the west, the Chesapeake Bay to the east with its tidal tributaries, and the Atlantic Ocean, also to the east, are major factors controlling the climate of the proposed viticultural area, in addition to the latitude and location of the proposed viticultural area on the North American Continent. The mountains to the west produce various steering, blocking, and modifying effects on storms and air masses. The large open bodies of water nearby and to the east, which are slow in reacting to atmospheric changes, contribute to the humid summers and mild winters.

The growing season, defined as the period between the average date of the last freezing temperature in spring (April 15) and the average date of the first freezing temperature in fall (October 26), is 194 days at the Warsaw Research Station. Precipitation at Warsaw averages about 15 inches a year.

The Virginia Research Station at Louisa located to the west of the proposed viticultural area is in the central part of Louisa County in the Central Piedmont Plateau. The topography within the area is generally rolling with elevations ranging from 200 to 500 feet above sea level. The growing season is April 24 through October 14, averaging 173 days. Precipitation there averages 20 inches annually.

The Virginia (Piedmont) Research Station at Orange, to the west of the proposed viticultural area, is located in the central part of the Piedmont Plateau. The topography at this location is generally rolling but becomes steep at the mountains.

Elevations range from 200 to 500 feet above sea level. The growing season

averages 189 days, from April 17 to October 23. Precipitation averages 22 inches a year.

The following information was obtained from U.S. Department of Agriculture's Soil Survey of Westmoreland County, 1981:

The climate of the proposed Northern Neck viticultural area is greatly influenced by the waters of the Chesapeake Bay and the Potomac and Rappahannock Rivers. The moderating effect of the surrounding waters places most of the proposed viticultural area in zone 8 of the U.S. Department of Agriculture hardiness zone map.

From temperatures recorded at Colonial Beach (located in the western part of the proposed viticultural area) during the periods 1963 to 1978, it is noted that the approximate average last frost date during the Spring occurs about April 22nd. The earliest average Fall frost date is approximately October 26th. This gives an average of over 210 days of frost free growing season. For the counties to the east, this growing season is extended by a few days due to the moderating effect of the Chesapeake Bay.

The petitioner states that climatic features are the most prominent and compelling characteristics which distinguish the five county Northern Neck as a separate viticultural area.

The climate of the proposed area is vastly influenced by the Chesapeake Bay, the Potomac and Rappahannock Rivers which, indeed, almost surround it. The moderating effect of these huge bodies of surrounding water is the chief reason native stands of longleaf pine (pinus taeda), southern bayberry (myrica cerifera) and other plants are found growing from King George County eastward to the Chesapeake Bay and these varieties of native stands are not found in any substantial degree to the west of King George County in Stafford County. By contrast, there are in Stafford County, native stands of hemlock (tsuga canadensis), which are not found anywhere in the Northern Neck counties.

To summarize the evidence submitted by the petitioner, the climate of the Northern Neck is milder, its native plants more southern, its snowfall less severe, its frost free days longer, its temperatures more even and moderate than the Piedmont Plateau Region located to the west, beginning at Stafford County and the city of Fredericksburg. In addition, the classification of the major agricultural soils of the Northern Neck by the U.S. Department of Agriculture as being prime farmland, combined with a mild climate, a short but freezing winter season, a 15-inch average yearly rainfall, and a generally dry, sunny grape ripening and harvest time, make for ideal growing conditions for wine grape production, especially the vitis Vinifera varieties grafted on American rootstocks.

A Description of the Specific Boundaries of the Viticultural Area, Based on Features which can be Found on United States Geological Survey (U.S.G.S.) Maps of the Largest Applicable Scale

The appropriate maps for determining the boundaries of the proposed Northern Neck viticultural area are two Eastern United States U.S.G.S. maps titled Richmond, VA; MD. (1973), 1:250,000 minute series and Washington, DC; Maryland; Virginia (1957-Revised 1979), 1:250,000 minute series.

The proposed Northern Neck viticultural area is in tidewater Virginia and includes all the counties of King George, Westmoreland, Richmond, Lancaster and Northumberland. It encompasses a total of 922 square miles of land. The area is bounded on the north by the Potomac River, on the east by the Chesapeake Bay, on the south by the Rappahannock River and on the west by the King George County/Stafford County boundary line.

Copies of the appropriate U.S.G.S. maps with the boundary prominently marked on them were submitted by the petitioner. A comprehensive description of the boundary marked on the appropriate maps, is found in the regulations section of this document in 27 CFR Part 9, Subpart C.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

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

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) A significant adverse affect 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation-Issues on Which Comments Are Requested

ATF requests comments from all interested persons concerning the proposed viticultural area. ATF especially requests comments concerning evidence of name and boundary. The petitioner requested the name George Washington Birthplace for the proposed viticultural area. Mr. Flemer said that petitioners should be allowed to use the most prominent names applicable to viticultural area identification. He said that names such as Shenandoah, Monticello and George Washington Birthplace are excellent choices for names of American viticultural areas. The petitioner claimed the reason why the name Northern Neck or Northern Neck of Virginia was not used as the name of this proposed viticultural area was because that over the years, that designation has not gained popular acceptance across Virginia or the United States.

ATF believes, based upon a review of the petition, that the evidence supports the name Northern Neck rather than George Washington Birthplace. Although it is a fact that one of the prominent historic sites on the Northern Neck is George Washington's birthplace at Wakefield (538 acres), the petitioned area of land (590,080 acres) is historically recognized by maps, books, local landmarks, etc. as the Northern Neck. ATF believes that the name George Washington Birthplace only describes the land now designated as the National Park Service Landmark

memorial site at the Wakefield Farm on Pope's Creek in Westmoreland County. In addition, the Northern Neck was also the birthplace of two other U.S. Presidents as well as other prominent famous Americans. ATF seeks comments on any other name or boundary description that may be appropriate in identifying the proposed viticultural area.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed regulation should submit a written request to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, Sec. 5, 49 Stat. 981, as amended 27 U.S.C. 205, unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.109 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.109 Northern Neck.

Par. 3. Subpart C, is amended by adding § 9.109 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.109 Northern Neck.

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

(b) *Approved maps.* The approved maps for determining the boundary of the Northern Neck viticultural area are 2 U.S.G.S. 1:250,000 scale maps. They are entitled:

(1) Washington, D.C.; Maryland; Virginia 1957 (Revised 1979) and

(2) Richmond, VA; MD. 1973

(c) *Boundary.* The proposed Northern Neck viticultural area takes in a land area locally and nationally known as the Northern Neck of Virginia. It consists of all of the land in the Counties of Westmoreland, King George, Northumberland, Lancaster and Richmond. The boundary is as follows:

Beginning on the Washington, D.C.; Maryland; Virginia U.S.G.S. map at a point on Potomac Creek where the King George County western boundary line at its northernmost point intersects Potomac Creek, thence easterly along the Potomac Creek shoreline approximately 3 miles to the Potomac River, thence easterly and southeasterly on the Richmond, VA; MD. U.S.G.S. map, along the Virginia shoreline of the Potomac River for approximately 66 air miles to Smith Point on the Chesapeake Bay, thence southerly along the shoreline of the Chesapeake Bay for approximately 20 air miles to Windmill Point at the mouth of the Rappahannock River, thence northwesterly approximately 72 air miles to Muddy Creek at the point where the western boundary line of King George County at its southernmost point begins, thence northward along the King George County-Stafford County line approximately 7 air miles to the point of the beginning.

Signed: September 3, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-22155 Filed 9-16-85; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 569]

Ozark Mountain Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Arkansas, Missouri, and Oklahoma to be known as "Ozark Mountain." This proposal is the result of a petition submitted by Mr. Al Wiederkehr, a grape grower and winery proprietor in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

DATE: Written comments must be received by November 1, 1985.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 569).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Al Wiederkehr of Altus, Arkansas, proposing an area in southern Missouri, northern Arkansas, and northeastern Oklahoma as a viticultural area to be known as "Ozark Mountain." The area contains about 55,000 square miles. There are about 4,280 acres of grapes currently planted in the proposed area. The petitioner states that approximately 35 wineries are operating within the area.

Name

The petitioner claims that the proposed viticultural area is known by the name of "Ozark Mountain." To support this, he submitted the following evidence:

(a) Wine labels from Wiederkehr Wine Cellars and others have borne the appellation "Ozark Mountain" since as far back as 1959.

(b) This area has been referred to as the "Ozark Mountain" region in many geographical books, including *Natural Regions of the United States and Canada* by C.B. Hunt (W.H. Freeman & Co., San Francisco, 1974) and *The Ozarks* by Richard Rhodes (Time-Life Books, New York, 1974).

(c) The Ozark Mountain area is well-known as a winemaking region, as is shown by this quote: "Like all of the other American wine regions, the Ozarks [Mountains] are quietly seething with new ideas, new personalities, new grape varieties and a new sense of direction." (*Restauranteurs' Guide to American Wines, Part IV: The Wines and Wineries of the Ozarks.* "Dining," April–May 1973, p. 58.)

Geography

The proposed viticultural area is distinguished geographically from the surrounding areas. In his book, *The Ozarks,* Richard Rhodes states (pp. 19, 22), as quoted by the petitioner:

> Stretching from the forests of southern Missouri outside St. Louis through northern Arkansas to the Oklahoma plains near Tulsa, the 55,000 square miles of the Ozarks are bounded by five major rivers: The Mississippi, the Missouri, the Osage, the Neosho, and the Arkansas. The Ozark highlands, the only extensive elevated area in the United States between the Appalachians and the Rocky Mountains, consist of low mountains and hills shaped by springfed streams and rivers . . . cutting their way through the elevated bed rock . . .
>
> . . . These boundaries do not merely locate the Ozarks on the map, but also serve to isolate some of the region's plant and animal life . . .
>
> The Ozarks mark the farthest western extension of the great deciduous forest that once covered the eastern United States. Their western border is the beginning of the prairie that runs from Western Missouri to the Rockies and from Texas to Canada. Their northern border, the Missouri River, is about as far south as the glacier of the ice age came . . . And the hot, lush alluvial lands of the Mississippi begin at the Ozarks' abrupt southeastern edge, in the Missouri bootheel.
>
> With four different climatic regions pressing against them, the Ozarks serve as a sanctuary for a selection of plants and animals from all sides . . .

Geologically, the Ozarks are regarded as an upland plateau, in which mountains and valleys have been carved out by numerous streams and rivers. The land is hilly to mountainous, and the soils are characteristically stony and well-drained. The distinctive soil of the Ozark region is "Clay from deeply weathered, well consolidated sedimentary and deeply weathered volcanic rocks." (Hunt, op. cit., pp. 122–123.) Most of the land remains forested, as it was before the arrival of civilization, in contrast to the neighboring plains country.

The primary effect which the mountainous terrain has on the climate of the Ozarks is to divide the region into innumerable small microclimatic temperature zones. This is demonstrated by the following quote from Milton D. Rafferty in *The Ozarks, Land and Life* (University of Oklahoma Press, Norman, 1980), p. 29:

> Within the Ozarks, temperatures will vary widely with the orientation of slope, nature of surface materials, relief, and presence of water. South and west-facing slopes receive the greatest amount of sunlight and are subject to higher rates of evaporation . . . In winter, perhaps the most noticeable effect of temperature differences within a small area is the duration of snow and icicles on the north-facing slopes . . .
>
> Air drainage creates the most readily observed temperature differences in summer. Nights are notable for the cool breeze that drains down the slopes, beginning an hour or two before sunset . . .
>
> . . . As a rule, frosts occur in the valleys several weeks earlier in fall and later in spring than they do on the uplands, especially in the case of the larger valleys lying in the hill regions. The margins of the uplands have the best air drainage and are least subject to frosts.

Ozark viticulturists rely on their knowledge of local microclimatic conditions to select the best sites for their vineyards. Such sites possess generally similar conditions of soil and climate, thus giving Ozark viticulture a distinctive character. Favorable conditions for viticulture can be found at locations throughout the Ozarks, from Herman in the north to Altus in the south. The reason for this is summarized succinctly by Milton D. Rafferty in the book mentioned above (p. 160): "The growing of grapes is well suited to the climate and soils of the Ozarks."

Boundaries

The boundaries of the proposed viticultural area have been drawn by the petitioner to follow the five major rivers mentioned above in the quote from Richard Rhodes. These boundaries may be found on 11 U.S.G.S. maps in the scale of 1:250,000, titled St. Louis, Jefferson City, Springfield, Joplin, Tulsa, Fort Smith, Russellville, Memphis, Poplar Bluff, Paducah, and Rolla. The boundaries would be as described in the proposed § 9.108. The following approved viticultural areas are entirely enclosed within the proposed Ozark Mountain boundaries: Altus (§ 9.77) and Hermann (§ 9.71).

In establishing a large viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a small area and its surroundings are more refined than the differences between a large area and its surroundings. It is possible for a large viticultural area to contain approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Ozark Mountain viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for possible future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

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

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read a follows:

Authority: August 29, 1935, Chapter 814 sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.108, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.108 Ozark Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.108, which reads as follows:

§ 9.108 Ozark Mountain.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of Ozark Mountain viticultural area are 11 U.S.G.S. maps in the scale of 1:250,000. They are titled—

(1) St. Louis, Missouri (1963, revised 1969);

(2) Jefferson City, Missouri (1955, revised 1970);

(3) Springfield, Missouri (1954, revised 1969);

(4) Joplin, Missouri; Kansas (1954, revised 1974);

(5) Tulsa, Oklahoma; Arkansas; Missouri; Kansas (1958, revised 1973);

(6) Fort Smith, Arkansas-Oklahoma (1978);

(7) Russellville, Arkansas (compiled in 1954);

(8) Memphis, Tennessee; Arkansas; Missouri (1953, revised 1978);

(9) Poplar Bluff, Missouri; Arkansas (1957, revised 1978);

(10) Paducah, Kentucky; Illinois; Missouri; Indiana (1949, revised 1969); and

(11) Rolla, Missouri; Illinois (1954, revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Mountain viticultural area is located in Missouri, Oklahoma, and Arkansas. The starting point of the following boundary description is the point at which the Missouri River joins the Mississippi River north of St. Louis, Missouri (on the St. Louis map).

(2) *Boundary Description*—(i) The boundary proceeds from the starting point westward along the Missouri River until it meets the Osage River;

(ii) Then further westward along the Osage River (flowing through Lake of the Ozarks and the Harry S. Truman Reservoir) until it passes adjacent to Missouri Highway 82 in Osceola, Missouri (on the Jefferson City map);

(iii) Then southwestward along Missouri Highway 82 until it intersects U.S. Highway 54 in Eldorado Springs, Missouri (on the Joplin map);

(iv) Then westward along U.S. Highwary 54 until it intersects U.S. Highway 71 near Nevada, Missouri;

(v) Then southward along U.S. Highway 71 until it intersects Interstate Highway 44 approximately 5 miles south of Carthage, Missouri;

(vi) Then westward and southwestward along Interestate Highway 44 into the State of Oklahoma, and continuing southwestward until Interstate Highway 44 crosses the Neosho River near Miami, Oklahoma (on the Tulsa map);

(vii) Then southward along the Neosho River (flowing through the Lake of the Cherokees, Lake Hudson, and Fort Gibson Lake) until it flows into the Arkansas River approximately 2 miles west of Fort Gibson, Oklahoma (on the Fort Smith map);

(viii) Then southward and eastward along the Arkansas River (flowing through the Robert S. Kerr Lake) into the State of Arkansas, and continuing eastward until the Arkansas River is joined by Caldron Creek approximately 6 miles west of Conway, Arkansas (on the Russellville map);

(ix) Then northeastward and eastward along Caldron Creek for about 2½ miles until passes under U.S. Highway 64 approximately 3½ miles west of Conway, Arkansas;

(x) Then eastward along U.S. Highway 64 until it intersects U.S. Highway 67 near Beebe, Arkansas (on the Memphis map);

(xi) Then northeastward along U.S. Highway 67 into the State of Missouri, then northward until U.S. Highway 67 intersects U.S. Highway 60 in Poplar Bluff, Missouri (on the Poplar Bluff map);

(xii) Then eastward along U.S. Highway 60 until it crosses the western boundary of Stoddard County (here that boundary is the St. Francis River);

(xiii) Then northward, northeastward, and eastward along the boundary of

Stoddard County until it joins the southern boundary of Cape Girardeau County (on the Cape Girardeau map);

(xiv) Then northeastward along the Cape Girardau County boundary until it meets the Mississippi River south of Cape Girardeau, Missouri;

(xv) Then northward along the Mississippi River to the starting point.

Signed: September 2, 1985.

W.T. Drake,

Acting Director.

[FR Doc 85-22154 Filed 9-16-85; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Proposal To Supersede a Provision of State Law

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: This document announces and seeks public comment on a proposed action by OSM to preempt and supersede Kentucky Revised Statute (KRS) 350.060(22). This provision proposed for preemption and supersession involves the exemption of "operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site" from the requirements of the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program).

The proposed action would not require that mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site be regulated.

This action is being taken because the Director has determined that these provisions are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Director's determination is based on reasons cited in the "Director's Findings" section in a separate notice announcing disapproval of the statutory provision in today's **Federal Register.**

DATE: Written comments or other information not received on or before October 17, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the proposed modification to the program, and all written comments received in response to this notice will be available for review and copying at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington DC 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

II. Background

Detailed background on the actions proposed in this document can be found in a notice of final rulemaking pertaining to the Kentucky program which also appears in today's **Federal Register.**

III. Director's Findings and Proposed Action

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede KRS 350.060(22) which reads as follows:

> (22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

The Director proposes to take this action because he has determined that this provision is inconsistent with section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5 based on the reasons cited under "Director's Findings" in a separate notice of final rulemaking pertaining to the Kentucky program, also being published in today's **Federal Register.**

This proposed action will not require that the State of Kentucky regulate mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site. However, this proposed action would remove any legal bar to Kentucky being able to regulate processing facilities, and OSM expects Kentucky to submit a schedule for the prompt permitting of them.

The Director is now soliciting comments on this proposal to preempt and supersede KRS 350.060(22). If no evidence is received demonstrating why this provision should not be preempted and superseded, a final notice will be published to effect the supersession of the provision by Federal law. This action, if taken, will require the State to operate and enforce the approved program as if the preempted and superseded provisions did not exist.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85-21915 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Waiver of Right to Receive Benefits Under the G.I. Bill

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Compensation and Program Improvements Amendments of 1984 which affect VEAP (the Post-Vietnam Era Veterans' Educational Assistance Program). The most far-reaching provision permits some veterans who are eligible for benefits under the G.I. Bill to waive their eligibility and elect to receive benefits under VEAP instead. This proposal will acquaint the public with the way in which the VA intends to implement the new provision of law.

DATES: Comments must be received on or before October 17, 1985.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW; Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 1, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: Various regulations in the 38 CFR 21.5000 series are amended to provide that some veterans may waive their eligibility under the G.I. Bill and elect to receive benefits under VEAP. The regulations provide that a veteran who is aware of his or her eligibility under the G.I. Bill, and who negotiates a VEAP benefit check has made an irrevocable election to receive benefits under VEAP. Other regulations are amended to show that a veteran, who is eligible under more than one of the various educational programs available to veterans and their dependents, may not receive concurrent benefits under more than one provision of law for pursuit of the same program of education.

Upon final publication the VA (Veterans Administration) and Department of Defense propose to make these regulations retroactively effective on March 2, 1984. Retroactive effect is justified for the following reasons:

These regulations are liberalizing since they relieve several restrictions. These changes are interpretive rules which construe the meaning of some of the provisions of Pub. L. 98-223.

Moreover, the VA and the Department of Defense find that good cause exists for proposing that these regulations, like the sections of the statute they implement, shall be made retroactively effective on March 2, 1984. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date for these regulations would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA and the Department of Defense have determined that these proposed regulations are not major rules as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veteran's Affairs and the Secretary of Defense have certified that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these changes affect only individual benefit recipients. Furthermore, any impact will be the result of the underlying law. It will not result from the regulations themselves.

The Catalog of Federal Domestic Assistance number for the program affected by this regulaion is 64.120.

List of Subjects in 38 CFR Part 21

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

Approved: July 8, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Lieutenant General E.A. Chavarrie,

Deputy Assistant Secretary of Defense.

38 CFR Part 21, *Vocational Rehabilitaiton and Education*, is amended as follows:

PART 21—[AMENDED]

1. Section 21.5022 is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* An individual eligible to receive educational assistance under 38 U.S.C. ch. 32 and the provisions of the § 21.5000 series of VA regulations is not eligible to receive educational assistance allowance under 38 U.S.C. ch. 34. An individual may not receive educational assistance under 38 U.S.C. ch. 32 concurrently with benefits under any of the following provisions of law for the same program:

(1) 38 U.S.C. ch. 31,

(2) 38 U.S.C. ch. 35,

(3) 10 U.S.C. ch. 107,

(4) Section 903 of the Department of Defense Authorization Act, 1981, or

(5) The Hostage Relief Act of 1980.

(38 U.S.C. 1781(b); Pub. L. 98-223)

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. ch. 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

(i) 38 U.S.C. ch. 35,

(ii) 10 U.S.C. ch. 107,

(iii) Section 903 of the Department of Defense Authorization Act, 1981, or

(iv) The Hostage Relief Act of 1980.

(2) No one may receive assistance under 38 U.S.C. ch. 31 in combination with assistance under 38 U.S.C. ch. 32 in excess of 48 months (or the part-time equivalent) unless the VA determines that additional months of benefits under 38 U.S.C. ch. 31 are necessary to accomplish the purposes of a rehabilitation program.

(38 U.S.C. 1631, 1795; Pub. L. 94-502, Pub. L. 96-466, Pub. L. 98-223)

2. Section 21.5040 is amended by revising paragraph (b)(1)(ii) and adding paragraph (g) to read as follows:

§ 21.5040 Basic eligibility.

* * * * *

(b) * * *

(1) * * *

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. ch. 34;

* * * * *

(g) *Election to receive educational assistance allowance under 38 U.S.C. ch. 32.* Some individuals who have eligibility under 38 U.S.C. ch. 34 may elect instead to receive educational assistance allowance under 39 U.S.C. ch. 32.

(1) In order to qualify to make this election the veteran must—

(i) Have served a period of active duty for training for at least 181 consecutive days under provisions of 10 U.S.C. 511(d) in an enlistment in the Army National Guard or the Air National Guard or as a reservist in the Army, Navy, Air Force, Marine Corps or Coast Guard Reserve. At least one of the 181 consecutive days of active duty for training must have occurred before January 1, 1977.

(ii) After December 31, 1976 have served on active duty for a period of one year or more so that the service described in paragraph (g)(1)(i) of this section is the sole reason for the veteran's potential eligibility for educational assistance allowance under 38 U.S.C. ch. 34.

(iii) Never have received educational assistance allowance under 38 U.S.C. ch. 34 for pursuit of a program of education.

(iv) Otherwise have basic eligibility under 38 U.S.C. ch. 32 by meeting the requirements listed in this section.

(2) If a veteran makes an election and negotiates an educational assistance check under 38 U.S.C. 32, the election is irrevocable.

(3) If, as a result of the retroactive effect of this regulation or due to other circumstances, a veteran negotiates an educational assistance check under 38 U.S.C. ch. 32 without knowledge of his or her eligibility under 38 U.S.C. ch. 34, the negotiation of the check shall not constitute an irrevocable election to receive educational assistance allowance under 38 U.S.C. ch. 32.

(38 U.S.C. 1602(1); Pub. L. 98-223)

3. In Section 21.5058, paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C. ch. 34 may not reenroll if he or she has negotiated a check under that chapter for pursuit of a program of education. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(38 U.S.C. 1602(1), 1621; Pub. L. 98-223)

* * * * *

4. In Section 21.5060, paragraph (a) is revised to read as follows:

§ 21.5060 Disenrollment.

(a) *Voluntary disenrollment.* (1) An individual may disenroll at anytime after the initial 12 months of participation.

(2) An individual may elect to disenroll at anytime within the initial 12 months of participation only—

(i) For reasons of personal hardship; or

(ii) Because he or she has decided to receive educational assistance allowance under 38 U.S.C. ch. 34 rather than electing to receive educational assistance allowance under ch. 32. See § 21.504(g).

(38 U.S.C. 1602, 1621; Pub. L. 94-502, Pub. L. 98-223)

* * * * *

[FR Doc. 85-22185 Filed 9-16-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2899-5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearing; cancellation.

SUMMARY: This is a notice that EPA is cancelling the public hearing on proposed rules (50 FR 35402, August 30, 1985) concerning nonconformance penalties for heavy-duty engines and heavy-duty vehicles, including light-duty trucks, and that EPA will instead hold a public workshop as requested by a commenter. The workshop will cover the development of nonconformance penalty rates and will be held on September 19, 1985, beginning at 9:00 a.m. in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105. Because of the workshop, EPA is extending the comment period on the proposed rules from September 30, 1985 to October 19, 1985.

The hearing was scheduled to take place, if requested, on September 19, 1985, beginning at 9:00 a.m. in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105. The hearing is being cancelled because it was not requested by September 9, 1985, as required by the proposal (50 FR 35402).

DATES: All comments on the nonconformance penalty proposal (50 FR 35402, August 30, 1985) should be received on or before October 19, 1985.

ADDRESSES: Send written comments on the proposed rule to: Public Docket EN-85-02, Central Docket Section (A-130), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. If possible, a copy of the written comments should be submitted to the EPA contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery, Manufacturers Operations Division (EN-340F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382-2487.

Dated: September 12, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-22220 Filed 9-16-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 122

[OW-FRL-2889-1]

National Pollutant Discharge Elimination System Permit Regulations; Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period for EPA's Notice of Additional Information and Request for Comments, published in the **Federal Register** on August 12, 1985, is being extended.

Since publication of the August 12 notice, the agency has received several requests to lengthen the comment period

to allow sufficient time to consider and respond to the issues raised.

DATES: All comments on the Notice of Additional Information and Request for Comments must be received on or before November 12, 1985.

ADDRESS: Interested persons may submit written comments to: Martha Kirkpatrick, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Laverty, Telephone: (202) 426-7035.

SUPLEMENTARY INFORMATION: On September 26, 1984, EPA published final regulations (49 FR 37998) that addressed several issues concerning the National Pollutant Discharge Elimination System (NPDES) program administered under the Clean Water Act. One aspect of those amended rules concerned the regulation of point sources of storm water runoff. These rules identified storm water dischargers subject to the NPDES permitting process, established application requirements for the different types of storm water dischargers, and set a deadline of April 26, 1985 for the submittal of NPDES permit applications.

In response to concerns raised with the September 26 rule, including the difficulty of sampling due to winter weather conditions and the size of the task of identifying, sampling and testing storm water point sources, the Agency published proposed changes to the storm water regulations on March 7, 1985 (50 FR 9362). This notice proposed an application deadline of December 31, 1985 for all storm water point sources, and proposed eliminating the requirement that Group I dischargers submit effluent data.

With regard to the application deadline, on August 29, 1985, EPA published a final rule establishing an application deadline of December 31, 1987 for Group I and June 30, 1989 for Group II storm water point sources (50 FR 35200). With regard to the application requirements for Group I, on August 12, 1985 (50 FR 32548), the Agency reopened the comment period on the March 7 notice to seek comment on the testing, sampling and analysis requirements for Group I storm water point sources. The notice discussed a group application process whereby a trade association would submit representative sampling data covering a particular subcategory of dischargers. The August 12 notice set a period of 30 days for the receipt of public comments.

Since publication of the August 12 notice, the agency has received several requests to lengthen the comment period to allow sufficient time to consider and respond to the issues raised. In response to these requests and to ensure adequate opportunity for public comment on the issues raised by the August 12 notice, EPA has decided to extend the comment period to November 12, 1985.

Dated: September 10, 1985.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 85-22213 Filed 9-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 391

Federal Income Tax Aspects of the Capital Construction Fund

AGENCY: Maritime Administration, DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing a notice of proposed rulemaking (NPRM) that was published jointly with the Department of the Treasury in 1972 (37 FR 11887). The NPRM proposed conditions for the utilization of funds that U.S. ship operators deposit into a Capital Construction Fund (CCF).

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washing, DC 20590; Tel. (202) 382-0389.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 1177, a United States citizen owner or operator of an "eligible vessel," as defined, may establish a CCF, by agreement with the Secretary of Transportation. The proceeds of the CCF are to be used for the eventual construction of "qualified vessels" in U.S. shipyards. Funds deposited in a CCF represent income from ship operations, and the Federal income tax that would otherwise be payable currently on such income is deferred. In 1972, a notice of proposed rulemaking was published with the Department of the Treasury that proposed conditions for the use of funds that U.S. ship operators deposit in the CCF.

MARAD believes that it should now formally terminate rulemaking action for the following reasons. The proposed regulations in the NPRM would have merely formalized policy that is presently used, understood and accepted by participants in the CCF program. MARAD has perceived no public interest in finalizing this regulation. Further, the Department of the Treasury has not recognized this as an active rulemaking on its entry in the Semi-Annual Unified Regulatory Agenda. Accordingly, the NPRM is being withdrawn.

(46 U.S.C. 1114(b) 49 CFR 1.66)

By order of the Maritime Administrator.

Dated: September 11, 1985.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-22211 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 3]

Federal Motor Vehicle Safety Standards; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice grants a request from the Motor Vehicle Manufacturers Association for extension of the period to submit written comments on a proposed new brake standard for passenger cars. The period for comment is extended to January 13, 1986.

DATES: Comments on Docket No. 85-06; Notice 1 must be received by January 13, 1986.

ADDRESS: Comments should refer to the docket and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours 8 a.m.-4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 426-2800.

SUPPLEMENTARY INFORMATION: On May 10, 1985 (50 FR 19744), NHTSA issued a notice of proposed rulemaking seeking comments on a proposal to adopt a new braking standard for passenger cars. Comments were requested by October 7, 1985. The Motor Vehicle Manufacturers Association (MVMA) has timely requested an extension of the period to comment on the NPRM. MVMA said the Economic Commission for Europe (ECE) has been working for the past three years to harmonize the requirements of

Federal Motor Vehicle Safety Standard No. 105 and ECE Regulaton 13. MVMA pointed out that there are three upcoming ECE meetings that are being held specifically to prepare comments on the proposed NHTSA braking standard. The meetings will be held on October 1–3, October 21–25, and December 9–13. MVMA noted that after the meetings, the ECE staff will need time to prepare the final comments and circulate it in the three languages required by ECE procedures.

The agency has participated over the past several years in the ECE's work on developing an international harmonized brake standard for passenger cars. NHTSA agrees with MVMA that the comments generated as a result of the three ECE meetings will be of substantial assistance in this rulemaking proceeding. NHTSA has therefore has decided to extend the comment period for this notice to January 13, 1986 to allow the ECE sufficient time to prepare and submit its comments.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 12, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22250 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Reopening of Comment Periods on Proposed Threatened Status and Critical Habitat for the Loach Minnow (Tiaroga Cobitis) and the Spikedace (Meda Fulgida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of public hearings and reopening of comment periods.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that public hearings will be hold to discuss its proposals to list two fish, *Meda fulgida* (spikedace) and *Tiaroga cobitis* (loach minnow), as threatened species and to designate critical habitat for them. The period for acceptance of comments on these two proposals is reopened. Comments are solicited on these proposals from all interested parties.

DATES: Public hearings will be held on these proposals as follows:

1. October 7, 1985 (Monday), 7:00 to (9:00 p.m. MDT, Silver City, New Mexico;

2. October 8, 1985 (Tuesday), 7:00 to 9:00 p.m. NST, Thatcher, Arizona;

3. October 9, 1985 (Wednesday), 7:00 to 9:00 p.m. MST, Phoenix, Arizona.

The comment periods on these proposals are reopened on October 7, 1985. The comment periods, both of which originally closed on August 19, 1985, will now close on November 8, 1985. Comments received after the closing date may not be considered in the final decision on these proposals.

ADDRESSES: The public hearings will be held at the following locations:.

1. Silver City, New Mexico, Light Hall, Western New Mexico University—October 7, 1985;

2. Thatcher, Arizona, South Campus Lecture Room 2, Eastern Arizona College—October 8, 1985;

3. Phoenix, Arizona, Maricopa County Board of Supervisors' auditorium, 205 West Jefferson—October 9, 1985.

Written comments and materials concerning these proposals should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW Room 4000, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, 505/766-3972 (FTS 474-3972) (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Meda fulgida is a small minnow, native to the Gila River basin. Because of habitat destruction and alteration, and competition and predation by introduced fish species, *Meda fulgida* has been eliminated from 96 percent of its historic range. Threats to its continuing survival come from water development, stream channel and watershed disturbances, and predation and competition from nonnative fish. A proposal to list *Meda fulgida* as a threatened species and to designate critical habitat for this species was published in the **Federal Register** on June 18, 1985 (50 FR 25390). Critical habitat is proposed for a portion of Aravaipa Creek in Graham and Pinal Counties, Arizona; portions of the Gila, West Fork of the Gila, and Middle Fork of the Gila Rivers in Grant and Catron Counties New Mexico; a portion of the Verde River in Yavapai County, Arizona; and a small portion of Sycamore Creek in Yavapai County, Arizona.

Tiaroga cobitis is also a small native minnow of the Gila River basin. It has been subjected to the same habitat destruction and alteration and competition and predation as has *Meda. Tiaroga cobitis* has been eliminated from 85 percent of its historic range. Threats to its future survival also come from water development, stream channel and watershed disturbances, and predation and competition from nonnative fish. A proposal to list *Tiaroga cobitis* as a threatened species and to designate critical habitat for this species was published in the **Federal Register** on June 18, 1985 (50 FR 25380). Critical habitat is proposed for a portion of Aravaipa Creek in Graham and Pinal Counties, Arizona; portions of the Gila, West Fork of the Gila, East Fork of the Gila, and Middle Fork of the Gila Rivers in Grant and Catron Counties, New Mexico; portions of the San Francisco River in Greenlee County, Arizona, and Catron County, New Mexico; a portion of the Tularosa River in Catron County, New Mexico; and the Blue River in Greenlee County, Arizona.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. That 45-day period, for these proposals, ended on August 2, 1985. Requests for hearings were received from: The Southwest New Mexico Council of Governments, Silver City, New Mexico, on July 25, 1985; the Hooker Dam Association, Silver City, New Mexico, on July 25, 1985; the New Mexico State Engineer Office, Santa Fe, New Mexico, on July 29, 1985; the Graham County Board of Supervisors, Safford, Arizona, on July 29, 1985; the Arizona Cattle Growers' Association, Phoenix, Arizona, on August 2, 1985; and the Southwest New Mexico Industrial Development Corporation, Silver City, New Mexico, on August 13, 1985. In response to these requests, the Service has scheduled public hearings for October 7, 1985, from 7:00 to 9:00 p.m. MDT, Light Hall, Western New Mexico University, Silver City, New Mexico; October 8, 1985, from 7:00 to 9:00 p.m. MST, South Campus Lecture Room 2, Eastern Arizona College, Thatcher, Arizona; and October 9, 1985, from 7:00 to 9:00 p.m. MST, Maricopa County Board of Supervisors' auditorium, 205 West Jefferson, Phoenix, Arizona. Those parties wishing to make statements for the record should have available a copy of their statements, to be presented to the moderator at the start of the hearings. Oral statements may be

limited to 5 or 10 minutes, if the number of statements to be presented necessitates some limitation. There are no limits on the length of written comments which may be presented at these hearings or mailed to the Service during the comment period.

The comment period on these two proposals originally closed on August 19, 1985. In order to accommodate these hearings, the Service is reopening the comment period on both proposals. Written comments will now be received from October 7 until November 8, 1985 (see **ADDRESSES**).

Author

This notice was prepared by Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Authority

The authority for the action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 11, 1985.

Jerry L. Stegman,

Acting Regional Director.

[FR Doc. 85-22151 Filed 9-16-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

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

Federal Grain Inspection Service

Federal Grain Inspection Service Advisory Committee; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Avisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 8, 1985.

Place: Landmark Metairie Hotel, 2601 Severn Avenue, Metairie, Louisiana 70002.

Time: 8:30 a.m.

Purpose: To provide advice to the administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Subcommittee reports on insect infestation and dust; (2) financial matters; (3) updates on research, safety, and health activities; and (4) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: September 11, 1985.

D.R. Galliart,

Acting Administrator, Federal Grain Inspection Service.

[FR Doc. 85–22159 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

National Advisory Council on Child Nutrition; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the U.S. Department of Agriculture, has scheduled a meeting for October 22–24, 1985.

DATES: The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, October 22 and 23 and Thursday, October 24 from 9:00 a.m. to noon.

ADDRESS: The meeting will be held at the Days Inn of Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Gatley, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: The meeting will be devoted primarily to a discussion of the Department's response to the council's recommendations contained in the 1984 biennial report to the President and the Congress, as well as current program issues. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: September 10, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–22232 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Environmental Impact Statement; Perley Brook Watershed, ME

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 Perley Brook Watershed, Aroostook County, Maine.

FOR FURTHER INFORMATION CONTACT: Ron E. Hendricks, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone 207–866–2132.

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, Ron E. Hendricks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for wateshed protection and flood prevention. The planned works of improvement include land treatment measures on 2520 acres of cropland to protect the resource base from deterioration and some 2200 feet of diversions with pipe outlets for flood damage reduction.

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 Ron E. Hendricks.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 9, 1985.

Ron E. Hendricks,

State Conservationist.

[FR Doc. 85-22226 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-502]

Certain Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada; Preliminary Determination of Sales at Not Less than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make our final determination by November 18, 1985.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766.

Preliminary Determination

We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We made fair value comparisons on two companies representing approximately 87 percent of sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the United States price, home market price, and constructed value. We have preliminarily found that the margins for both companies investigated are *de minimis.*

Case History

On March 25, 1985, we received a petition from the Committee on Pipe and Tube Imports on behalf of the domestic industry producing certain heavy-walled rectangular welded carbon steel pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on April 15, 1985 (50 FR 15771). On May 9, 1985, the ITC determined that there is a reasonable indication that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are materially injuring a U.S. industry (50 FR 20302).

We presented an antidumping duty questionnaire to Titan Industrial Corporation (Titan), whose exports account for approximately 80 percent of the products under investigation, on May 10, 1985. Their response to our questionnaire was received on June 25, 1985. Additional voluntary responses were received from Welded Tube of Canada (Welded Tube), on June 25, 1985, July 10, 1985, and July 30, 1985, from Acier Royalcor Steel, Inc. (Royalcor), on July 2, 1985, and from Capco Tubular Products Co. (Capco), on July 27, 1985. The response of Royalcor was included in our analysis. The responses of Welded Tube were found to be untimely and inadequate for consideration. The response of Capco represented only one sale of the subject merchandise, which we considered to be too insignificant to warrant inclusion in our analysis.

Products Under Investigation

The products covered by this investigation are certain welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inches, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute specifications for oil well casing, currently provided for in item 610.3955 of the *Tariff Schedules of the United States, Annotated.*

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the ex-factory, packed, or C.I.F., duty paid, delivered, packed price. We made deductions, where appropriate, for U.S. inland freight, foreign inland freight, U.S. brokerage charges, foreign brokerage charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Titan based on constructed value, as there were insufficient sales in the home market or to third countries to provide viable comparisons. For Royalcor we calculated foreign market value based on home market ex-factory, packed prices to unrelated purchasers.

Royalcor's packing costs are incorporated in their acquisition cost of the subject merchandise, and appear to be identical for both markets. No claims were made for circumstances of sale.

We made comparisons of "such or similar" merchandise based on grade, dimension, wall thickness, and whether or not cut to length, as selected by Commerce Department industry experts.

To determine foreign market value for Titan, we calculated constructed value by totaling the costs of materials used in producing such or similar merchandise, fabrication, general expenses, profit and the cost of packing on U.S. shipments. Since the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. The amount added for profit was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses, since the actual level of profit was less than eight percent. We made adjustments, where appropriate, for after-sale warehousing expenses incurred on United States sales in accordance with section 353.15 of the Commerce regulations.

In a letter dated August 2, 1985, counsel for petitioner noted that the ratio of cost of materials and fabrication to sales price for the sales in the response is below the figure which would be indicated in the final statements. For purposes of this preliminary investigation, an analysis of this ratio and of the cost response was conducted using the information available at this time. Specifically, the cost of coil, a major component of both the cost of manufacture contained in the response, and cost of goods sold was reviewed by a Department product expert. It was found that coil cost, although low, was within the range of prices available in the market during the period of investigation.

In our analysis, two expenses were noted which were not included by respondent in the cost of fabrication. For purposes of this preliminary determination, we considered warehousing expenses incurred by the Canadian subsidiary of Titan for the storage of finished goods prior to sale to be costs of fabrication rather than general expenses as claimed in Titan's response. We also included in the cost of fabrication a penalty payment made by Titan for failing to meet minimum purchase requirements in a contract for the conversion of skelp into pipe.

Even with these adjustments there remains a discrepancy between the cost of production data in the response and the audited financial statements, but the discrepancy is not greater than would appear reasonable given the different purposes of the two sets of data. The financial statements include a significant proportion of products which are not under investigation and the time periods covered by those statements are not concurrent with our review period. A detailed reconciliation to the audited financial statements will be conducted at verification.

Verfication

In accordance with section 776(a) of the Act, we will verify the information provided by the respondents by using standard verification procedures, including examination of relevant sales, financial and cost records of the company.

Preliminary Results

The preliminary results of our investigation are as follows:

Manufacturer/Seller/Exporter	Weighted-average margin percentage
Titan Industrial Corp. (Dominion)	0.47 (*de minimis*)
Acier Royalcor Steel, Inc.	0.10 (*de minimis*)

ITC Determination

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 11, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 4, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85-22215 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

A-582-501]

Postponement of Final Antidumping Duty Determination; Photo Albums and Filler Pages from Hong Kong

AGENCY: International Trade Administration, Imort Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 99 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of photo albums and filler pages from Hong Kong have occurred at less than fair value until not later than October 23, 1985.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377-1777.

SUPPLEMENTARY INFORMATION: On February 19, 1985, we published a notice in the **Federal Register** (50 FR 7624) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of photo albums and filler pages from Hong Kong were being, or were likely to be, sold at less than fair value. On March 18, 1985, the International Trade Commission determined that there is a reasonable indication that imports of photo albums and filler pages from Hong Kong are materially injuring a U.S. industry. On July 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 28829). The notice stated that if the investigation proceeded normally, we would make our final determination by September 23, 1985.

On August 13, 1985, counsel for Climax Paper Converters, the respondent in this case, requested that we extend the period for the final determination until not later than 99 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Setion 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Climax Paper Converters is qualified to make such a request since it accounts for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final

determination in this case not later than October 23, 1985.

The public hearing is also being postponed until 9:30 a.m. on September 26, 1985 at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW, Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 23, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85-22218 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-614-503]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, processors or exporters in New Zealand of lamb meat as described in the "Scope of Investigation" section of this notice. The net bounty or grant for the review period is NZ$0.3602/lb. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of lamb meat from New Zealand which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit on these products equal to the net bounty or grant.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161 or 377-3464.

SUPPLEMENTARY INFORMATION: .

Final Determination

For purposes of this investigation, the following programs have been found to confer bounties or grants:

- Meat Producers Board Price Support Scheme
- Supplementary Minimum Price Scheme
- Export Market Development Taxation Incentive
- Export Performance Taxation Incentive
- Export Suspensory Loan Scheme
- Regional Development Suspensory Loan Scheme
- Livestock Incentive Scheme

The net bounty or grant for the review period is NZ$0.3602/lb.

Case History

On March 26, 1985, we received a petition from the American Lamb Company of Chino, California; the Denver Lamb Company of Denver, Colorado; and the Iowa Lamb Corporation of Hawarden, Iowa, filed on behalf of the U.S. lamb meat industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers, processors or exporters of lamb meat in New Zealand directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

On April 11, 1985 (after the filing of the petition and prior to the intitiation of this investigation), the Office of the United States Trade Representative terminated New Zealand's status as a "country under the Agreement" within the meaning of section 7019(b)(1) of the Act.

Since New Zealand is no longer a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, the ITC is not required to determine whether imports of these products cause or threaten material injury to a U.S. industry, or are materially retarding the establishment of an industry in the United States.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 15, 1985, we initiated the investigation (50 FR 15949). We stated that we expected to issue our preliminary determination by June 19, 1985.

On April 25, 1985, we presented a questionnaire to the New Zealand government in Washinton, D.C. concerning the petitioner's allegations. Responses to the questionnaire were received on May 31, 1985, with supplementary information submitted on June 17, 1985.

On June 25, 1985, we published our preliminary determination that benefits which constitute bounties or grants are being provided to producers, processors, or exporters in New Zealand (50 FR 26236).

During the period July 1 to 16, 1985, we conducted a verification of the response submitted by the government of New Zealand.

At the request of the petitioners, we held a public hearing on July 30, 1985, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues.

Scope of Investigation

The product covered by this investigation is lamb meat from New Zealand, currently classified in the *Tariff Schedules of the United States* (TSUS) under item 106.30.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Contervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1984, through March 31, 1985, which corresponds to the 1985 fiscal year of the government of New Zealand.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to producers, processors, or exporters in New Zealand of lamb meat under the following programs:

A. Meat Producers Board Price Supports Scheme

Pursuant to the Meat Export Prices Act of 1955 (amended in 1976 and 1982), the Meat Board Price Support Scheme was established to compensate meat producers for fluctuations in market prices and to guarantee them a minimum return on export sales of their products. The scheme is administered by the Meat Producers Board (the Board), the Ministry of Agriculture and Fisheries, and the Meat Export Prices Committee.

It is financed through the Meat Income Stabilization Account (MISA), an overdraft account maintained by the Board at the Reserve Bank of New Zealand.

The New Zealand Parliament established the Board through the Meat Export Control Act of 1921–22. The Board controls virtually all aspects of the meat trade including grading, handling, polling, slaughtering, storing, shipping, selling and disposing of all meat exported from New Zealand. Although established by Act of Parliament, the Board is not an agency of the government. Of the nine members of the Board, two are appointed by the government, six are elected as representatives of sheep and diary farmers and one is appointed by the Dairy Board. While the Board is subject to government audit of its activities and finances, it does not report to the government and is not legally required to follow government policy.

The Board appears to have four primary sources of funds: (1) A levy set by the board and collected by processors from lamb, sheep and cattle growers at the time of slaughter; (2) return on investments; (3) short-term borrowings from commercial lenders in New Zealand and overseas; and (4) advances from the Meat Industry Reserve Account (the MIRA).

Each production season, the Meat Export Prices Committee (the Committee), an independent, non-governmental committee, establishes a "schedule (minimum) price" for each grade of lamb slaughtered for export. Those prices are set at the beginning of the season and remain in effect for the entire season. At the time of slaughter, the processing company pays the schedule price, less slaughtering and freezing costs, to the producers. The processing company, in turn, is reimbursed by the Board at the schedule price. The Board, in effect buys all the meat which is subsequently exported. In addition, the Committee annually establishes a "trigger price" above which the meat income stabilization levy is collected from producers. The meat income stabilization levy is deposited into the MISA when the market price exceeds the trigger price.

The Board has two methods by which it can support the price of meat. If the market price falls below the schedule price, the Board may either: (1) Purchase meat at the schedule price, or (2) purchase meat at the market price and make a stablization payment equal to the difference between the market price and the schedule price. In either case, the funds used to support the price are drawn from the MISA. Since November, 1983, the Board has elected to purchase all export lamb meat at the schedule price.

According to the questionnaire response, the MISA is meant to be self-balancing, *i.e.*, producer levies collected during periods of high prices cover the cost of support payments made during periods of low prices. When the MISA is in a deficit position, the government authorizes the Board to meet its commitments through a low-cost overdraft arrangement with the Reserve Bank of New Zealand (MISA Account No. 1). On October 1, 1984, a new overdraft account (MISA Account No. 2) was established to provide coverage on deficits incurred subsequent to the date. The New Zealand Meat Producers Board 1984 Annual Report indicate that the MISA Account No. 1 deficit would be converted to a 30-year subordinated loan, with no interest or principal repayable until September 30, 1989.

We do not consider the minimum price support payments funded by producer levies to constitute a bounty or grant within the meaning of the countervailing duty law. However, this program does operate to guarantee producers a minimum return on export sales, and provides government funds to the Meat Producers Board on terms that are not available from commercial sources. Therefore, we determine that the portion of the payments represented by government funds provides an indirect bounty or grant on exports within the meaning of the countervailing duty law.

In our preliminary determination, we treated the accumulated lamb meat deficit in the MISA Account No. 1 as a one-year, interest-free loan. However, we have reconsidered this issue and have now determined that the government's coverage of the MISA deficit should be viewed *de facto* as a continuing price support payment to lamb meat producers and, as such, countervailable in the year of receipt. This support program has been in operation since 1976 and, while in theory the MISA is self-funding, deficits on lamb meat have grown to a level of NZ$332 million as of March 31, 1984. Counsel for petitioners has stated, and we concur, that it is unrealistic to expect the MISA Account No. 1 deficit to be repaid. Trigger prices have consistently been higher than market prices and, as such, producer levies have not been generated. Given the current pricing mechanism in effect, producer levies are not likely to be generated in the immediate future. Although the Board, in its 1984 Annual Report, discussed the conversion of the accumulated deficit in the MISA Account No. 1 into a 30-year loan, we have verified that the conversion agreement has not been finalized. Therefore, we have no evidence that the deficit will in fact be repaid, nor do we have evidence indicating that additional deficits will not be incurred. To the contrary, we were informed at verification that the first advance against the MISA Account No. 2 overdraft facility is expected later this year to cover current deficits. Therefore, consistent with our treatment of government price support payments in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097), we have determined that benefits provided under this program are, in fact, recurring price support payments and should be allocated to the year of receipt. Dividing the value of the MISA Account No. 1 deficit attributable to lamb meat during the period of investigation by the total weight of the lamb products exported resulted in a net bounty or grant amount of NZ$0.10171/lb.

B. Supplementary Minimum Prices Scheme (SMP)

The Ministry of Agriculture and Fisheries established the SMP in 1978 to augment the support payments provided under the Meat Producers Board Price Support Scheme. Each year, the government established a supplementary minimum price support level (supplementary price) which was set above the Board's schedule price level. Support payments equal to the difference between those two prices were drawn from the government-funded Supplementary Minimum Meat Prices Account (SMMPA). If the market price falls below the Board's schedule price, payments are then made from both the Meat Board's Minimum Price Support Scheme *and* the Supplementary Minimum Price Support Scheme. Supplementary payments are made only on meat sold for export consumption.

In September, 1984, the Minister of Finance terminated the SMP and instead provided the SMMPA with a lump-sum payment estimated to equal the value of payments that were provided under the SMP. Because of the overlap between the government's fiscal year (April-March) and the production period (October-September), the Board received payments under both the SMP and the lump-sum disbursement during the review period.

Because price support payments provided under the SMP and lump-sum schemes represent direct government payments limited to the exported product, we determine them to be

bounties or grants within the meaning of the countervailing duty law. To calculate the benefit from this program, we divided the value of the 1984–85 payments (SMP's and lump-sum payments) by the total weight of lamb products exported during the review period. This resulted in net bounty or grant of NZ$0.1741/lb.

C. Export Market Development Taxation Incentive (Section 156F, Income Tax Act 1976) (EMDTI)

Under the 1999 Amendment of the Income Tax Act 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit equal to 67.5 percent of the total expenditure. However, an exporter who takes advantage of this program may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the normal corporate tax rate in New Zealand is 45 percent, the net benefit to exporters under this program is 22.5 percent of the qualifying expenditure amount. We have verified that the Meat Export Development Company (Devco) received benefits under this program during the review period.

According to our tax methodology, tax benefits earned during a given fiscal/tax year are treated as received the following year, the year the tax return is filed.

Because eligibility for this program is limited to exporters, we determine that the EMDTI provides a bounty or grant within the meaning of the countervailing duty law. Accordingly, we divided 22.5 percent of the U.S.-related qualifying expenditures incurred by Devco in 1983/84 by the weight of its lamb products exported to the United States during the review period. This resulted in a bounty or grant amount of NZ$0.0348/lb.

D. Export Performance Taxation Incentive (Section 156A, Income Tax Act 1976) (EPTI)

Under the 1979 Amendment of the Income Tax 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable and, if the tax credit exceeds the income tax payable, the balance is paid to the taxpayer in cash. The rate, or specified percentage of the tax credit is dependent upon the predetermined government value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the specified percentage corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Lamb meat processed beyond the primal cut stage falls into value-added category D, for which the corresponding specified percentage is 7.7 percent. The specified percentages under this program will be reduced in the tax years ending on March 31, 1986, and March 31, 1987. Devco received benefits under this program during the review period.

Becaues eligibility for this program is limited to exporters, we determine that it provides a bounty or grant within the meaning of the countervailing duty law. To calculate the tax benefit, we divided the amount of the tax credit claimed for qualifying laws products exported to the United States in 1983/84 by the weight of lamb products exported to the United States during the review period. This resulted in a net bounty or grant of NZ$0.0292/lb.

E. Export Suspensory Loan Scheme

The Export Suspensory Loan Scheme (ESLS), administered by the Department of Trade & Industry and the Development Finance Corporation (DFC), was establisned in the 1973 budget and modified by Cabinet decision in 1978. The purpose of the program is to provide loans to assist exporters in purchasing equipment needed to expand their production of export goods. The loans cover up to 40 percent of eligible expenditures and are converted to grants if pre-determined export targets are met. If the export targets are not met, the loans may be partially converted to grants or called in full at the DFC's long-term interest rates. The ESLS terminated on March 31, 1985; no new loans under this program will be granted.

Because this program is contingent on export performance and provides loans: (1) That may be at rates lower than those available from commercial sources, and (2) that may be converted to grants, we determine it confers bounties or grants within the meaning of the countervailing duty law.

To calculate the benefit from this program, we treated the loans which had not yet been forgiven as a series of one-year loans rolled over each year. For our benchmark, we used national average commercial interest rate on overdraft accounts, as this is the preponderant source of short-term financing in New Zealand. In this case, the interest rates charged were above our benchmark rate and, therefore, no countervailable benefits were bestowed. For loans which had been forgiven because the export targets were met, the amount forgiven was treated as a grant. The amounts forgiven prior to the review period were small enough that the benefits would have been allocated to the year of forgiveness. Therefore, we have not included these grants in our calculation. We have included the forgiveness that occurred during the review period and allocated the entire benefit to the review period because the *ad valorem* benefit was less than 0.5%.

Dividing the benefit from the grant portion of the program by the total weight of the lamb products exported during the review period resulted in a net bounty or grant amount of NZ$0.00005/lb. We have not adjusted the net bounty or grant amount to account for this program's termination because there are still loans outstanding that may be converted to grants in the future.

F. Regional Development Suspensory Loan Scheme (RDSL)

The New Zealand Government established the Regional Development Assistance Program to encourage utilization of resources in priority regions of New Zealand. Regions designated by the government as non-priority do not qualify for regional developement assistance. The RDSL program, one of a variety of regional development programs administered by the DFC, provides interest-free loans which are later converted to grants if development objectives are met. One freezing works (*i.e.*, a company that slaughters lambs and processes lamb meat) located in a priorty region in New Zealand has received a loan under this program to be used for the production of products subjects to this investigation.

Because this program provides government-funded financing to specific regions in New Zealand on terms inconsistent with commercial considerations, we determine it to be a regional subsidy, and is therefore countervailable. To calculate the benefit from this program, we treated the loans which had not yet been forgiven as a series of one-year loans rolled over each year. For our benchmark, we used the national average commercial interest rate on overdraft accounts. For loans which had been forgiven because the development targets were met, the amounts forgiven were treated as grants, and because the *ad valorem* benefit was less than 0.5%, were allocated to the year the conversion occurred. There were no conversions made during the review period.

Dividing the value of the benefits from the loan portion of the program by the total weight of the lamb portion of the program by the total weight of the lamb

products sold during the review period resulted in a net bounty or grant amount of NZ$0.00001/lb.

C. Livestock Incentive Scheme

The Livestock Incentive Scheme (the scheme) was introduced in 1976 under section 174 of the Income Tax Act 1976, and is administered by the Rural Banking and Finance Corportion (RBFC). The RBFC was established to provide loans and other development assistance for farming, other primary industries, and related service industries.

This particular schemes encourages farmers to increase permanently the numbers of livestock carried. Under the scheme, a farmer employing a stock increase program for a minimum of one and a maximum of three years may opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12.00 for each additional qualifying stock unit carried, or (2) a deduction of NZ$24.00 from assessable income for each additional qualifying stock unit carried. (A "stock unit" represents one breeding-ewe equivalent; *e.g.*, one breeding ewe = 1 stock unit, other sheep = 0.7 stock units, a dairy cow = 7 stock units, *etc.*) The last date for making applications under the scheme was March 31, 1982.

Under the loan option, no interest was charged on the loan if the recipient complied with the conditions of the scheme. Upon breach of the conditions, the principal was repayable in cash or over a term with interest at the RBFC rate for development loans.

Farmers choosing the tax incentive could claim deductions at the time of livestock increases or at the end of the program plus the two-year sustaining period. All other qualifying criteria are the same as for the loan option.

If the livestock increase was sustained for two years following the development program's completion, farmers who elected to take out suspensory loans could write the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction was confirmed and could be applied toward tax liability in any of the three years after completion of the development program.

Because benefits under this program are limited to farmers with livestock herds and are on terms inconsistent with commercial considerations, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit received from the loan option portion of this program, we treated the amounts forgiven as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate chosen for allocation purposes was the national weighted-average trading-bank loan rate. For the portion that has not yet been forgiven, we treated the amount as a one-year loan and compared the interest rate to the benchmark as described above. The benefit under the tax option was determined to be the amount of the tax deductions that were available to be used during the review period. We added the value of the benefits from the loan and tax option portions of the program, and multiplied the result by a factor determined to represent the value of lamb meat as a percentage of total sheep production. Dividing that result by the total weight of the lamb products sold during the review period resulted in a net bounty or grant amount of NZ$0.0149/lb.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to producers, processors, or exporters of lamb meat in New Zealand under the following programs:

A. Loans and Loan Guarantees Provided by the Meat Producers Board

The petitioners alleged that the Board is issuing loans and providing guarantees for various companies involved in lamb production and exportation, loans and guarantees that they claim are countervailable. In our preliminary determination, we stated that the Meat Board entered into these financial transactions as one independent party, whose funds are its own, dealing with another. We have since verified that the funds used for the loans and loan guarantees are not its own, but those of the MIRA.

During World War II, the government of New Zealand took control of the marketing of all meat products, and entered into a bulk-purchasing agreement with the United Kingdom. The profits from the sale of meat products remaining when that agreement was terminated in 1942 were put into the Meat Pool Account, the stated purpose of which was to provide a fund for the future benefit of the industry. Additional profits resulting from increases in the price paid by the United Kingdom for meat products were credited to the Meat Income Stabilization Account.

Note.—This Meat Income Stablization Account is different from the one discussed previously in this notice.

Like the Meat Pool Account, the funds in this account were also to be held for the future benefit of the industry. These two accounts were eventually combined and provided the seed money for the MIRA. Since its establishment, the MIRA has grown through investment to approximately NZ$150 million. There have no government infusions of funds into the account. The Board administers the account for the benefit of the industry, and determines how its funds are to be used.

Therefore, because the MIRA contains industry money, which the Board administers for the benefit of the industry, we determine that the use of the MIRA to fund these programs operated by the Meat Producers Board is not a bounty or grant within the meaning of the countervailing duty law.

B. Fertilizer Price Subsidy

Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand provides payments to wholesalers or importers of phosphate rock, phosphatic, potassic, nitrogenous and compound fertilizers, and on all organic fertilizers. The response indicates that wholesalers and fertilizer producers pass these payments on to farmers in the form of reduced prices.

In our preliminary determination, we stated that the purpose of this program was to maintain a low cost of fertilizer to farmers in order to encourage adequate *pasture* maintenance and development. As such, we determined that its benefits were limited to a specific enterprise or industry, or group of enterprises or industries, and were countervailable.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producers. We found no government restrictions, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited by industry, sector or region. Therefore, we find this program not countervailable.

C. Fertilizer and Lime Transportation Subsidy

Under the administration of the Ministry of Agriculture and Fisheries, the government of new Zealand provided payments to retailers and wholesalers of fertilizer and lime to cover their costs of transporting those products from the superphosphate works, ports of landing, or approved limeworks. We verified that these payments are, in turn, passed on to farmers in the form of reduced prices

In our preliminary determination, it was our understanding that the purpose of the program was to ensure that the rate of fertilizer application was kept at levels allowing for adequate *posture* maintenance and development. We stated that because benefits under this program appeared to be provided primarily to sheep and other livestock farmers, we determined that its benefits were limited to a specific enterprise or industry, or group of enterprises or industries, and were countervailable.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producer's. We found no government restriction, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited. Therefore, we find this program not countervailable.

D. Fertilizer and Lime Bounty

Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand sponsored two programs under this heading. The first, called "The Fertilizer and Lime Bounty," was terminated in 1979. The second, called "The Fertilizer Aerial Spreading Bounty," provided payments to aerial spreading companies, payments which were then credited to the farmer.

In our priliminary determination, we found this program to be limited to a specific enterprise or industry, or group of enterprises or industries, because the majority of payments appeared to be provided to sheep and other livestock farmers.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producers. We found no government restriction, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited by industry, sector or region. Therefore, we find this program not countervailable.

E. Deductions for Capital Expenditures for Development of Domestic Farmland

This program is administered by the Inland Revenue Department. Under sections 126, 127 and 129 of the Income Tax Act 1976, a deduction is available for certain expenditures incurred in clearing and preparing farming and agricultual land. The deductions may be taken in the year incurred or spread over that year and the next four tax years. Any taxpayer engaged in farming or agricultural business on land in New Zealand may claim a deduction for qualifying capital expenditures.

We verified that any taxpayer engaged in any farming or agricutural business or land in New Zealand may apply for this deduction. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

F. Land Development Encouragement Loans

Under the administration of the Rural Bank, contingent liability loans were provided for the development of pastoral and agricutural land. All farmers were eligible for financing provided the minimum area for development was 10 hectares. Expenditures qualifying for these loans included sowing of permanent pastures, clearing, cultivation, seeding, fertilizing, and drainage. The program, which was open for applications from August 1, 1978, to March 1981, offered maximum loans of NZ$250 per hectare of land. The loans were for a 15-year term and, provided the land was maintained to the satisfaction of the Rural Bank, no interest was charged on the loan and half of the principal could be written off.

This program was preliminarily found to be countervailable in our 1981 *Preliminary Affirmative Countervailing Duty Determination: Lamb Meat from New Zealand* (46 FR 58128). However, we have verified that this program neither designates specific agricultual products for receipt of funding, nor established differing terms for specific products. Therefore, we determine it is not countervailable. *See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, 25107).

G. Standard and Nil Value of Livestock

Under section 85 of the Income Tax Act 1976, trading stock (inventory) must be valued at either cost, market, or replacement value. The choice and use of the valuation method is subject to review by the Commissioner of Inland Revenue. If inventory increased in value and is recorded as such by the taxpayer, that increase must be included as (assessable) taxable income for that year. If an end-of-the-year valuation of trading stock results in a decrease of value, the loss is allowed as a deduction in calculating the assessable income for that year. As an alternative to this system, owners of livestock may adopt the standard value and a nil value of livestock method for recording inventory for income tax purposes.

Under the standard value of livestock system, the Commissioner of Inland Revenue will periodically establish minimum acceptance levels of standard value, *i.e.*, value per head of livestock. These values are based on average market returns over a period of time, taking into account costs of production, and serve as a buffer against price fluctuations. A farmer may elect to value his inventory using the standard value or any higher value. However, once a standard value has been adopted by a farmer for a class of livestock, it cannot be reduced without the approval of the Commissioner. This system has been in operation since 1915.

Under the nil value of livestock system, a farmer can elect to adopt a nil value for all or part of the increase in his herd over a basic number of livestock. That basic number is established as the greater of the number of livestock on hand at the end of either of the two income years immediately preceding the year in which the decision is made to join the system. By using this scheme, the farmer can defer part of his tax liability by not paying tax on increases in stock until the livestock is actually sold. Upon sale, income taxes are payable on the net proceeds.

This program appears merely to be a method of taxation accounting, used not only by livestock producers, but by other manufacturers in New Zealand as well that hold reserve stocks for maturity purposes (*e.g.*, manufacturers of wine, brandy, and whiskey). As such, we determine that this program does not bestow a countervailable bounty or grant within the meaning of the Act.

H. Government Contributions to the Meat Industry Research Institute

In 1955, under the administration of the Department of Scientific and Industrial Research (DSIR), the government of New Zealand established the Meat Industry Research Institute (MIRINZ) to carry out research and development in all aspects of meat and meat by-product processing and to promote the adoption of new technology in the meat industry. MIRINZ is funded by the Meat Board, the New Zealand Freezing Companies Association and the government.

In our preliminary determination, we found government contributions to MIRINZ research limited to the meat industry. At the time, we had no indication that the results of the research and development were publicly available. However, at verification, we learned that MIRINZ is one of many DSIR-funded research institutions. Other institutions conduct research for the fertilizer, logging, dairy, leather and shoe, heavy engineering, building, concrete, coal, textile and wool

industries. The results of government-funded DSIR/MIRINZ research are published in scientific papers, technical reports, journals, digests and bulletins.

Because DSIR funds are provided to a variety of industrial and agricultural sectors and because the results of such government-funded research are publicly available, we find that government funding of MIRINZ does not provide a countervailable bounty or grant. *See, Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Belgium* (47 FR 39304), Appendix 2.

I. Noxious Plants Control Scheme

The Ministry of Agriculture and Fisheries provides to farmers payments that are equal to 50 percent of their costs for chemical or mechanical control of specified weeds, *i.e.*, sweet briar, blackberry, broom, gorse, and barberry. While projects must be approved in order to receive funding under this scheme, there is no indication that this scheme is limited to producers of any particular agricultural commodities. In fact, we are informed that the control of these weeds is as crucial to producers of corn, soybean and other grain as it is to livestock farmers. Therefore, we determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries, nor to a specific region, and is not countervailable.

J. Suspension of Government Inspection Fees

This service, administered by the Ministry of Agriculture and Fisheries, ensures that all meat and meat by-products comply with domestic inspection and hygiene standards, and the requirements of overseas importing countries. Since 1978, government inspection fees on meat for domestic consumption, as well as for export, have been waived. It is reported that the government of New Zealand will phase in a partial cost recovery program, *i.e.*, a collection of some inspection fees, beginning October 1985.

As the government bears the cost of inspecting meat for both the domestic and export markets, inspection fee waivers do not confer a subsidy on exports. Moreover, numerous other agricultural products, such as poultry, fish, rabbits and margarine are similarly inspected. We find the provision of this type of service to be a legitimate function of government, namely ensuring that agricultural products sold domestically and abroad meet minimum health and quality standards. In addition, the provision by the government of this type of service is as beneficial to consumers as to producers, *i.e.*, consumers get a better quality product and producers receive higher returns for their commodities. Thus, we determine that this practice is not countervailable as an export subsidy, nor is it limited to a specific enterprise or industry, or group of enterprises or industries.

III. Programs Determined Not To Be Used

Based on our verification of the responses of the New Zealand Meat Producers Board, various freezing companies, and the government, we determine that producers, processors, or exporters in New Zealand of lamb meat did not use the following programs:

A. Export Programme Grant Scheme (EPGS/Export Programme Suspensory Loan Scheme (EPSLS)

The EPGS was established in the 1979 Budget to encourage marketing research in targeted foreign markets. The grants, amounting to 64 percent of budgeted expenditures, were available for up to three years. In 1982, the grant program was converted to the EPSLS, a suspensory loan program. Loans covering up to 40 percent of eligible expenditures are available to established exporters who increase their net foreign exchange earnings through the marketing of specific goods or services in a designated foreign market. If a predetermined sales forecast is accomplished, the suspensory loan is converted into a grant; if the forecast is not met, the exporter repays the loan with interest.

We verified that neither producers, processors, nor exporters of lamb meat to the United States received benefits under either portion of this program.

B. Rural Export Suspensory Loans

The purpose of this program, which was introduced in 1974 and closed to new applicants on March 31, 1985, was to promote the export of non-traditional agricultural, horticultural, fish products not previously exported, and products for which market expansion was possible. We verified that lamb meat, considered a traditional export product, has never been eligible for this program, and that no loans have been granted to the producers, processors, or exporters of lamb. Therefore, we determine that this program was not used.

IV. Program Determined To Be Terminated

A. Meat Industry Hygiene Grants

The government of New Zealand, in its 1977 budget, provided special temporary grants to assist meat export processing companies in upgrading buildings, plant and machinery, and operations in freezing works required to meet the hygiene standards imposed by importing countries. We verified that the scheme expired on September 30, 1981, and that final payments were made in 1983/84.

In our preliminary determination, we stated that since this program provided benefits which were limited to processors who produce meat for export, we determined it to be countervailable. Despite the fact that payments had been terminated, because these were grants, we allocated the benefits over 10 years, the average useful life of machinery and equipment used for freezing-works facilities.

We have since verified that the total value of grants bestowed in any given year was less than 0.5 percent of the value of production of lamb meat in those years, and are therefore allocable to the year in which they were received. Since the federal payments under this program were made in 1983/84, no products now entering the United States are benefiting from grants provided under this program. Therefore, we determine this program to be terminated.

Petitioners' Comments

Comment 1. Petitioner argue that because statistics on domestic and non-U.S. export sales are reported on a carcass-weight basis, and are reported on a product-weight basis for exports to the United States, a conversion factor must be applied to achieve weight equivalency. They believe that most of the lamb legs and shoulders exported to the United States are in boneless form and therefore the appropriate conversion factor should be either the one published by Devco for boneless cuts (excluding breast/flap and neck) of 59.6 percent, or an average of that factor and the one published by Devco for bone-in cuts of 80.4 percent. Respondents rebut this argument by stating that boneless cuts enter the United States under TSUS 107.76 (lamb or mutton (prepared or preserved)), a duty-free classification and not subject to this investigation.

DOC Position. We agree with petitioners that weight equivalency should be achieved in order to determine the proper denominator used in our benefit calculations. However, we disagree with their proposal that a factor of 59.6 percent be used. There is no verified evidence on the record indicating: 1) that most of the lamb legs and shoulders entering the United States

are in boneless form, or 2) what the product mix (legs, loins, racks, shoulders shanks, breast/flap) of lamb meat exported to the United States was during our period of investigation. We do known, however, that most of the imported product does indeed enter the United States in cartons (*i.e.*, cut form), and that the TSUS classification covering the products subject to this investigation does include "meat even though completely detendonized or deboned". Therefore, since both boneless and bone-in cuts are entering the United States, we are using and average of the boneless and bone-in factors. We have, however, included the breast/flap and neck because this factor is being used to convert total lamb meat production, and not only that portion exported to the United States.

Comment 2. Petitioners state that the establishment of a risk premium for uncreditworth institutions should be based, not on the difference between the Moddy's Aaa and Baa corporate bond rates calculated as a percentage of the prime rate in the United States, but instead on the difference in rates between high yield bonds, (as reported by Morgan Stanley & Company) and Moody's Aaa rated bonds. They claim that this methodology more closely approximates the risk premium for uncreditworthy institutions.

DOC Position. This issue is moot. None of the calculation methodologies used in this determination required the use of a risk premium.

Comment 3. Petitioners suggest that, with respect to grants to sheep producers under the Livestock Incentive Scheme, benefits should be spread over five years, and not ten years as was done for the preliminary determination. This would be in accordance with the U.S. Internal Revenue Service Class Life Asset Depreciation Range System for breeding sheep. Respondents contend that a four year range should be used, as this is the standard for breeding stock in New Zealand.

DOC Position. We agree with petitioners. When determining the period over which to allocate benefits resulting from grants, our practice is to use the Internal Revenue Service's depreciation range. We followed that practice in this case.

Comment 4. Petitioners contend that, if duties are assessed uniformly on a per pound basis, it will act as an incentive for New Zealand to export only the higher-valued cuts and thereby significantly avoid the remedial nature of a countervailing duty. They suggest that the amount of the bounties or grants be countervailed by apportionment to the primal cuts imported from New Zealand according to their relative value. They believe that there would be no significant administrative inconvenience in the assessment of duties based on the method suggested.

DOC Position. We disagree. First, none of the programs found to be countervailable provides benefits on a per cut basis. Both the SMP and Meat Board Price Support Schemes provide benefits on the basis of a certain dollar amount per kilogram of lamb. Other programs found to be countervailable provide benefits without regard for the type of cut produced or the relative value of individual cuts. Second, we believe that any future increase in New Zealand's export to the United States of more valuable cuts would be the result of market demand, not because the duty rate is on a per pound basis. We do not believe that the New Zealand exporters would ship more valuable cuts in order to evade the effect of a countervailing duty order if those cuts could not be sold in the United States. Finally, it has been our practice in recent countervailing duty investigations to establish countervailing duty rates that are on terms consistent with the costoms duty rates published in the TSUS. In this case, lamb meat classified under TSUS 106.30 has a duty rate 0.5 cents per pound. *See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097).

Comment 5. Petitioners argue that the MISA has no assets and will generate income only in the event that market prices for lamb meat exceed the trigger prices, an event they claim is unlikely to occur. As such, if government funding of the MISA through September 30, 1984, is not regarded as a continuing, recurring price support payment to producers, they claim that it should be treated as a long-term loan to an uncreditworthy borrower (*e.e.*, the Meat Board) and the benchmark interest rate should reflect that fact. They further argue that the government funding of the MISA since October 1, 1984, should be regarded as a continuing, recurring price support payment to producers, and therefore countervailed at the time of receipt. While the theoretical framework is in place for repayment of the MISA advances, petitioners contend that such repayments can hardly be expected given the current and projected condition of the industry.

DOC Position. We have treated the MISA deficit as a price support payment countervailable in the year of receipt, and, therefore, the benchmark issue is moot.

Comment 6. Petitioners question the accuracy of the amount of the SMP payments reported for the 1984/85 fiscal year (our period of investigation) given (1) the intent of the government of New Zealand's to keep SMP payments on an equivalent basis with the preceding year, and (2) the fact that payments for the year ended September 30, 1984, were considerably higher than those reported for the 1984/85 fiscal year.

DOC Position. We have verified the value of the actual SMP and lump-sum payments made during the period of investigation and have used these figures in calculating the net bounty or grant.

Comment 7. Petitioners claim that a benchmark interest rate based on prime commercial bills is inappropriate for purposes of calculating benefits under the Export Suspensory Loan Scheme. They claim that these loans are provided to farmers, and that even in the United States, borrowers such as these would have to pay at least 2 percentage points over the prime lending rate.

DOC Position. For the preliminary determination, we used the rate for prime commercial bills because, at that time, we believed that it was the most representative rate for alternative short-term financing. For the final determination, we have used the national average commercial interest rate on overdraft accounts, published by the Reserve Bank of New Zealand in the *Reserve Bank Bulletin*, and reported in the questionnarie response. Because this is a weighted-average rate on all overdraft loans, and not just a rate for prime borrowers, the question of including an additional spread over prime is moot. This choice of benchmark is consistent with the policy for short-term loans outlined in the Subsidies Appendix (49 FR 18006) loans.

Comment 8. Petitioners suggest that government contributions to the Meat Industry Research Institute be allocated only over export production because the activities of that organization are related solely to export production and export processing of lamb.

DOC Position. We have found this program not countervailable. See section II.H of this notice.

Comment 9. Petitioners contend that nearly all of the benefits provided under the Livestock Incentive Scheme are attributable to increases in sheep stock, not only 8.6 percent as was allocated in the preliminary determination. They reference the Meat Producers Board's 1983 Annual Report, which indicates that while the number of dairy cattle has remained unchanged and the number of

beef cattle has declined since 1978, the number of sheep has increased by approximately 15 percent. In addition, they contend that virtually every livestock farm eligible for benefits under this program carries sheep.

DOC Position. Our preliminary analysis was based on unverified information contained in the response. We have since verified that, in fact, sheep farms have received well over 90 percent of the money provided under this program. Our final calculations reflect this fact.

Comment 10. With respect to the Fertilizer and Lime Transport Subsidy and the Fertilizer Price Subsidy, petitioners assert that the Department's 46 percent allocation of the total benefit to sheep production was too low. They claim that a more reasonable allocation would be 75 percent, the allocation used by the government of New Zealand for the Fertilizer and Lime Bounty.

DOC Position. We have found the three programs not countervailable. See section II.B, II.C, and II.D of this notice.

Comment 11. Petitioners assert that the source of funds for the Meat Board loans and loan guarantees is the MIRA, which they claim is an account of the government. Therefore, those loans and loan guarantees should be found countervailable to the extent that their terms are inconsistent with commercial considerations.

DOC Position. While we agree that, technically, the MIRA is an account of the Ministry of Agriculture and Fisheries, we do not agree with petitioners' assertion that the use of MIRA funds as the source of the Meat Board's loans and loan guarantees provides a countervailable benefit. See section II.A of this notice.

Comment 12. Petitioners argue that, while inspection of meat for domestic consumption is an appropriate action of government, inspection of meat to meet special standards of importing countries is a service designed solely to benefit export marketing, and is therefore countervailable.

DOC Position. We disagree. See section II.J of this notice.

Comment 13. Petitioners contend that the Noxious Plants Control Scheme is limited to specific weeds which are solely pastoral and that the program is of benefit only to livestock producers; therefore, this program should be found countervailable.

DOC Position. We disagree. See section II.I of this notice.

Comment 14. Petitioners argue that, because the MISA and SMP complement one another, the time periods for calculating the two programs' benefits should be identical. They contend that the appropriate period should be October 1, 1983, through September 30, 1984 (the Meat Board's financial year).

DOC Position. When selecting the period used for the measurement of bounties or grants, the Department attempts to look at the most recent fiscal period for which complete information is available. In this case, we selected the government of New Zealand's 1985 fiscal year (April 1, 1984, through March 31, 1985). Choosing this period enabled us to tie the information contained in the response to audited government budget documents and financial statements. While the two price support programs do operate on an October through September basis, the government of New Zealand was able to compile, and we were able to verify, expenditures on these programs made during our period of investigation.

Comment 15. Petitioners take issue with the respondents' ratio of the value of lamb meat:pelts:wool:offal. They argue that, based on information available to them, the lamb meat accounts for a significantly higher portion of the value of a lamb than that reported by respondents.

DOC Position. We are required to use verified information for our final determination. In this case, while petitioners have provided data on this issue, we note that the sources of their information are (1) a three-year old New Zealand Meat and Wool Board Report, and (2) U.S. domestic industry experience. On the other hand, respondents have provided, and we have verified, information on the product ratios that is current and reflective of the New Zealand industry. Accordingly, we have used respondents' information for allocation purposes.

Respondents' Comments

Comment 1. Respondents contend that the Fertilizer and Lime Transportation Subsidy, the Fertilizer and Lime Bounty, and the Fertilizer Price Subsidy programs are generally available and, even though the Department recognized the termination of the first two programs in its preliminary determination, all three programs should be found not countervailable for the final determination.

DOC Position. We agree. See sections II.B, II.C, and II.D of this notice.

Comment 2. Respondents also contend that government contributions to the Meat Industry Research Institute are not countervailable because government funding in New Zealand is available to a wide variety of research associations and industries, and that the findings of government funded research is publicly available.

DOC Position. We agree. See section II.H of this notice.

Comment 3. Respondents state that because the Meat Industry Hygiene Grant program was terminated in September, 1981, and that the value of grants in any given year were verified to be less than 0.5 percent *ad valorem*, the Department should find this program terminated with no benefits bestowed during the period of investigation.

DOC Position. We agree. See section IV of this notice.

Comment 4. With respect to the Export Suspensory Loan Scheme, respondents contend that the bonding rate should reflect the program's termination and take into account only those loans outstanding. They also argue that there is no concessional element in the rate of interest charged on those loans and, therefore, there is no countervailable element with respect to interest.

DOC Position. We recognize the termination of the program. With respect to any concessional element in the rate of interest charged, we verified that the DFC charges its borrowers rates of interest that are higher than its own costs to borrow. Our benchmark interest rate, however, is not based on the DFC's borrowing history, but on what comparable commercial loans would cost in New Zealand.

Comment 5. Respondents assert that, with respect to the Meat Board Price Support Scheme: (a) Devco has not contributed to the MISA deficit, (b) our preliminary determination did not take into account the fact that 1 percent interest was paid by the Meat Board on the deficit, and (c) that the appropriate benchmark interest rate should be a weighted-average of term-loans and overdraft rate in New Zealand, *i.e.*, the commercial rates that are charged to prime borrowers such as packing companies in New Zealand.

DOC Position. There is no evidence on the record to support respondents' assertion that Devco's sales to North America have not contributed to the MISA deficit. We did not take into account the 1 percent interest charged on the MISA deficit in our preliminary determination because the Board's annual report indicated that the deficit has been converted to a 30-year loan, interest-free for the first five years. We have since verified that 1 percent interest had been paid and, accordingly, have taken the interest payment into account for the final determination. We are now treating the deficit as a price support payment to lamb meat producers and countervailing it in the

year of receipt. Therefore, the benchmark issue is moot.

Comment 6. Respondents submit that because the SMP program was terminated as of September 20, 1984, the bonding rate for this program should be based solely on the lump-sum payment allocable to the period of investigation.

DOC Position. We disagree. While we have verified that the SMP program was terminated, we note that the state purpose of its replacement, the lump-sum payment, was to provide an equivalent level of benefits to lamb meat producers for the 1984/85 production year. While the lump-sum program itself is scheduled to be terminated on September 30, 1985, we have verified that the price supports for subsequent periods are being considered. At its August 1984 mid-year meeting, the Meat Board's Electoral Committee stated that a review would be undertaken to identify an alternative means of support for the period after 1984/85. Therefore, given that the lump-sum program is not scheduled to terminate until September 30, 1985, and because there may be another support system in place after that date, we do not believe that it is appropriate to reduce the bonding rate for this program.

Comment 7. Respondents argue the EPTI is not a tax program requiring a cash flow analysis under the Department's traditional tax methodology. Respondents maintain that EPTI tax benefits are earned on a sale-by-sale basis for specific tax years. The Department has verified that under the New Zealand government's schedule for phasing-out the EPTI program, Devco's exports of lamb meat to the United States will earn a 3.85 percent EPTI credit during Devco's 1986 tax year (October 2, 1984—October 1, 1985), a 1.925 percent EPTI credit during Devco's 1987 tax year (October 2, 1985—October 1, 1986), and no more credits on or after October 2, 1986. Respondents conclude that any EPTI tax credits can be offset precisely by assessing a countervailling duty rate equal to the specified EPTI credit rates in effect during the tax years of the phase-out period.

DOC Position. We disagree. We consider tax benefits to the countervailable when a company actually receives the benefits, rather than when a company becomes eligible to receive them. Tax law changes, such as the EPTI phase-out schedule, cannot be considered to be in effect until fully implemented by the government and used by the respondent. We verified that Devco claimed and received a 7.7 percent EPTI tax credit in its most recently completed tax return. The 3.85 percent EPTI credit will not be available to Devco until the company's 1986 fiscal year, and, under our tax methodology, these benefits are not realized until the 1986 tax return is filed. As such, current exports to the U.S. of lamb meat are benefiting from a bounty or grant equal to the 7.7 percent EPTI rate, which is the rate we are using for duty deposit purposes. If the scheduled EPTI changes are claimed in future tax returns, we will consider these changes in a section 751 administrative review, if one is required.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During verification we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the accounting records of the company producing and exporting the merchandise under investigation to the U.S.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was held on July 30, 1985. In accordance with the Department's regulation (19 CFR 355.34(a)), written views have been received and considered in this determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net bounty or grant is NZ$0.3602/lb. Therefore, in accordance with section 706(a)(3) of the Act, we are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from New Zealand which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with section 706(a)(1) and 751 of the Act.

This notice is published in accordance with section 703(f) of the Act (19 U.S.C 1671b(f))

Dated: September 3, 1985.

Walter J. Olson, Jr.,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-22190 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Wool From Argentina; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On May 6, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina The review covers the period July 1, 1983, through June 30, 1984, and six programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of the comment received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 19046) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through June 30, 1984, and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) perferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the

preliminary results. We received a written comment from C. Dana Draper Company, and importer of Argentine wool.

Comment: Draper argues that the Department should not have used data from the original investigation to establish the percentages of wool shipped from the various ports in Argentina. Rather, the Department should have ascertained the actual volume of the wool exports from each port by examining the records of the various ports from which the wool is shipped.

Department's Position: In conducting administraive reviews, the Department relies on information provided by respondent governments and other interested parties. In its response to our questionnaire, the Argentine government was unable to provide export data on a port-by-port basis. We therefore relied on the best information otherwise available, verified data from the original investigation.

Final Results of the Review

After review of the comment received, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be 6.98 percent for the period July 1, 1983, through June 30, 1984. The Department will instruct the Customs Service to assess countervailing duties of 6.98 percent of the f.o.b. invoice price on any shipments of wool exported on or after July 1, 1983, and on or before June 30, 1984.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 6.98 percent of the entered value on any shipment of Argentine wool entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of Commerce Regulations (19 CFR 355.41).

Dated: September 6, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 85-22191 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Review of Commercial Activities

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Revision of Schedule for Review of Commercial Activities.

Pursuant to OMB Circular No. A-76 and Department of Commerce Administrative Order 201-41, the National Bureau of Standards announces that it is revising the schedule for review of its commercial activities that was published in the Federal Register on May 8, 1985 (50 FR 19426). The revised schedule set out below replaces the previous NBS inventory listings that were published in that earlier notice and is the result of combining several small activities into larger studies. Commercial activities are those which are operated by the agency and which provide a product or service which could be obtained from a commercial service.

This notice is not an invitation for sealed bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Mrs. Paige Gilbert, A-76 Coordinator, Office of the Director of Administration, National Bureau of Standards, Gaithersburg, Maryland 20899 (301) 921-3567.

Dated: September 6, 1985.

Ernest Ambler,

Director.

NATIONAL BUREAU OF STANDARDS PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST

Identifier	Name of activity	Location	Review period
NBS-45-C	Plant Operations	Boulder	7/9/85-10/10/86
NBS-46-C	Plant Operations	Gaithersburg	10/31/85-1/31/87
NBS-47-C	Consolidated Administrative Services.	Gaithersburg	9/30/86-12/31/87
NBS-21-CP	Instrument Shops	Boulder	3/31/86-6/30/87
NBS-22-GP	Library	Gaithersburg	5/1/87-11/15/87
NBS-33-CP	Visual Arts	Gaithersburg	6/30/86-9/30/87

[FR Doc. 85-22225 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Control Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 12, 1985.

The Chairman of the Committe for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 18, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Republic of Singapore have exchanged notes further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 21, 1981, as amended to convert the existing minimum consultation levels for cotton and man-made fiber gloves in Categories 331 and 631, cotton dresses in Category 336 and men's and boys' woven shirts of man-made fibers in Category 640, cotton and man-made fiber playsuits in Categories 337 and 637 and other cotton apparel, including cotton vests, in Category 359 to designated consultation levels for the duration of the agreement. The letter to the Commissioner of Customs which follows this notice establishes these increased levels and controls for the first time in 1985 the levels for Categories 337, 631, 637 and 640. The sublevels for cotton vests in Category 359 (only T.S.U.S.A. numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043) is also being controlled by Customs for the first time in 1985. The levels for these latter five categories have not been adjusted to reflect any imports exported during 1985. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical

Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Singapore and exported during 1985.

Effective on September 18, 1985, the directive of December 21, 1984 is hereby further amended to adjust the restraint levels for cotton textile products in Categories 331, 336 and 359 and control the levels for Categories 337, 631, 637 and 640 and the sublevel for Category 359pt.[1] as follows:

Category	Twelve Month Levels[2]
331	250,000 dozen pairs.
336	35,000 dozen.
337	Do.
359	300,000 pounds of which not more than 200,000 pounds shall be in category 359pt.[1]
631	250,000 dozen pairs.
637	47,000 dozen.
640	65,000 dozen.

[1] In Category 359, only T.S.U.S.A. number 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043.
[2] The levels have not been adjusted to reflect any imports exported after December 31, 1984.

Textile products in Categories 337, 631, 637 and 640 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Category 337, 631, 637 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22206 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only T.S.U.S.A. numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043.

Denial of Entry of Incorrectly Visaed Gloves of Man-Made Fibers Produced or Manufactured in Taiwan

September 12, 1985.

The Chairman of the Committee for the implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 20, 1985. For further information contact Claire McDermott, Deputy Director, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 26, 1984 a notice was published in the **Federal Register** (49 FR 18026) which announced that, in order to meet the "correct category" requirement of the existing visa mechanism, certain apparel products, including man-made fiber gloves in Category 631, produced or manufactured in Taiwan and exported to the United States on and after May 1, 1984, must include on the visas certain specified letter designations to differentiate among products in the category. In the case of Category 631, the designations are "631-W" for work gloves and "631-0" for gloves other than work gloves. The purpose of this notice is to advise the public that the Chairman of the Committee for the Implementation of Textile Agreements is directing the Commissioner of Customs, until further notice, to deny entry for consumption and withdrawal from warehouse for consumption in the United States of man-made fiber which are visaed as gloves, other than work gloves in Category 631-0 (all T.S.U.S.A. number in the Category except 704.3215, 704.8525, and 704.900)), but are determined by the U.S. Customs Service to be properly classified in Category 631-W (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.9000). Conversely, man-made fiber gloves, visaed as Category 631-W, but found to be properly classified as gloves, Category 631-0, will also be denied entry.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenaham,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but doe not cancel, the directive of September 27, 1972, as amended, from the Chairman of the Commjttee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products produced or manufactured in Taiwan, for which the authorities in Taiwan had not issued an appropriate export visa.

Effective on September 20, 1985 and until further notice, you are directed to prohibit entry for consumption, or withdrawal from warehouse for consumption, in the United States of man-made fiber textile products which are visaed as Category 631-0 (all T.S.U.S.A. numbers except 704.3215, 704.8525, 704.9000), but are determined to be Category 631-W (only T.S.U.S.A. numbers 704.3215, 705.8525, and 704.9000). Entry should also be denied to man-made fiber textile products, visaed as Category 631-W, which are found to be Category 631-0.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22207 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 12, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 18, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 27, 1984 a notice was published in the **Federal Register** (50 FR

50231) which established import control limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1985 and extends through December 31,1985. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to also control imports of cotton sweaters in Category 345 and men's and boys' other coats of man-made fibers in Category 634 produced or manufactured in the Philippines and exported during the same period at the designated limits. The new limits have not been adjusted to account for any imports in these categories, exported during 1985. As the data become available these charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Effective on September 18, 1985, the directive of December 21, 1985 is hereby further amended to include the following limits for cotton and man-made fiber textile products in Categories 345 and 634:

Category	Twelve-Month Restraint Limit[1]
345	34,583 dozen
634	218,437 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984. Imports in Categories 345 and 634 during the January-July period of 1985 have amounted to 16,093 dozen and 34,841 dozen, respectively.

Textile products in Categories 345 and 634 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 345 and 634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22205 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 360 (Cotton Pillowcases)

September 12, 1985.

On August 29, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 360. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong, relating to trade in cotton, wool and man-made fiber textile and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 360, produced or manfuactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 360 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreemnts considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22208 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearings; Applications to Review

AGENCY: Department of Education.

ACTION: Notice of application for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between June 16, 1985, and August 15, 1985. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, DC 20202. Telphone: (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED).The Secretary also has designated the Board as having jurisdiction to conduct hearings

concerning most ED administered programs that involve (a) a determination that a grant is void, (b) the disposal of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the Federal Register on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Vocational Rehabilitation

Appeal of the Hawaii State Board of Vocational Education, Docket No. 15-(190)-85, Audit Control No. 09-30003.

The Hawaii State Board of Vocational Education (Hawaii) appealed a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed programs conducted under the Vocational Eucational Act of 1963 (Act) during the period July 1, 1977, through June 30, 1980.

Costs were disallowed because Federal disadvantage funds allegedly were not used for purposes mandated under the Act and because expenditures for guidance and counseling allegedly were not documented adequately.

The Department seeks a refund of $333,887. Hawaii disputes its liability.

Appeal of the State of Wyoming, Docket No. 16-(191)-85, Audit Control No. 08-30009.

Wyoming requested review of a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed the vocational education program administered by Wyoming during fiscal years 1979 through 1982.

Costs were disallowed because (1) funds allegedly were awarded to the University of Wyoming Adult Re-Entry Center, Goshen County School District #1, and Albany County School District #1 contrary to the State plan; (2) allegedly students were served who were not handicapped or disadvantaged; and (3) fulfillment of the matching requirement allegedly was not documented.

The Department requests a refund of $201,922. Wyoming disputes this liability.

Miscellaneous Programs

Appeal of the Texas Education Agency, Docket No. 17-(192)-85, Audit Control No. 06-20112.

The Texas Education Agency (Texas) appealed a final audit determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The final audit determination was based on a review of the accuracy of the counts of handicapped children served under Public Law 94-142, Part B on December 1, 1978, 1979, and 1980.

A refund of funds awarded for Fiscal Year 1980 was requested because the count of handicapped children upon which that year's grant award was based allegedly overstated the number of handicapped children served in the Fort Worth Public Schools.

The Department seeks a refund of $161,178. Texas disputes this liability.

Appeal of the California State Department of Education, Docket No. 18-(193)-85, Audit Control No. 09-20102.

The California State Department of Education (California) requested review of a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed unemployment insurance charges to Federal grants during the period January 1, 1972, through December 31, 1980.

The final audit determination seeks to establish joint and several liability against California and the California Employment Development Department which administers the unemployment compensation fund. The disallowance is based on an allegedly higher unemployment insurance contribution rate for employees of Federally funded programs than for employees of State funded programs.

The Department requests a refund of $2,752,000. California disputes this liability.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 245-7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: September 11, 1985.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85-22233 Filed 9-16-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Graduate and Professional Opportunity Fellowships Program Application Notice for Fiscal Year 1985; Extension of Closing Date

The Assistant Secretary extends the period that institutions of higher education may submit proposals under the Graduate and Professional Opportunity Fellowships Program (GPOP) to October 11, 1985.

Because of printing problems, materials for this program were not available to institutions as originally scheduled. These materials are now available and have been distributed to the public. Accordingly, the extended closing date of October 11, 1985 will allow institutions sufficient time to submit proposals.

An Application Notice for this program was published in the Federal Register on July 26, 1985 (50 FR 30497). Information concerning available funds and other program information is contained in that Notice.

Authority for this program is contained in Part B of Title IX of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1134d-1134g)

(Catalog of Federal Domestic Assistance No. 84.094B, Graduate and Professional Opportunity Fellowships Program)

Dated: September 12, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-22234 Filed 9-16-85; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for 1985 for the National Graduate Fellows Program (NGFP)

The National Graduate Fellows Program offers fellowships to students at accredited institutions of higher education to pursue graduate study at the doctoral level. Applications are invited for awards to be made in 1985. Authority for this program is contained in the Higher Education Act of 1965, as amended (20 U.S.C. 1134h-k).

Applications are invited for 30 month fellowship awards for the period from

January 1, 1986 through June 30, 1988. These awards are intended to be used during the portion of the 1985–86 academic year beginning January 1, 1986, and during the 1986–87 and 1987–88 academic years.

At its initial meeting held on August 14–16, 1985, the National Graduate Fellows Program Fellowship Board determined which disciplines within the arts, the humanities, and the social sciences will be considered as eligible for fellowship awards under this program. The disciplines are contained in the NGFP program brochure. Those determinations are the statutorily mandated responsibility of this Presidentially-appointed Fellowship Board (20 U.S.C. 1134i(a)(2)(B)).

Closing Date for Transmittal of Application

An application for the NGFP must be mailed or hand-delivered by October 17, 1985. The Fellowship Board will meet prior to the closing date to appoint review panels so that the review process may begin as soon as applications are received. Therefore, applicants are encouraged to make every effort to mail their completed applications well in advance of the application deadline.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.173, National Graduate Fellows Program, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that the application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible Applicants

The program regulations (34 CFR 650.2) require that at the time of application, candidates for NGFP fellowships must be eligible to begin or continue graduate study at the doctoral level at an accredited institution of higher education. Candidates must be citizens or nationals of the U.S.; be permanent residents of the U.S.; provide evidence from the Immigration and Naturalization Service that they are in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or be permanent residents of the Trust Territories of the Pacific Islands or Northern Mariana Islands. All applicants must meet any additional requirements established by the Fellowship Board. These requirements are included in the application package.

The Fellowship Board has determined that an individual is eligible for a NGFP fellowship if applying to, accepted, or already enrolled in a graduate program with the expressed intent of obtaining a doctorate or other doctoral level degree. According to the Fellowship Board, the NGFP is not intended to support students seeking Master's degrees, except where such a Master's degree is an integral preparatory step to a doctorate or other doctoral level degree.

Available Funds

The Department of Education Appropriations Act, 1985, provided $2.5 million for the NGFP. The Supplemental Appropriations Act, 1985, Pub. L. 99–88, extended the availability of these funds until December 31, 1985.

Under §§ 650.5 and 650.42 of the regulations, a fellowship award consists of (1) an annual allowance, paid to the institution in which the fellow is enrolled, of $6,000 or tuition and other expenses required by the institution as part of the fellow's instructional program, whichever is less, and (2) an annual stipend of $10,000 or the amount of the fellow's financial need, whichever is less. For the 1985–86 academic year, the Secretary intends to prorate these amounts to cover the period beginning January 1, 1986.

Application Forms

Application forms will be available for mailing on September 24, 1985. They may be obtained by writing to the National Graduate Fellows Program, Office of Postsecondary Education, U.S. Department of Education, P.O. Box 44367, L'Enfant Plaza Station, Washington, DC 20026–4367.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the application package is intended to aid applicants in applying for assistance under this competition. Nothing in the package is intended by the Department of Education to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under statute and regulations governing the competition.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the NGFP, 34 CFR Part 650, 50 Fed. Reg. 33220 (August 16, 1985).

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply:

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580—75.592 of Subpart E, What conditions must be met by a grantee?

Further Information

For further information, contact the U.S. Department of Education, National Graduate Fellows Program, P.O. Box 44367, L'Enfant Plaza Station, Washington, DC 20026–4367; (202) 245–9274.

(20 U.S.C. 1134h–k)

(Catalog of Federal Domestic Assistance No. 84.173, National Graduate Fellows Program)

Dated: September 13, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–22324 Filed 9–16–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Firm Displacement Rate and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Request for Comments. *BPA File No:* FD–85.

BPA requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the Firm Displacement rate contain the file number designation FD–85.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), enacted on December 5, 1980, provides that BPA is obligated to establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS).

BPA forecasts a regional firm capacity surplus for at least 20 years and a firm energy surplus for at least the next 5 years. BPA seeks to develop rates to market its surplus power at cost on a long term basis. BPA is therefore proposing to develop a Firm Displacement (FD) rate that will apply to contract purchases of BPA power by Pacific Northwest (PNW) utilities to replace the utilities' firm resources. The displaced resources would be exported from the region on a firm basis. This arrangement would provide power to Pacific Southwest utilities on a long-term basis.

BPA will conduct a hearing under sec. 7(i) of the Pacific Northwest Power Act in establishing the FD rate. Opportunities will be available for interested persons to review the proposed rate, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rate proposed in this notice.

Responsible Official: Mr. John D. Carr, Assistant Director, Division of Rates, is the official responsible for the development of BPA's FD rate.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 27, 1985, and should be addressed as follows: Hearing Officer—APR, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m. on September 27, 1985, in the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington. Registration for the prehearing conference will begin at 8:30 a.m.

During the prehearing conference, dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearing will be mailed to all parties of record. All formal hearing sessions will be held in the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later Federal Register notice (currently expected to be published in February 1986).

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the address above. Telephone numbers, voice/TTY, for the Public Involvement Office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Reginald M. Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Relevant Statutory Provisions

Section 7 of the Pacific Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides:

> [s]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Section 7 of the Pacific Northwest Power Act also contains specific directives regarding the establishment of particular rates. For example, section 7(b) addresses the establishment of rates for firm power sales to BPA's public body, cooperative, and Federal agency customers. Similary, section 7(c) addresses the establishment of rates for firm power sales to BPA's direct service industrial customers. Of particular relevance to the establishment of the FD rate is section 7(f), which provides:

> Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c) of this Act and additional resources which, in the

determination of the Administrator, are applicable to such sales.

Rates established by BPA can only become effective upon interim approval or confirmation and approval by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. 839e(a)(2).

In addition to the Pacific Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832, *et seq.*, the Federal Columbia River System Act, 16 U.S.C. 838, *et seq.* and the Flood Control Act of 1944, 16 U.S.C. 825, *et seq.*

BPA power sales are subject to the provisions of the Pacific Northwest Regional Preference Act, 16 U.S.C. 837 *et seq.* This Act, in conjunction with section 9(c) of the Pacific Northwest Power Act, 16 U.S.C. 839f(c), guarantees PNW consumers first call on Federal power generated in the PNW. While FD sales would only be made to serve loads within the PNW region, the Regional Preference Act places certain constraints on Federal sales to regional utilities where Federal power is used "as replacement, directly or indirectly, with the Pacific Northwest for hydroelectic energy delivered for use outside that region by a non-federal utility . . ." 16 U.S.C. 837b(a).

B. History

BPA first proposed an FD rate in September 1984 as part of BPA's 1985 initial wholesale rate proposal. the proposed FD rate was part of a package of rates designed to give BPA the flexibility needed to sell surplus firm power in a market characterized by a high degree of uncertainty. However, on December 11, 1984, BPA notified all parties to the rate hearing that the proposed FD rate was withdrawn from consideration. Although BPA believed that the firm displacement concept had considerable merit, the rate itself needed further study.

Thereafter, BPA pursued discussions with PNW and California utilities regarding potential sales of PNW surplus firm power to California markets. When several utilities expresed interest in the FD concept, BPA began a series of informal weekly meetings with interested parties in June 1985 to explore an appropriate FD rate design. At the same time, contract negotiations between BPA and individual utilities were proceeding. After assessing the results of the weekly meetings, BPA announced in early July that it would undertake a section 7(i) process to develop an FD rate.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), establishes procedures for public participation in the development of BPA's rates. In order to advise the public regarding in BPA's rates. In order to advise the public regarding participation in BPA's rate adjustment proceedings and to elaborate on the procedures established in section 7(i), BPA published on February 10, 1982, "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" in the Federal Register (46 FR 6240). These procedures were used in BPA's 1985 wholesale power and transmission rate adjustment proceedings. On March 23, 1984, BPA published its "Interim Amendment of Procedures Governing BPA Rate Adjustments" (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the Administrative Procedures Act. See 5 U.S.C. 557(d). BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on the FD rate.

The Pacific Northwest Power Act prescribes a Federal Register notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the hearing process. BPA's procedures expand these requirements. They provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

The process begins with publication of the notice of the proposed rates which includes a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a prehearing conference if scheduled by an Indpendent Hearing Officer. A prehearing conference has been schedule before the Hearing Officer on September 27, 1985, at BPA's Ross Complex. Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the prehearing conference.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as interested persons who may express their views, but who may not cross-examine other witnesses, participate in the prehearing conference, or serve or be served with documents. Participants are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties.

Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interest and positions, the Hearing Officer, to expedite the hearing, may order appropriate limitations on the number of attorneys (or parties appearing pro se) who will be permitted to cross-examine witnesses and file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that clarification

sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record which addresses significant technical issues. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the pertinent law through briefs. The Hearing Officer also will extend an opportunty to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Procedures for submitting comments to BPA's Public Involvement Manager are detailed in the Dates and Addresses sections of this notice. Participants will be kept informed of activity at the formal hearings through regular summary letters.

The record will include, among other things, transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the BPA Administrator for decision.

The Administrator will develop the final proposed FD rate based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rate will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rate and record with FERC for approval.

III. Rate Schedule

Schedule FD-85—Firm Displacement Power Rate

Section 1. Availability

This schedule is available for Firm Displacement contract purchases by Pacific Northwest utilities for use within the Pacific Northwest. Firm Displacement purchases must replace firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement purchase may not exceed the planned output of the resource(s) identified by the purchaser as dedicated to serve extraregional load.

Section II. Rate

A. *Demand Charge.* $70.80 per kilowatt per year of contract demand billed monthly at the rate of $5.90 per kilowatt of contract demand for contracts that specify 12 months of service per year.

1. *Partial Year Service.* For contracts which specify service for fewer than 12 months per year, the monthly demand charge of $5.90 per kilowatt shall be increased by:

$$\frac{\$5.90 * (12 - \text{number of specified service months}) * .25}{\text{number of specified service months}}$$

The monthly demand charge shall be assessed only for specified service months.

2. *Load Factor Credit.* A credit shall be granted based on the purchaser's annual load factor.

a. For annual load factors equal to or greater than 55 percent, the credit shall be $1.17 per kilowatt of billing demand per month.

b. For annual load factors less than 55 percent the credit shall be equal to:

$$\$1.17 * \frac{\text{Annual Load Factor}}{55 \text{ percent}}$$

Annual load factor is the ratio of the average energy load in kilowatts during the contractually specified service months to the peak load in kilowatts during that period. The average load and peak load shall be contractually specified.

B. *Energy Charge.* 22.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* The FD-85 rate shall be subject to change each October 1, beginning October 1, 1987.

1. *Energy Charge.* The FD-85 energy charges through September 30, 1991, shall be calculated according to one of the two formulas below. The applicable formula shall be contractually specified.

a. $Rate_n = Rate_{n-1} * 1.075$

where:

$Rate_n$ = the energy charge in the year (October 1 through September 30) for which the FD-85 rate is being calculated; and

$Rate_{n-1}$ = the energy charge of the FD-85 rate in the previous year (year n-1);

b. $Rate_n = Rate_{n-1} * (1 + INC_{n-1})$

where:

$Rate_n$ = the energy charge in the year (October 1 through September 30) for which the FD-85 rate is being calculated;

$Rate_{n-1}$ = the energy charge of the FD-85 rate in the previous year (year n-1);

INC_{n-1} = the weighted average increase in the cost of exchange resources in year n-1 as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of exchanging investor-owned utilities (IOUs). If any IOU equalizes rates in year n-1 pursuant to section 10 of the Residential Purchase and Sale Agreement, the calculation of INC shall not reflect the average system cost of that utility.

2. *Demand Charge.* The FD-85 demand charge, including charges for Partial Year Service and the Load Factor Credit, through September 30, 1991, shall be calculated as follows:

$Rate_n = Rate_{n-1} * 1.05$

where:

$Rate_n$ = the demand charge in the year (October 1 through September 30) for which the FD-85 rate is being calculated; and

$Rate_{n-1}$ = the demand charge of the FD-85 rate in the previous year (year n-1).

B. *Extended Peaking and Returned Energy Surcharges.* Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E and IV.F of the CF-85 rate schedule) will be established pursuant to contract unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

C. *Demand Charge Ceiling.* Beginning fiscal year 1992, the rate ceiling for the FD demand charge shall be determined for each fiscal year (October-September) on October 1 of the relevant fiscal year. The FD demand charge shall not be higher than the charge calculated according to the following formula:

$(PF_n/PF_1) * FD_1$

where:

PF_a = the average annual Priority Firm Power (PF) rate or its successor (in mills per kilowatthour) that is in effect on October 1 of the fiscal year for which the ceiling is being calculated. Such average annual PF rate shall be calculated at 55 percent load factor, assuming a uniform demand in each of the twelve months of the year. If there is more than one PF rate, PF_a shall be based on the weighted average PF rate using sales forecasted at each rate in the development of the PF rate.

PF_i = The average annual PF rate (in mills per kilowatthour) that is in effect on the effective date of the contract for the purchase of Firm Displacement power. Such average annual PF rate shall be calculated at 55 percent load factor, assuming a uniform demand in each of the 12 months of the year.

FD_i = The Firm Displacement demand charge in dollars per kilowattyear that is in effect on the effective date of the contract for the purchase of Firm Displacement power.

The same test will be applied to the Load Factor Credit and the Partial Year Service charge.

Section V. Resource Cost Contribution

In compliance with Sec. 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD–85 rate is 99.2 percent Exchange and 0.8 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.6 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 33.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following acts, as amended: the Flood Control Act of 1944, 16 U.S.C. 825, *et seq.*; the Bonneville Project Act, 16 U.S.C. 832, *et seq.*; the Regional Preference Act, 16 U.S.C. 837, *et seq.*; the Federal Columbia River Transmission System Act, 16 U.S.C. 838, *et seq.*; and the Pacific Northwest Power Act, 16 U.S.C. 839, *et seq.*

IV. General Rate Schedule Provisions

Firm Displacement Power

Firm Displacement Power is electric power that BPA will make available to Pacific Northwest utilities for use within the Pacific Northwest. The power will replace firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement purchase may not exceed the planned output of the resource(s) identified by the purchaser as able to be dedicated to serve extraregional load. BPA may limit the amount of Firm Displacement sale under this rate schedule to the amount specified in the contract between BPA and the utility as actually serving extraregional load from the utility's displaced resources. Firm displacement sales, however, may be restricted pursuant to the Restriction of Deliveries section of the General Rate Schedule Provisions (section V.F.).

V. Rate Derivation and Design

BPA has firm capacity available for sale in the amount of at least 2000 megawatts for 20 years. Surplus energy also is available on a firm basis through at least 1991. In order to help market this firm surplus, BPA has developed the Firm Displacement rate schedule. This schedule is available for contract purchases by Pacific Northwest utilities. Firm Displacement purchases must be used within the Pacific Northwest region to replace firm resources exported from the region.

The proposed FD–85 rate is based on the cost and rate studies prepared for the 1985 wholesale power and transmission rate proposals. These studies use a fiscal year (FY) 1987 (October 1986 through September 1987) test year. The FD rate is calculated from the costs allocated to the Surplus Firm Power (SP–85) rate, and it features a demand charge that varies with the amount of energy purchased. If the FD customer is purchasing only capacity, the rate is the same as the SP–85 demand charge: $70.80/kilowattyear (Kw-yr). Purchases having a load factor that equals or exceeds 55 percent are assessed a demand charge of $56.76/kW-yr. A Load Factor Credit is applied to reduce the demand charge as load factor increases from zero to 55 percent. The energy rate is 22.2 mills/kilowatthour (kWh).

The calculation of the FD rate can be divided into three steps. In the first step, the average SP–85 rate at 100 percent load factor is calculated from its demand ($70.80/kW-yr, or $5.90/kilowattmonth (kW-mo)) and energy (20.6 mills/kWh) rate components. The average SP–85 rate is equal to 28.7 mills/kWh. In the second step, new rate components are calculated from this average SP–85 rate by setting the energy charge equal to 22.2 mills/kWh, the NF–85 Standard rate. In order for the new rate components to collect the same average revenue at 100 percent load factor as the SP–85 rate, demand charge must be decreased to $56.76/kW-yr ($4.73/kW-mo). At a 55 percent load factor, this new rate averages 34.0 mills.

The third step in designing the FD rate allows BPA to charge the higher SP–85 demand rate, $70.80/kW-yr, for capacity-only sales while maintaining an average rate of 34.0 mills/kWh at 55 percent load factor. This is accomplished through development of the Load Factor Credit, which reduces the demand charge by $.225/kW-yr for every 1 percent increase in load factor up through 55 percent. The Load Factor Credit is determined by first subtracting the monthly SP–85 demand charge ($5.90/kW-mo) from the demand charge developed in the second step ($4.72/kW-mo). This difference in the two demand charges is multiplied by the ratio of the purchaser's annual load factor to 55 percent which yields the reduction in the FD–85 demand charge for that particular annual load factor. Above a 55 percent load factor, the credit remains constant. The Load Factor Credit thus offers an incentive for purchasing FD firm power at higher load factors.

Another feature of the FD demand rate is Partial Year Service, in which a customer may elect to purchase FD power for less than 12 months per year. A charge is assessed for taking Partial Year Service, through an increased demand charge for the months when service is taken. This increased charge equals 25 percent of the demand charge that would have been assessed for those months that the customer elects not to purchase capacity. This adjusted demand charge ensures that BPA recovers some of the revenue foregone by reserving capacity for a period of less than 12 months, and thus, precluding other long-term sales.

In order to adjust rates in future years to account for cost increases, escalation factors are included as part of the FD–85 rate for the four years following FY 1987. The escalation factor for the FD–85 energy charge is similar to that in the SP–85 rate. Two energy escalation factors are provided, one of which must be selected by contract. The variable escalation factor is based on the annual rate of increase in the cost of investor-owned utility exchange resources. The fixed escalation factor is 7.5 percent, based on forecasts of the average rate of increase in BPA's New Resource rate, plus a risk factor of 2.5 percent.

The demand charge escalation factor is the 5 percent factor used for the energy escalation factor, without the risk factor. This 5 percent escalator reflects the lesser risk associated with surplus capacity sales, due to a larger and longer lasting capacity surplus and expectations of slower growth in capacity costs.

The demand charge escalation factor will be used only in the first 5 years of the FD contract. Thereafter, the demand charge will be revised through a Sec. 7(i) process. However, this rate will be subject to a ceiling which cannot be exceeded through the 20-year term of the FD contract. The demand charge ceiling is set to equal the cumulative increase in the average Priority Firm Power (PF) rate at 55 percent load factor times the FD demand charge in effect when the FD contract first becomes effective. The PF rate is considered BPA's most stable and lowest firm power rate; the ceiling will provide purchasers with some assurance regarding the level of the FD demand charge over the anticipated 20-year life of the FD purchase contracts.

Issued in Portland, Oregon, on September 6, 1985.

Peter T. Johnson,

Administrator.

[FR Doc. 85-22239 Filed 9-12-85; 4:22 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-83-14; ERA Case No. 51825-3630-01-02-03-82]

Concurrence on Certificate and Issuance of Final Prohibition Orders; Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Amendment to notice of concurrence on certification and issuance of final prohibition orders—Medina Electric Cooperative, Inc. (49 FR 32102).

SUMMARY: The amendment to Notice of Concurrence should read: The revised project schedules for conversion checkout and test dates of Medina's Pearsall plant units are as follows:

Unit No. 1—April 1989
Unit No. 2—July 1989
Unit No. 3—October 1989.

Dated: August 30, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Economic Regulatory Administration.

[FR Doc. 85-22240 Filed 9-16-85; 8:45 am]

BILLING CODE 6450-01-M

Pester Derby Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Revised Proposed Remedial Order which was issued to Pester Derby Oil Company. This Revised Proposed Remedial Order alleges pricing violations in the amount of $271,595.60 plus interest in connection with the sale of refined products at prices in excess of those permitted under 10 CFR Part 212 during the time period November 1, 1973 through May 8, 1974.

A copy of the Proposed Remedial Order, with confidential information deleted may be obtained from the Office of Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Ave. SW., Room: 1E-190, Forrestal Building, Washington, DC 20585. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW., Room: 6F-078, Forrestal Building, Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 13th day of August, 1985.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 85-22187 Filed 9-16-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST85-1203-000, et al.]

Columbia Gulf Transmission Co., et al.; Self-Implementing Transactions

September 10, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.149(d) of the Commission's Regulatons.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "C/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before September 30, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBTU)
ST85-1203	Columbia Gulf Transmission Co	Southern Natural Gas Co	G	07-01-85		
ST85-1204	do	Texas Gas Transmission Corp	G	07-01-85		
ST85-1205	Equitable Gas Co	Koppers Co., Inc	F(157)	07-01-85		
ST85-1206	Sea Robin Pipeline Co	Dayton Power and Light Co	B	07-01-85		
ST85-1207	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	C	07-01-85		
ST85-1208	Northern Natural Gas Co	Archer Daniels Midland Co	F(157)	07-01-85		
ST85-1209	Texas Eastern Transmission Corp	La Gloria Oil and Gas Co	F(157)	07-01-85		
ST85-1210	Valero Transmission Co	Richardson Fuels, Inc	C	07-01-85		
ST85-1211	Llano, Inc	Pacific Lighting Gas Supply Co	D	07-01-85	11-26-85	10.20
ST85-1212	Panhandle Eastern Pipeline Co	Texas Gas Transmission Corp	G	07-01-85		
ST85-1213	ANR Pipeline Co	Bethlehem Steel Corp	F(157)	07-01-85		
ST85-1214	do	Kaiser Aluminum & Chemical Corp	F(157)	07-01-85		
ST85-1215	Panhandle Eastern Pipeline Co	Warner Gear, Div. of Borg-Warner Automotive	F(157)	07-01-85		
ST85-1216	do	Cargill, Inc	F(157)	07-01-85		
ST85-1217	Trunkline Gas Co	Natural Gas Pipeline Co. of America	G	07-01-85		
ST85-1218	Southern Natural Gas Co	Transcontinental Gas Pipeline Corp	G	07-02-85		
ST85-1219	Northern Natural Gas Co	NGP Pipeline Co	B	07-02-85		
ST85-1220	PGC Pipeline	New Jersey Natural Gas Co	D	07-02-85		
ST85-1221	Producer's Gas Co	Connecticut Natural Gas Corp	D	07-02-85		
ST85-1222	National Fuel Gas Supply Corp	Milk Products Cooperative, Inc	F(157)	07-02-85		
ST85-1223	Transcontinental Gas Pipeline Corp	Lone Star Gas Co	B	07-02-85		
ST85-1224	Producer's Gas Co	Dayton Power and Light Co	D	07-02-85		
ST85-1225	Transcontinental Gas Pipeline Corp	Public Works Commission of Fayetteville	F(157)	07-03-85		
ST85-1226	do	Carolina Yarn Processors	F(157)	07-03-85		
ST85-1227	do	Burlington Industries	F(157)	07-03-85		
ST85-1228	do	Republic Refining Co	F(157)	07-03-85		
ST85-1229	El Paso Natural Gas Co	Inspiration Consolidated Copper Co	F(157)	06-24-85		
ST85-1230	Transcontinental Gas Pipeline Corp	Owens-Corning Fiberglass Corp	F(157)	07-03-85		
ST85-1231	Trunkline Gas Co	Elizabethtown Gas Co	B	07-03-85		
ST85-1232	Panhandle Eastern Pipeline Co	Allegheny Ludlum Steel Corp	F(157)	07-03-85		
ST85-1233	do	Frito-Lay, Inc	F(157)	07-03-85		
ST85-1234	United Gas Pipeline Co	Newport Steel Corp	F(157)	07-03-85		
ST85-1235	Transcontinental Gas Pipeline Corp	Firestone Tire & Rubber Co	F(157)	07-03-85		
ST85-1236	do	Collins & Aikman Corp	F(157)	07-03-85		
ST85-1237	do	Westpoint Pepperell Alamac Knitting Div	F(157)	07-03-85		
ST85-1238	do	J.P. Stevens and Co., Inc	F(157)	07-03-85		
ST85-1239	do	Hercofina	F(157)	07-03-85		
ST85-1240	do	Cannon Products	F(157)	07-03-85		
ST85-1241	do	American Efird	F(157)	07-03-85		
ST85-1242	do	Kayser-Roth Hosiery, Inc	F(157)	07-03-85		
ST85-1243	Panhandle Eastern Pipeline Co	Phenix Transmission Co	B	07-03-85		
ST85-1244	ANR Pipeline Co	Baltimore Gas and Electric Co	B	07-03-85		
ST85-1245	Texas Gas Transmission Corp	General Tire and Rubber Co	F(157)	07-09-85		
ST85-1246	Panhandle Eastern Pipeline Co	Aluminum Co. of America	F(157)	07-05-85		
ST85-1247	do	Chrysler Corp	F(157)	07-05-85		
ST85-1248	Michigan Gas Storage Co	James-River Corp.-Norwalk	F(157)	07-05-85		
ST85-1249	Northwest Pipeline Corp	NGL Production Co	F(157)	07-08-85		
ST85-1250	do	Northwest Alloys, Inc	F(157)	07-08-85		
ST85-1251	do	Spindletop Gas Distribution System	B	07-08-85		
ST85-1253	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	B	07-03-85		
ST85-1254	do	Bowman, GA	B	07-03-85		
ST85-1255	do	Buford, GA	B	07-03-85		
ST85-1256	do	Butler, AL	B	07-03-85		
ST85-1257	do	Clanton, AL	B	07-03-85		
ST85-1258	do	Commerce, GA	B	07-03-85		
ST85-1259	do	Covington, GA	B	07-03-85		
ST85-1260	do	East Central Alabama Gas District	B	07-03-85		
ST85-1261	do	Elberton, GA	B	07-03-85		
ST85-1262	do	Hartwell, GA	B	07-03-85		
ST85-1263	do	Lawrenceville, GA	B	07-03-85		
ST85-1264	do	Liberty, MS	B	07-03-85		
ST85-1265	do	Linden, AL	B	07-03-85		
ST85-1266	do	Madison, GA	B	07-03-85		
ST85-1267	do	Maplesville, AL	B	07-03-85		
ST85-1268	do	Monroe, GA	B	07-03-85		
ST85-1269	do	Roanoke, AL	B	07-03-85		
ST85-1270	do	Rockford, AL	B	07-03-85		
ST85-1271	do	Royston, GA	B	07-03-85		
ST85-1272	do	Social Circle, GA	B	07-03-85		
ST85-1273	do	Sugar Hill, GA	B	07-03-85		
ST85-1274	do	Thomaston, AL	B	07-03-85		
ST85-1275	do	Toccoa, GA	B	07-03-85		
ST85-1276	do	Tri-County Natural Gas Co	B	07-03-85		
ST85-1277	do	United Cities Gas Co., GA	B	07-03-85		
ST85-1278	do	Wadley, AL	B	07-03-85		
ST85-1279	do	Wedowee, AL	B	07-03-85		
ST85-1280	do	Winder, GA	B	07-03-85		
ST85-1281	do	Bessemer City, NC	B	07-03-85		
ST85-1282	do	Blacksburg, SC	B	07-03-85		
ST85-1283	do	Clinton-Newberry Natural Gas Authority	B	07-03-85		
ST85-1284	do	Commonwealth Gas Pipeline Corp	B	07-03-85		
ST85-1285	do	Danville, VA	B	07-03-85		
ST85-1286	do	Fort Hill Natural Gas Authority	B	07-03-85		
ST85-1287	do	Fountain Inn, SC	B	07-03-85		

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBTU)
ST85-1288	do	Greenwood, SC	B	07-03-85		
ST85-1289	do	Greer, SC	B	07-03-85		
ST85-1290	do	Kings Mountain, NC	B	07-03-85		
ST85-1291	do	Laurens, SC	B	07-03-85		
ST85-1292	do	Lexington, NC	B	07-03-85		
ST85-1293	do	Lynchburg Gas Co	B	07-03-85		
ST85-1294	do	North Carolina Gas Service Co	B	07-03-85		
ST85-1295	do	North Carolina Natural Gas Corp	B	07-03-85		
ST85-1296	do	Piedmont Natural Gas Co., Inc	B	07-03-85		
ST85-1297	do	Public Service Co. of North Carolina, Inc	B	07-03-85		
ST85-1298	do	Shelby, NC	B	07-03-85		
ST85-1299	do	South Caroina Pipeline Corp	B	07-03-85		
ST85-1300	do	Southwestern Virginia Gas Co	B	07-03-85		
ST85-1301	do	Union, SC	B	07-03-85		
ST85-1302	do	United Cities Gas Co., NC & SC Div	B	07-03-85		
ST85-1303	do	Washington Gas Light Co	B	07-03-85		
ST85-1304	do	Brooklyn Union Gas Co	B	07-03-85		
ST85-1305	do	Columbia Gas Transmission Corp	G	07-03-85		
ST85-1306	do	Consolidated Edison Co. of NY, Inc	B	07-03-85		
ST85-1307	do	Delmarva Power and Light Co	B	07-03-85		
ST85-1308	do	Eastern Shore Natural Gas Co	G	07-03-85		
ST85-1309	do	Elizabethtown Gas Co	B	07-03-85		
ST85-1310	do	Frederick Gas Co	B	07-03-85		
ST85-1311	do	Long Island Lighting Co	B	07-03-85		
ST85-1312	do	Pennsylvania Gas and Water Co	B	07-03-85		
ST85-1313	do	Philadelphia Electric Co	B	07-03-85		
ST85-1314	do	Philadelphia Gas Works	B	07-03-85		
ST85-1315	do	Public Service Electric and Gas Co	B	07-03-85		
ST85-1316	do	South Jersey Gas Co	B	07-03-85		
ST85-1317	do	UGI Corp	B	07-03-85		
ST85-1318	do	Union Gas Co	B	07-03-85		
ST85-1319	Ozark Gas Transmission System	Elizabethtown Gas Co	B	07-15-85		
ST85-1320	Transcontinental Gas Pipe Line Corp	Witco Chemical Corp	F(157)	07-09-85		
ST85-1321	do	National Can Corp	F(157)	07-09-85		
ST85-1322	Sabine Pipe Line Co	ANR Pipeline Co	G	07-10-85		
ST85-1323	do	Natural Gas Pipeline Co. of America	G	07-10-85		
ST85-1324	MGTC, Inc	Mountain Fuel Resources, Inc	C	07-10-85		
ST85-1325	MIGC, Inc	Big Horn Fractionation Co., et al	G	07-10-85		
ST85-1326	Algonquin Gas Transmission Co	Boston Gas Co	B	07-11-85		
ST85-1327	Midwestern Gas Transmission Co	SCM Corp	F(157)	07-11-85		
ST85-1328	Arkla Energy Resources	Northwest Central Pipeline Corp	G	07-12-85		
ST85-1329	Consolidated Gas Transmission Corp	Mobay Chemcial Corp	F(157)	07-12-85		
ST85-1330	do	Wheeling-Pittsburgh Steel Corp	F(157)	07-12-85		
ST85-1331	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	C	07-15-85		
ST85-1332	do	Columbia Gas Transmission Corp	C	07-15-85		
ST85-1333	Equitable Gas Co	H.J. Heinz Co	F(157)	07-15-85		
ST85-1334	Columbia Gulf Transmission Co	Creole Gas Pipeline Corp	B	07-15-85		
ST85-1335	United Gas Pipe Line Co	Mississippi River Transmission Corp	G	07-15-85		
ST85-1336	Transcontinental Gas Pipe Line Corp	National Fuel Gas Supply Corp	G	07-15-85		
ST85-1337	do	Kendall Mills	F(157)	07-15-85		
ST85-1338	do	Clinton Mills	F(157)	07-15-85		
ST85-1339	do	Torrington Co	F(157)	07-15-85		
ST85-1340	do	Kayser-Roth Plant	F(157)	07-15-85		
ST85-1341	do	Greenwood Mills	F(157)	07-15-85		
ST85-1342	do	Hercules, Inc	F(157)	07-15-85		
ST85-1343	do	Ithaca Mills	F(157)	07-15-85		
ST85-1344	do	North Carolina Natural Gas Corp	B	07-15-85		
ST85-1345	United Gas Pipe Line Co	UGI Corp	B	07-15-85		
ST85-1346	do	Pine Pipeline, Inc	B	07-15-85		
ST85-1347	Northwest Central Pipeline Corp	Arkla Energy Resources	G	07-15-85		
ST85-1348	Transok, Inc	Illinois Power Co	C	07-16-85	12-13-86	21.75
ST85-1349	Texas Eastern Transmission Corp	Elizabethtown Gas Co	B	07-15-85		
ST85-1350	El Paso Natural Gas Co	West Texas Gas, Inc	B	07-15-85		
ST85-1351	Columbia Gulf Transmission Co	Lukens Steel Co	F(157)	07-15-85		
ST85-1352	Columbia Gas Transmission Corp	Owens-Illinois, Inc	F(157)	07-15-85		
ST85-1353	do	Lukens Steel Co	F(157)	07-15-85		
ST85-1354	Northern Natural Gas Co	Romar Energy, Inc	B	07-19-85		
ST85-1355	Columbia Gulf Transmission Co	Owens-Illinois, Inc	F(157)	07-15-85		
ST85-1356	Transcontinental Gas Pipe Line Corp	Gerber Products	F(157)	07-17-85		
ST85-1357	do	Beacon Manufacturing Co	F(157)	07-17-85		
ST85-1358	do	Berkeley Mills	F(157)	07-17-85		
ST85-1359	do	Threads USA	F(157)	07-17-85		
ST85-1360	do	Ithaca Textiles, Inc	F(157)	07-17-85		
ST85-1361	do	Armtex, Inc	F(157)	07-17-85		
ST85-1362	do	Asheville Dyeing & Finishing	F(157)	07-17-85		
ST85-1363	do	Harriet & Henderson Yarns	F(157)	07-17-85		
ST85-1364	do	Amtex	F(157)	07-17-85		
ST85-1365	do	Pharr Yarns, Inc	F(157)	07-17-85		
ST85-1366	do	Cone Mills Corp	F(157)	07-17-85		
ST85-1367	do	J.C. Cowan Plant	F(157)	07-17-85		
ST85-1368	do	Durham Domestics	F(157)	07-17-85		
ST85-1369	do	W.G. Lord Plant	F(157)	07-17-85		
ST85-1370	do	Mooresville Mill	F(157)	07-17-85		
ST85-1371	do	Sandoz Chemical Corp	F(157)	07-17-85		
ST85-1372	do	Wheaton Industries	F(157)	07-17-85		
ST85-1373	do	Scott Paper Co	F(157)	7-17-85		
ST85-1374	do	Collins & Aikman Corp	F(157)	7-17-85		
ST85-1375	do	Granite Finishing	F(157)	7-17-85		
ST85-1376	do	Peidmont Processing	F(157)	7-17-85		
ST85-1377	do	N.C. State Dept. of Mental Health	F(157)	7-17-85		
ST85-1378	do	Mount Hope Finishing Co	F(157)	7-17-85		
ST85-1379	do	Cannon Mills Co	F(157)	7-17-85		

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBTU)
ST85-1380	Sea Robin Pipeline Co	Texas Gas Transmission Corp	G	7-18-85		
ST85-1381	Transcontinental Gas Pipe Line Corp	Burlington Industries, Inc	F(157)	7-18-85		
ST85-1382	do	Texaco Refining & Marketing Inc	F(157)	7-18-85		
ST85-1383	United Gas Pipe Line Co	Hudson Gas Systems, Inc	B	7-19-85		
ST85-1384	ANR Pipeline Co	Eastern Shore Natural Gas Co	B	7-19-85		
ST85-1385	do	Eastex Gas Transmission Co	B	7-19-85		
ST85-1386	do	Long Island Lighting Co	B	7-19-85		
ST85-1387	Texas Transmission Corp	St. Joe Resource Co	F(157)	7-22-85		
ST85-1388	do	System Fuels, Inc	F(157)	7-22-85		
ST85-1389	El Paso Natural Gas Co	American Distribution Co	B	7-23-85		
ST85-1390	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	G	7-23-85		
ST85-1391	do	Venice Maid Co	F(157)	7-23-85		
ST85-1392	do	Progresso Quality Foods	F(157)	7-23-85		
ST85-1393	Columbia Gas Transmission Corp	SCM Corp. Glidden Coatings & Resins	F(157)	7-19-85		
ST85-1394	Columbia Gulf Transmission Co	do	F(157)	7-19-85		
ST85-1395	do	Atlantic Cement Co. Inc	F(157)	7-19-85		
ST85-1396	Columbia Gas Transmission Corp	Empire Detroit Steel	F(157)	7-19-85		
ST85-1397	Kansas Power and Light Co	Michigan Consolidated Gas Co	D	7-23-85		
ST85-1398	Tennessee Gas Pipeline Co	Tenneco Oil Co	F(157)	7-26-85		
ST85-1399	Norther Natural Gas Co	Phelps Dodge Refining Corp	F(157)	7-24-85		
ST85-1400	Transcontinental Gas Pipe Line Corp	National Spinning Co	F(157)	7-24-85		
ST85-1401	do	Texfi K	F(157)	7-24-85		
ST85-1402	do	Abbott Laboratories	F(157)	7-24-85		
ST85-1403	ANR Pipeline Co	Texas Eastern Transmission Corp	G	7-26-85		
ST85-1404	Transcontinental Gas Pipe Line Corp	Burroughs Welcome	F(157)	7-24-85		
ST85-1405	do	Cherry Hospital	F(157)	7-24-85		
ST85-1406	do	Gold Bond Building Products	F(157)	7-24-85		
ST85-1407	do	Texfi Industries	F(157)	7-24-85		
ST85-1408	El Paso Natural Gas Co	Southern California Gas Co	B	7-25-85		
ST85-1409	do	do	B	7-25-85		
ST85-1410	Panhandle Gas Co	Providence Gas Co	D	7-25-85		
ST85-1411	Northern Natural Gas Co	Energy Systems Co	F(157)	7-25-85		
ST85-1412	Northwest Pipeline Corp	J.R. Simplot Co	F(157)	7-25-85		
ST85-1413	United Gas Pipe Line Co	Entex, Inc	B	7-25-85		
ST85-1414	do	Allied Corp	F(157)	7-25-85		
ST85-1415	do	Public Service Electric and Gas Co	B	7-25-85		
ST85-1416	do	Gulf Coast Energy, Inc	B	7-25-85		
ST85-1417	Columbia Gulf Transmission Co	Dayton Power and Light Co	B	7-26-85		
ST85-1418	Valero Transmission Co	Southern California Gas Co	C	7-26-85		
ST85-1419	do	Pacific Lighting Gas Supply Co	C	7-26-85		
ST85-1420	do	Petrolina Gas Pipeline Co	C	7-26-85		
ST85-1421	Transcontinental Gas Pipe Line Corp	Providence Gas Co	B	7-26-85		
ST85-1422	do	System Fuels, Inc	F(157)	7-26-85		
ST85-1423	Valero Transmission Co	Trunkline Gas Co	C	7-26-85		
ST85-1424	do	El Paso Natural Gas Co	C	7-26-85		
ST85-1425	do	Southwest Gas Corp	C	7-26-85		
ST85-1426	Midwestern Gas Transmission Co	Northern Petrochemical Co	F(157)	7-29-85		
ST85-1427	Algonquin Gas Transmission Co	Boston Gas Co	B	7-29-85		
ST85-1428	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	B	7-29-85		
ST85-1429	Equitable Gas Co	Equitable Gas Energy Co	F(157)	7-29-85		
ST95-1430	Palo Duro Pipeline Co., Inc	El Paso Natural Gas Co	C	7-29-85		
ST85-1431	Natural Gas Pipeline Co. of America	Firestone Tire & Rubber Co	F(157)	7-29-85		
ST85-1432	Tennessee Gas Pipeline Co	Graham Oil & Gas Ltd	F(157)	7-29-85		
ST85-1433	Columbia Gulf Transmission Co	Baltimore Gas and Electricity Co., et al	B	07-29-85		
ST85-1434	Transcontinental Gas Pipe Line Corp	Foote Mineral Co	F(157)	07-29-85		
ST85-1435	do	Stowe Mills, Inc	F(157)	07-29-85		
ST85-1436	United Gas Pipe Line Co	Borden Inc	F(157)	07-30-85		
ST85-1437	do	B.F. Goodrich, Inc	F(157)	07-30-85		
ST85-1438	National Fuel Gas Supply Corp	Sharon Tube Co	F(157)	07-30-85		
ST85-1439	Transcontinental Gas Pipe Line Corp	Cincinnati Gas and Electric Co	B	07-30-85		
ST85-1440	Michigan Gas Storage Co	Clark Material Systems Technology Co	F(157)	07-30-85		
ST85-1441	Northern Natural Gas Co	Central Hudson Gas and Electric Co	B	07-30-85		
ST85-1442	do	Pacific Lighting Gas Supply Co	B	07-30-85		
ST85-1443	Tennessee Gas Pipeline Co	Boston Gas Co	B	07-31-85		
ST85-1444	do	Creole Gas Pipeline Co	B	07-31-85		
ST85-1445	do	Midwestern Gas Transmission Co	G	07-31-85		
ST85-1446	El Paso Natural Gas Co	Southern California Gas Co	B	07-31-85		
ST85-1447	Panhandle Eastern Pipe Line Co	Northern Petrochemical Co	F(157)	07-31-85		
ST85-1448	Trunkline Gas Co	do	F(157)	07-31-85		
ST85-1449	Lone Star Gas Co	Kickman Group, Inc	F(157)	07-31-85		
ST85-1450	Columbia Gulf Transmission Co	Roanoke Gas Co	B	07-31-85		
ST85-1451	ANR Pipeline Co	Texas Eastern Transmission Corp	G	07-31-85		
ST85-1452	Riverway Gas Pipeline Co	Southern Natural Gas Co	C	07-31-85		
ST85-1453	Southern Natural Gas Co	THC Pipeline Co	B	07-31-85		
ST85-1454	Gasdel Pipeline System, Inc	Public Service Electric and Gas Co	B	07-31-85		
ST85-1455	Consolidated Gas Transmission Corp	St. Joe Resource Co	F(157)	07-31-85		
ST85-1456	do	Union Carbide Corp	F(157)	07-31-85		
ST85-1457	Transwestern Pipeline Co	Pacific Lighting Gas Supply Co	B	07-31-85		
ST85-1458	ANR Pipeline Co	Northern Intrastate Pipeline Co	B	07-31-85		

The following docket numbers are noticed out of sequence. They were initially filed as 48 hour reports and assigned docket numbers at that time. However, only initial full reports and petitions for rate approval are noticed. The official filing date is when the appropriate filing fee is received.

ST85-1191	Tennessee Gas Pipeline Co	Commonwealth Gas Co	B	07-27-85		
ST85-1192	do	Connecticut Light and Power Co	B	07-26-85		
ST85-1194	Valero Transmission Co	Northern Natural Gas Co	C	07-26-85		
ST85-1195	Arkansas Oklahoma Gas Corp	Brooklyn Union Gas Co., et al	G	08-13-85		
ST85-1198	Tennessee Gas Pipeline Co	Warrior Basin Gas Co	B	07-26-85		
ST85-1200	American Pipeline Co	American Distribution Co	C	07-26-85		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the commission's regulations.

[2] The intrastate pipeline has sought commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-22173 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-23-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on Sept. 3, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective as of July 1, 1985.

First Revised Volume No. 1—

First Revised Sheet No. 67 and
First Revised Sheet No. 68

Reason for Filing:

The change reflected in the First Revised Sheet Nos. 67 and 68 reflects the name change of FGT's customer from Gulfside Gas Company to Mustang Energy Company as of July 1, 1985.

The above-mentioned changes are being made pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act (18 CFR 154, *et. seq.).*

FGT states that a copy of its filing has been served on all jurisdictional customers served by FGT and the appropriate State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, 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 September 17, 1985. Protests will be considered by the Commission in determinng 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. 85-22174 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-117-009]

Midwestern Gas Transmission Co.; Filing of Tariff Rate Adjustments

September 10, 1985.

Take notice that on September 3, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective August 1, 1985:

Original Volume No. 1

Substitute Fifteenth Revised Sheet No. 5
Fifteenth Revised Sheet No. 6
Twelfth Revised Sheet No. 37
Sixth Revised Sheet No. 62K
Fifth Revised Sheet No. 62L
Fourth Revised Sheet No. 64F

Midwestern has also submitted a revised cost of service upon which the revised tariff sheets are predicated.

Midwestern states that the purpose of this filing is to comply with Opinion No. 236 issued June 18, 1985 in Docket No. RP82-117-000. Specifically, the revised cost of service and revised tariff sheets reflect the rate of return and income tax allowance derived from the capital structure and costs of equity approved for Midwestern by Opinion No. 236. Additionally, the revised cost of service and revised tariff sheets reflect the cash working capital allowance approved in the Amended Stipulation and Agreement filed July 9, 1984 in Docket Nos. RP81-17, RP81-57 and RP82-117.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 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 September 18, 1985. 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. 85-22175 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-66-009]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on Sept. 3, 1985 Mississippi River Transmission Corporation ("Mississippi") tendered for filing revised tariff sheets to its FERC Gas Tariff as listed on the attached Appendix A.

Mississippi states the purpose of the tariff filing is to implement changes in the provisions of Mississippi's tariff to comply with the Commission Order issued June 19, 1985 in the captioned docket. The revised tariff sheets reflect revised billing rates and Purchased Gas Cost Adjustment procedures to implement the use of a 34% load factor in determining the D-1 demand charge unit amounts applicable to Rate Schedule SGS-1 customers.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 September 17, 1985. 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.

MISSISSIPPI RIVER TRANSMISSION CORP.

[RP83-66 (Reserved Issues)]

Second Revised Volume No. 1	Effective Date
Twelveth Revised Sheet No. 4	Sept. 1, 1985.
Fifth Revised Sheet No. 42	Sept. 1, 1985.
Third Revised Sheet No. 43	Sept. 1, 1985.
Third Revised Sheet No. 49	Sept. 1, 1985.
Fourth Revised Sheet No. 50	Sept. 1, 1985.

[FR Doc. 85-22176 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-41-000, 001]

Southwest Gas Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

September 10, 1985.

Take notice that Southwest Gas Corporation (Southwest) on September 3, 1985, tendered for filing Twenty-seventh Revised Sheet No. 10 and Tenth Revised Sheet No. 10A pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. Southwest's filing is occasioned by an increase in rates from Southwest's northern Nevada sole supplier of gas, Northwest Pipeline Corporation.

proposed to become effective October 1, 1985.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 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 September 17, 1985. 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. 85-22177 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-196-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on September 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco) filed Original Sheet No. 2328-A to its FERC Gas Tariff, Original Volume No. 2, proposed to be made effective October 6, 1985. Transco states that such tariff sheet will provide for a change in the rate applicable to Transco's Rate Schedule X-235 under which Transco provides transportation service to United Gas Pipe Line. Transco further states that this tariff filing is being made to bring the subject rate schedule into harmony with Transco's currently effective rates under Rate Schedule T-II for upstream deliveries within Zone 1 of Transco's market area.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 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 September 17, 1985. 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 proceedings. 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. 85-22178 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51584; FRL-2883-5]

Certain Chemicals Premanufacture Notice

Correction

In FR Doc. 85-19711 beginning on page 33630 in the issue of Tuesday, August 20, 1985, on page 33631 under P85-1315 in the tenth line "LC_5O" should read "LC_50". In the eleventh line "LC_5O" should read "LC_50".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

New FM Stations; Applications for Consolidated Hearing; B & B Communications and Thomas A. Voss Enterprises

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No.	MM Docket No.
A. B & B Communications; Newcastle, WY.	BPH-840217AA	85-277
B. Thomas A. Voss Enterprises, Inc.; Newcastle, WY.	BPH-840229CA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicant(s)

1. Air Hazards, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in the proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-22188 Filed 9-16-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Milyana Broadcasters, et al.

1. The Commission has before it the following mutually exculusive applications for a new FM station:

Applicant, city/state	File No.	MM Docket No.
A. Milyana Broadcasters Palm Desert, CA.	BPH-820715AH	85-276
B. Palm Desert Broadcast Co.; Palm Desert, CA.	BPH-821217AW	
C. Pannino Music Co. Inc.; La Quinta, CA.	BPH-821217BD	
D. John H. Gayer d.b.a. Radio Rancho Rancho Mirage, CA.	BPH-821221AM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant

Issue heading and applicant (s)

1. (See Appendix, D
2. 307(b), A,B,C,D
3. Contingent Comparative, A,B,C,D
4. Ultimate A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to

which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

APPENDIX

ISSUE(S)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 [1], the applicant(s) is financially qualified: D (Radio Rancho)

[FR Doc. 85-22189 Filed 9-16-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-20]

Harrington & Company, Inc. and Palmetto Shipping & Stevedoring Company, Inc. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Harrington & Company, Inc. and Palmetto Shipping & Stevedoring Company, Inc. against Georgia Ports Authority was served September 9, 1985. Complainant alleges that respondent has violated section 16, First and section 17 of the Shipping Act, 1916 and section 10 (b)(11), (b)(12), (d)(1), (d)(2) and (d)(3) of the Shipping Act of 1984, by attempting to hold agents liable as principals and guarantors for port/terminal charges through certain tariff provisions and by requiring data sheets of each party desiring credit arrangements with respondent.

This proceeding has been assigned to Administrative Law Judge Normal D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 11, 1986 and the final decision of the Commission shall be issued by January 12, 1987.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-22163 Filed 9-16-85; 8:45 am]

BILLING CODE 6730-01-M

[1] Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency: *Applicant(s)*—D (Radio Rancho); *Deficiency*—No Section III financial information or certification submitted.

FEDERAL RESERVE SYSTEM

New Superior Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

Correction

In FR Doc. 85-21281 appearing on page 36485 in the issue of Friday, September 6, 1985, the date in the third paragraph should read "September 27, 1985."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatend Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicants:

U.S. Fish and Wildlife Service, Regional Director, Region 3, Minneapolis, MN—PRT-697830

Regional Director, Region 4, Atlanta, GA—PRT-697819

Regional Director, Region 5, Boston, MA—PRT-697823

The applicants request permits to take various wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing or other Service work for those species.

Applicant:

Jack Risken, Jr., Corpus Christi, TX—PRT-697798

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van der Merwe in Cape Province, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Ted M. Siouris, New York, NY—PRT-698450

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. F.W.M. Bowker in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Leonard Hinckley, Camp Hill, PA—PRT-697804

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of F.W.M. Bowker in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Charles Mooney, Kerrville, TX—PRT-697809

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van der Merwe in Cape Province, South Africa, for the purpose of enhancement of propagation and survival of the species.

Applicant:

Andrew Caridis, Foster City, CA—PRT-698117

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive heard of C.J. Retief, Harrismith, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Natalie M. Eckel, Tarzana, CA—PRT-695739

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), called from the captive herd of M.J. D'Alton, Cape Province, South Africa for the purpose of enhancement of survival of the species.

Applicant:

Frank Bess, Albuquerque, NM—PRT-698474

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of F.W.M. Bowker, Jr. in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Hawaii Division of Fish & Wildlife,

Honolulu, HI—PRT–691504

The applicant requests an amendment to their permit PRT–691504 which authorizes take, banding, rehabilitation, etc. of the Hawaiian ('alala) crow (*Corvus hawaiiensis [=Tropicus]*). The amendment would allow the transfer of the Hawaiian crow to a new endangered species propagation facility on the island of Maui in order to eliminate stress to the birds caused by the present facility's proximity to the U.S. Army's Pohakuloa Training Center on the island of Hawaii.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing the the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 11, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–22169 Filed 9–16–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[W–96702]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

Correction

In FR Doc. 85–21007 beginning on page 35876 in the issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35876, third column, fourth line from the bottom, "E½SW¼" should read, "E½E½SW¼".

2. On page 35877, first column, first paragraph, fifteenth line, "2" should appear between "terminate" and "years".

BILLING CODE 1505–01–M

[W–89355]

Realty Action; Noncompetitive Sale of Public Lands in Lincoln County, WY

September 9, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), public land described as the SW¼SW¼, Section 15, T. 34 N., R. 119 W., 6th P.M., Wyoming, containing 40 acres, is proposed for direct sale to Max Larsen of Thayne, Wyoming at the fair market value of $20,000.00 as determined by appraisal.

SUMMARY: This sale involves an isolated tract of public land. All private land surrounding this tract is owned by Max Larsen, who also holds the only livestock grazing lease on this tract. There is no legal public access to this tract, and Mr. Larsen has asked the BLM to sell the land to him. If a sale parcel is isolated by a single landowner, the tract is offered to that landowner at the appraised fair market value. Because the tract is difficult and uneconomic to manage as part of the public lands, direct sale of this tract would best serve the interests of the Federal Government and the general public. Sale of the land is consistent with Bureau and local governmental land use planning.

DATES: Interested parties may submit comments for a period of 45 days from the date of this notice. The proposed sale will not be held until 60 days after publication of this notice.

ADDRESS: Detailed information concerning the sale is available for review at: Kemmerer Resource Area Office, P.O. Box 632, Kemmerer, Wyoming 83101, 307–877–3933. Comments should also be directed to this office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are as follows:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the BLM office.

2. Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

All comments received 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 be the final determination of the Department of the Interior.

Gene C. Herrin,

Associate District Manager.

[FR Doc. 85–22224 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–22–M

[W–88008]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

September 9, 1985.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–88008 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–88008 effective July 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–22223 Filed 9–16–85; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 7, 1985. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of Interior, Washington, DC 20243.

Written comments should be submitted by October 2, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Anniston, *Anniston Transfer Company (Anniston MRA)*, 911 Wilmer Ave.

Jefferson County

Birmingham (also in Mountain Brook), *Red Mountain Suburbs Historic District*, Roughly Valley View, Milner Heights, Altamont & Redmont Rds. and Redmont Park

Birmingham, *Smith, Joseph Riley, Historic District*, 300 & 400 Blks. of Tenth Ave., 100–400 Blks. of Ninth Ct. W and 944 Fourth W & 948 Third W Sts.

Birmingham, *Smithfield Historic District*, Between Eighth Ave. N & Fourth Terr. N and Sixth St. W to First St. W

Birmingham, *Wimberly-Thomas Warehouse*, 1809 First Ave. S.

Sumter County

Gainesville, *Coffin Shop (Gainesville MRA)*, McKee & Monroe St.

Gainesville, *Colgin Hill (Gainesville MRA)*, Off AL 39

Gainesville, *Gainesville Historic District (Gainesville MRA)*, Roughly bounded by North Carolina, Lafayette & Webster Sts. and end of Town Grid

Gainesville, *Gibbs House (Gainesville MRA)*, S.W. of Spruce & Webster Sts.

Gainesville, *Lee-Snow House (Gainesville MRA)*, Washington St.

Gainesville, *Main-Yankee Street Historic District (Gainesville MRA)*, Roughly bounded by Main, Washington & School Sts.

Gainesville, *Park and Bandstand (Gainesville MRA)*, State & McKee Sts.

Gainesville, *Watson, Laura, House (Gainesville MRA)*, Epes Rd.

ARKANSAS

Clark County

Arkadelphia, *Habicht-Cohn-Crow House*, Eigth & Pine

Pulaski County

Little Rock, *Frank, Joseph M., House*, 912 W. Fourth

MARYLAND

Montgomery County

Bethesda, *Taylor, David W., Model Basin*, Bounded by MacArthur Blvd. & George Washington Memorial Pkwy.

MASSACHUSETTS

Middlesex County

Lowell, *Lowell National Historical Park*, Roughly bounded by Northern, Eastern, Hamilton & Pawtucket Canals

Norfolk County

Brookline, *Anderson, Larz, Park Historic District (Brookline MRA)*, Bounded by Goddard & Avon St.

Brookline, *Arcade Building (Brookline MRA)*, 314—320A Harvard St.

Brookline, *Beacon Street Historic District (Brookline MRA)*, Roughly on Beacon St. from Saint Mary's to Ayr Rd.

Brookline, *Beaconsfield Terraces Historic District (Brookline MRA)*, Beacon and Tappan Sts. & Garrison Rd.

Brookline, *Bowditch, William Ingersoll, House (Brookline MRA)*, 9 Toxteth St.

Brookline, *Brandegee Estate (Brookline MRA)*, 280 Newton St.

Brookline, *Building (Brookline MRA)*, 30–34 Station St.

Brookline, *Cabot, Lewis, Estate (Brookline MRA)*, 514 Warren St.

Brookline, *Candler Cottage (Brookline MRA)*, 447 Washington St.

Brookline, *Chestnut Hill Historic District (Brookline MRA)*, Roughly bounded by Middlesex Rd., Boylston St. & Dunster Rd.

Brookline, *Child, Isaac, House (Brookline MRA)*, 209 Newton St.

Brookline, *Corey, Timothy, House No. 1 (Brookline MRA)*, 808 Washington St.

Brookline, *Corey, Timothy, House No. 2 (Brookline MRA)*, 786–788 Washington St.

Brookline, *Cypress—Emerson Historic District (Brookline MRA)*, Roughly bounded by Waverly, Emerson & Cypress Sts.

Brookline, *Davis, Robert S., House (Brookline MRA)*, 50 Stanton Rd.

Brookline, *Davis, Thomas Aspinwall, House (Brookline MRA)*, 29 Linden Pl.

Brookline, *Douglas, Alfred, House (Brookline MRA)*, 157 Clyde St.

Brookline, *Elliot, General Simon, House (Brookline MRA)*, 61 Heath St.

Brookline, *Emmett Cottage (Brookline MRA)*, 217 Freeman St.

Brookline, *Fernwood (Brookline MRA)*, 155 Clyde St.

Brookline, *Fire Station No. 7 (Brookline MRA)*, 665 Washington St.

Brookline, *Fisher Hill Historic District (Brookline MRA)*, Roughly bounded by Clinton & Sumner Rds. Boylston St. and Chestnut Hill Ave.

Brookline, *Francis, Dr. Tappan Eustis, House (Brookline MRA)*, 35 Davis Ave.

Brookline, *Fuller, Peter, Building (Brookline MRA)*, 808 Commonwealth Ave.

Brookline, *Goddard, John, House (Brookline MRA)*, 235 Goddard Ave.

Brookline, *Graffam Development Historic District (Brookline MRA)*, Roughly bounded by Abbottsford Rd., Babcock St., Manchester & Naples Rds.

Brookline, *Green Hill District (Brookline MRA)*, Roughly Warren St., Sargent Rd. & Cottage St.

Brookline, *Harris, House and Farm (Brookline MRA)*, 284 Newton St.

Brookline, *Heath, Charles, House (Brookline MRA)*, 12 Heath Hill

Brookline, *Heath, Ebenezer, House (Brookline MRA)*, 30 Heath St.

Brookline, *Holyhood Cemetery (Brookline MRA)*, Heath St.

Brookline, *Hotel Adelaide (Brookline MRA)*, 13–21 High St.

Brookline, *Hotel Kempsford (Brookline MRA)*, 72 Walnut St.

Brookline, *House (Brookline MRA)*, 156 Mason Terr.

Brookline, *House (Brookline MRA)*, 89 Rawson Rd & 86 Colburne Crescent

Brookline, *House (Brookline MRA)*, 38–40 Webster Pl.

Brookline, *House (Brookline MRA)*, 12–16 Corey Rd.

Brookline, *House (Brookline MRA)*, 5 Lincoln Rd.

Brookline, *House (Brookline MRA)*, 25 Stanton Rd.

Brookline, *House (Brookline MRA)*, 44 Stanton Rd.

Brookline, *House (Brookline MRA)*, 155 Reservoir Rd.

Brookline, *House (Brookline MRA)*, 83 Penniman Pl.

Brookline, *House (Brookline MRA)*, 12 Linden St.

Brookline, *House (Brookline MRA)*, 19 Linden St.

Brookline, *House (Brookline MRA)*, 4 Perry St.

Brookline, *House (Brookline MRA)*, 105 Marion St.

Brookline, *House (Brookline MRA)*, 53 Linden St.

Brookline, *House (Brookline MRA)*, 9 Linden St.

Brookline, *House (Brookline MRA)*, 44 Linden St.

Brookline, *House (Brookline MRA)*, 12 Vernon St.

Brookline, *House (Brookline MRA)*, 76–96 Harvard Ave.

Brookline, *Jackson, Thaddeus, House (Brookline MRA)*, 15 Alberta Rd.

Brookline, *Kilsyth Terrace (Brookline MRA)*, 15–27 Kilsyth Rd.

Brookline, *Linden Park (Brookline MRA)*, Linden Pl. & Linden St.

Brookline, *Linden Square (Brookline MRA)*, Linden Pl.

Brookline, *Lynch-O'Gorman House (Brookline MRA)*, 41 Mason Terr.

Brookline, *Milestone (Brookline MRA)*, Boylston St.

Brookline, *Milestone (Brookline MRA)*, Harvard St.

Brookline, *Murphy, William, House (Brookline MRA)*, 97 Sewall Ave.

Brookline, *Orrock, Rev. John, House (Brookline MRA)*, 68 Winchester St.

Brookline, *Paine Estate (Brookline MRA)*, 325 Heath St.

Brookline, *Perkins Estate (Brookline MRA)*, 450 Warren St.

Brookline, *Reservoir Park (Brookline MRA)*, Boylston St.

Brookline, *Richie Building (Brookline MRA)*, 112 Cypress St.

Brookline, *Roughwood (Brookline MRA)*, 400 Heath St.

Brookline, *Saint Aidan's Church and Rectory (Brookline MRA)*, 207 Freeman St. & 158 Pleasant St.

Brookline, *Saint Mary of the Assumption Church, Rectory, School and Convent (Brookline MRA)*, 67 Harvard St. and 3 & 5 Linden Pl.

Brookline, *Saint Paul's Church, and Parish House (Brookline MRA)*, 15, 27 Saint Paul St. & 104 Aspinwall Ave.

Brookline, *Saint Paul's Rectory (Brookline MRA)*, 130 Aspinwall Ave.

Brookline, *Sargent's Pond (Brookline MRA)*, Sargent Rd.

Brookline, *Second Unitarian Church (Brookline MRA)*, 11 Charles St.
Brookline, *Sparr, Eliphalet (Brookline MRA)*, 103 Walnut St.
Brookline, *Standish, James H., House (Brookline MRA)*, 54 Francis St.
Brookline, *Strathmore Road Historic District (Brookline MRA)*, Strathmore Rd. & Clinton Path
Brookline, *Toussaint, Winand, House (Brookline MRA)*, 203 Aspinwall Ave.
Brookline, *Town Stable (Brookline MRA)*, 237 Cypress St.
Brookline, *Tuckerman, William F., House (Brookline MRA)*, 63 Harvard Ave.
Brookline, *Twitchell, Ginery, House (Brookline MRA)*, 17 Kent St.
Brookline, *Walnut Hills Cemetery (Brookline MRA)*, Grove St. & Allandale Rd.
Brookline, *White Place Historic District (Brookline MRA)*, White Pl. between Washington St. & Davis Path
Brookline, *White, Benjamin, House (Brookline MRA)*, 203 Heath St.

MISSISSIPPI

Holmes County

Howard vicinity, *Clifton Plantation House*, Off MS 12

MISSOURI

Butler County

Poplar Bluff vicinity, *Hargrove Pivot Bridge*, CR 159

Jackson County

Lee's Summit, Saint Paul's Episcopal Church, Fifth & S. Green Sts.

NEW YORK

Columbia County

Hudson, *Hudson Historic District (Hudson MRA)*, Roughly bounded by Warren, Fourth, Sixth, Seventh & Eight Sts., Union, Allen & Grant Sts. & Penn Central RR
Hudson, *Rossman-Prospect Avenue Historic District (Hudson MRA)*, Propsect and Rossman Aves.

Madison County

Cazenovia, *Cazenovia Village Historic District (Cazenovia Town MRA)*, Roughly bounded by Union, Lincklaen & Chenango Sts., Rippleton Rds., & Foreman St.

Westchester County

Yonkers, *Public Bath House No. 2 (Yonkers Public Bath House TR)*, 27 Vineyard Ave.
Yonkers, *Public Bath House No. 3 (Yonkers Public Bath House TR)*, 48 Yonkers Ave.
Yonkers, *Public Bath House No. 4 (Yonkers Public Bath House TR)*, 138 Linden St.

NORTH CAROLINA

Wilson County

Wilson vicinity, *Pender, Joseph John, House (Wilson MRA)*, SR 1418 & Sr 1002

RHODE ISLAND

Providence County

Georgiaville, *Georgiaville Historic District*, Bounded by Farnum Pike, Stillwater Rd., Cross St. & Whipple Ave.
Gloscester, *Manton—Hunt—Farnum Farm*, Putnam Pike.

[FR Doc. 85-22242 Filed 9-16-85; 8:45 am]
BILLING CODE 4310-70-M

Fredericksburg and Spotsylvania National Military Park, Environmental Assessment/Finding of No Significant Impact, for Deep Run Sewer Intercepter, MD

AGENCY: National Park Service, Interior.
ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the Department of the Interior, National Park Service has prepared an environmental assessment and a finding of no significant impact for a right-of-way grant to construct an underground sewer line through Fredericksburg and Spotsylvania National Military Park lands.

ADDRESSES: Copies of the Assessment/FONSI are on file and available for inspection in the office of the Superintendent, Fredericksburg and Spotsylvania National Military Park, 120 Chatham Lane, Fredericksburg, Virginia 22405; the Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia 22401; office of the Administrator, Spotsylvania County, Spotsylvania Court House, Spotsylvania, Virginia 22553; the office of the Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, D.C. 20240.

Comments should be addressed to the Superintendent within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Superintendent James R. Zinck, Fredericksburg and Spotsylvania National Military Park, telephone 703/373-4461.

SUPPLEMENTARY INFORMATION: The proposed action would provide for a right-of-way grant to the County of Spotsylvania, Virginia to construct an underground sewer line through Fredericksburg and Spotsylvania National Military Park lands. The purpose of the underground sewer line would be to replace an existing pump station with a gravity feed line to improve sanitary services alleviating a waste overflow problem and reducing sanitary services costs. The subject line will be on park lands for a distance of approximately 2,225 feet. The park crossing would be accomplished by entering the park from the west and trenching a short distance to Lee Drive, boring under Lee Drive, and then trenching to the northern edge of the intersection with Lansdowne Road. The park is 240 feet wide at this point. The line would then be bored under Lansdown Road and continue eastward through the park twenty feet from the south shoulder of Lansdowne Road. Slightly more than 2,000 feet of the line along Lansdowne Road would be within the park, paralleling but offset fifteen feet from an existing 16-inch county water line which is located within the state highway right-of-way. A permanent 15-foot right-of-way easement for the the line through the park would be required after construction. During construction a temporary additional easement of 20 feet in width is being requested.

A range of alternatives for improving the sanitary services in the Deep Run Watershed were considered. One of the alternatives, the No Action alternative, would mean continued use of the Spostwood Pump Station at the risk of waste overflow into adjacent land and waterways due to mechanical and/or power failures at the pump station. The County has been advised by the Virginia State Water Control Board and the State Health Department to eliminate the pump station. Other alternatives considered were as follows: Continued use of the pump station with improved safeguards, however, standby generators do not guarantee the elimination of breakdowns and a holding pond for spillage is undersirable because of aesthetic and health reasons; relocation of the park crossing at an existing private easement eliminating a portion of the route across park-owned land. The desirability is offset by the need for a pump station and increasing the area served by about 1300 acres; limit crossing to the Lee Drive only (park land) and use private ownership land north of the park. Problems with this alternative involves the relocation of electric, telephone and cable television services, easements required of the entire backyards of property owners and construction complications involving an existing 3' deep by 20' wide drainage ditch.

The environmental assessment outlines the design proposal for the improved sanitary facilities and the mitigating actions to be taken by Spotsylvania County.

Dated: September 9, 1985.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region.

[FR Doc. 85-22209 Filed 9-16-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-16608]

Champion International Corp.; Continuance in Control Exemption; Moscow, Camden and San Augustine Railroad and Angelina and Neches River Railroad

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Champion International Corporation (Champion), which seeks initial motor carrier authority under Docket No. MC-185405, has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for its continuance in control of Moscow, Camden and San Augustine Railroad (MC&SA) and Angelina and Neches River Railroad (A&NR). The MC&SA is a wholly owned subsidiary of Champion, purchased in 1968. The purchase was approved by the Commission in 1969. MC&SA owns seven miles of trackage in Texas and serves Champion's mills at Camden, TX. Its president, Terry Wurtzbacher, is Champion's director of transportation and manages Champion's trucking operations. The A&NR became a non-consolidated, 50 percent affiliate of Champion as a result of the liquidation of the St. Regis Corporation when it merged with Champion. A&NR owns 11.6 miles of mainline track and four miles of sidetrack and yards in Texas. Thus, Champion, upon its institution of operations as a regulated carrier, will continue in control of two railroads. Continuance in control of a carrier by any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. See 49 U.S.C. 11343(a)(3) and 11343(e).

DATE: Comments must be received by October 7, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F 16608 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Jeanne Sisson, Manager Transportation Adminstration, Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz (202) 275-7974.

SUPPLEMENTARY INFORMATION: Champion seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulation in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed By Motor Carriers of Property, Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washinton, DC office of the Interstate Commerce Commission during normal business hours.

Decided: September 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22156 Filed 9-16-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Literature Advisory Panel

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 Literature Advisory Panel (Creative Writing Fellowships Section) to the National Council on the Arts will be held on October 3-5, 1985, from 9:00 a.m.-5:30 p.m. in rooms 714 (Prose) and M-14 (Poetry) of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on October 5, 1985, from 3:30-5:30 p.m. in room M-14. The topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on October 3-4, 1985, from 9:00 a.m.-5:30 p.m. and on October 5, from 9:00 a.m.-3:30 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 H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark, Director,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-22241 Filed 9-16-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel For Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cellular Physiology

Date and time: Tuesday, Wednesday and Thursday October 1, 2 and 3, 1985, from 9:00 a.m. until 5:00 p.m.

Place: Room 1141, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of meeting: Closed

Contact person: Maryanna P. Henkart, Program Director, Cellular Physiology, Room 332, Telephone: 202/357-7377.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries: and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Officer.

September 11, 1985.

[FR Doc. 85-22192 Filed 9-16-85; 8:45am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-333]

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is

considering issuance of an exemption from the requirements of Appendix J of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee) for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would permit the licensee to perform the seal leakage test specified in Paragraph III.D.2(b)(iii) of Appendix J in lieu of the full airlock test specified in Paragraph III.D.2(b)(ii), prior to plant startup following a period of cold shutdown, provided that no maintenance was performed on the airlock during this period.

The Need for the Proposed Action

The existing airlock doors are so designed that a full pressure test of an entire airlock can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are required because the pressure exerted on the inner door during the test is in a direction opposite to the pressure direction following a postulated accident and the locking mechanisms are not designed to withstand the reverse forces associated with test pressure. Installation of the strong backs must commence approximately 24 hours prior to establishing containment integrity. During this 24-hour period, approximately 1 hour is required to inspect the door seal and door seat surfaces; 3 hours are required to install strong backs; and 16 to 20 hours are required to pressurize the airlocks to the test pressure and to troubleshoot. This could delay plant startup by up to 24 hours. Furthermore, the licensee has estimated that the entire airlock test including the installation and removal of the strong backs, results in an expenditure of 18 hours and 0.15 man-rem compared with 0.5 hours and 0.025 man-rem for the seal leakage test.

Environmental Impacts of the Proposed Action

The periodic 6-month leak test of Paragraph III.D.2(b)(i) of Appendix J and the 3-day test requirements of Paragraph III.D.2(b)(iii) provide assurance that the airlock leakage rate will not be increased as a result of the airlock being opened during a period of cold shutdown when no maintenance has been performed. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 2, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 10th day of September, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-22236 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354A]

Public Service Electric and Gas Co.; and Atlantic City Electric Co.; Finding of no Significant Antitrust Changes and Time for Filing Requests for Reevaluation

September 11, 1985.

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of the Hope Creek Nuclear Generating Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Hope Creek construction permit to the Public Service Electric and Gas Company, and Atlantic City Electric Company, the staffs of the Antitrust and Economic Analysis Section of the site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit (CP) review are not of the nature to require a second antitrust review at the operating license (OL) stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New Jersey, the events relevant to the Hope Creek (formerly Newbold Island) construction permit review and the events that have occurred subsequent to the construction permit review.

The conclusion of the staff's analysis is as follows:

Since the construction permit antitrust review, there have been several changes in the plans and activities of the Public Service Electric and Gas Company (PSE&G) and Atlantic City Electric Company (ACE), co-owners of Hope Creek, but none of these changes indicate any anticompetitive actions by PSE&G or ACE. The changes have involved a decrease in load growth and the accompanying changes in generation and transmission requirements, including a delay in Hope Creek Unit No. 1 and cancellation of Unit No. 2. Other changes have involved changes in rates and rate structure, particularly at the retail level, and some wholesale load changes. These types of changes were common to the electric utility industry following the 1973 oil embargo. Further, there have been inquiries and studies by smaller electric utilities as to the costs for participation in Hope Creek, but none of these studies have led to actual participation in the unit. Based on the NRC staff review, neither PSE&G nor ACE has unreasonably restrained these utilities from further participation in Hope Creek, Unit 1.

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Hope Creek Nuclear Generating Station is not required.

Signed on September 4, 1985 by Harold R. Denton, *Director of Office of Nuclear Reactor Regulation.*

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days from the date of this notice. Request for a reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-22235 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

Issuance, Availability and Request for Comments on NUREG/CR-4214, "Health Effects Model for Nuclear Power Plant Accident Consequence Analysis"

The U.S. Nuclear Regulatory Commission has received a report from Sandia National Laboratories entitled "Health Effects Model for Nuclear Power Plant Accident Consequence Analysis," NUREG/CR-4214. This report was prepared by a group of emminent scientists and practitioners in the field, headed by the Harvard University School of Public Health under subcontract to Sandia National Laboratories. Public comments on this report are solicited.

This report was prepared at the request of the Nuclear Regulatory Commission to update and revise the health effects models used for accident consequence estimates in the Reactor Safety Study (NUREG 75/014), the analyses for which were performed in the early 1970s. The revised models proposed in NUREG/CR-2414 include improved models for early and continuing severe injuries, early fatalities, latent cancers, latent cancer fatalities, and genetic effects due to various levels of exposures to ionizing radiation. Models have been added for skin burns, mental retardation due to exposure of the fetus, and life shortening, amongst others. Early and continuing health effects have been modeled using hazard functions, which is a new approach. Estimates of uncertainty are presented for the various models. During 1986, these models will be evaluated by the NRC staff for applications in the regulatory process. In the meantime, the staff intends to use them on a trial basis in uncertainty analyses of reactor accident consequence estimates.

The NRC intends to use the methods and data contained in this report in areas of broad public interest such as probabilistic risk analyses, emergency response planning, siting, safety goal applications, and cost/benefit analyses—indeed, wherever risks to public health are considered in regulatory applications. Thus, although a substantial peer review was conducted during the course of the study that resulted in the report, it is considered imperative that an opportunity be provided for public comment on the results as presented in the report. Comments should be sent to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: J. A. Martin, Division of Risk Analysis and Operations. Comments will be most useful to the staff if they are received by December 15, 1985.

Copies of NUREG/CR-4214 may be obtained after September 15, 1985 by written request to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, or by calling (202) 275-2060 or (202) 275-2171. Other copies will be available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC and at the Commission's local public document rooms located in the vicinity of nuclear power plants. Addresses of these local public document rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7526.

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland, this 10th day of September 1985.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of Risk Analysis and Operations, Office of Nuclear Regulatory Research.

[FR Doc. 85-22237 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Southern California Edison Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (The Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 20, Appendix A, footnote d-2(c), to the Southern California Edison Company and San Diego Gas & Electric Company, who hold Provisional Operating License No. DPR-13, which authorizes operation of the San Onofre Nuclear Generating Station Unit No. 1, and to the Southern California Edison Company, The City of Anaheim, California, and the City of Riverside, California, who hold Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3. Units 1, 2, and 3 (the facilities) are pressurized water reactors located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

The exemption from 10 CFR Part 20 would allow the use of a radioiodine protection factor of 50 for MSA GMR-I canisters at San Onofre Units 1, 2, and 3.

The Need for the Proposed Action

The exemption is needed to facilitate refueling operations at San Onofre by reducing the time and person-rem exposure required to complete tasks that require respiratory protection.

Environmental Impacts of the Proposed Action

There are no environmental impacts of the proposed action. The proposed exemption involves a change in the installation or use of the facility's componets located within the restricted areas as defined in 10 CFR Part 20. The staff has determined that the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupation radiation exposure.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

We have concluded that there is no measurable environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This would not reduce

environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Proposed San Onofre Nuclear Generating Station Units 2 and 3" dated March 1973, the "Final Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station Units 2 and 3", dated April 1981, and the Errata to the Final Environmental Statement dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for exemption dated March 20, July 11, and July 31, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland this 13th day of September, 1985.

For The Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-22340 Filed 9-16-85; 9:49 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Estimating smolt survial at Corps projects on the Lower Snake and Lower Columbia rivers.
- Other.
- Pulic comment.

DATE: September 20, 1985, 8:30 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-22165 Filed 9-16-85; 8:45am]

BILLING CODE 0000-00-M

Economic Forecasting Advisory Committee; Regular Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of 1985 Draft Power Plan
- Public comment, followed by adjournment

DATE: Thursday, October 3, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-22164 Filed 9-16-85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program; Postal Service/U.S. Department of Housing and Urban Development, Office of Inspector General

AGENCY: Postal Service.

ACTION: Notice of a Matching Program—U.S. Postal Service/U.S. Department of Housing and Urban Development.

SUMMARY: The U.S. Postal Service (USPS) plans to match by computer certain records in its Payroll System file with the U.S. Department of Housing and Urban Development (HUD) records on individuals receiving assisted housing benefits. The match will be made under a written agreement between the USPS and HUD. The USPS will perform the match using certain data provided by HUD.

DATE: The match will begin in September 1985 unless comments are received that result in a contrary determination.

ADDRESS: Send any comments to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 245-4797.

SUPPLEMENTARY INFORMATION: At the request of HUD, the USPS has agreed to match certain data in USPS payroll system files (USPS 050.020 Finance Records—Payroll System) with HUD assisted housing benefit recipient files for the purpose of identifying those postal employees receiving benefits and determining their eligibility under the National Housing Act. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service/U.S. Department of Housing and Urban Development

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the U.S. Department of Housing and Urban Development (HUD) will submit to the U.S. Postal Service (USPS) a computer tape containing the social security numbers (SSNs) of its assisted housing benefit recipients which the USPS will match against its payroll system file (USPS 050.020). For matched employee SSNs (i.e., "hits"), the USPS will disclose to HUD the following information from its payroll file: name, SSN, home address, and annual gross wage, which HUD will use to make a determination of eligiblity under the National Housing Act. Further, the USPS Inspection Service may participate in the investigation of hits as

a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 50 FR 28863, July 16, 1985.

c. *Period of the Match:* The matching program will being in September 1985 and will be continuing for a period not to exceed five years. Follow-up work on resultant matches is expected to be completed within 6 months after completion of each computer match.

d. *Security:* The USPS personnel who perform the match will: (a) have the only USPS access to the HUD computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to HUD will be used by authorized HUD personnel only for the purpose of the match and for no other purposes and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by HUD and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that it relates to a legitimate, non-fraud situation.

f. *Other Comments:* No bestowed rights, privileges or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-22184 Filed 9-16-85; 8:45 am]

BILLING CODE 7710-12-M

Adjustment of Preferred Rates

Recognizing that appropriations for revenue forgone for Fiscal Year 1986 may not exceed $749 million, a level sufficient to support step 16 preferred rates and continuation of free mail for the blind, the Governors of the Postal Service on September 6, 1985 adopted Resolution 85-7, adjusting preferred rates of postage. This rate schedule appears below.

The purpose of publishing these rates at this time is to give mailers entitled to the preferred rates as much notices as possible of the extent of the possible increase of their rates. The new rates appearing below will be effective at 12:01 a.m. on October 1, 1985, unless prior to that time funds in excess of $749 million for revenue forgone are provided to the Postal Service. In that event a new schedule of rates will be published.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

CHAPTER 4—SECOND-CLASS MAIL

* * * * *

.32 In-County Rates

.321 General Application. In-county rates apply to copies of second-class publications (except commingled nonsubscriber copies in excess of the 10% allowance, and requester copies) that are to be delivered to addresses within the county of publication if such copies are:

a. Mailed at the office or original entry; or

b. Mailed at an office of additional entry within the county of publication.

Note.—If the postmaster of an office of entry directs a publisher to deposit copies of the publication at a postal facility serving that office, these copies will be considered as mailed at the office of entry. Copies are subject to in-county rates if they are addressed to destinations within the county and are entered at a post office which serves those addresses, but is located outside the county.

.322 Rates. In-County rates are:

	Cents
Per Pound	7.9
Per Piece:	
Level J—Not Presorted to Carrier Route	4.3
Level K—Presorted to Carrier Route. Packages of six or more addressed pieces for carrier route or finer sort destinations	2.5

* * * * *

.33 Special Nonprofit Rate

.331 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	7.6
Advertising portion:	
Zones 1 and 2	10.1
Zone 3	11.5
Zone 4	13.7
Zone 5	17.0
Zone 6	20.5
Zone 7	24.7
Zone 8	28.2

Note: The advertising zone rates are applicable to issues in which the advertising portion exceeds 10 percent. Issues containing 10 percent or less advertising will be computed at the nonadvertising rate.

.332 Per Piece Rates. The three per piece rates reflect the level of presort. The sortations that must be accomplished to qualify for those rates are prescribed in 468.

	Cents
Level G—Basic—Pieces not qualifying for Level H—5-Digit or Level I-Carrier (3-Digits which are not unique 3-digit cities, SCF, states, mixed states)	8.4
Level H—5-Digit—Packages of six or more addressed pieces for 5-digit, a unique 3-digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level I—Carrier—Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.333 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece.

SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

* * * * *

.34 Classroom

.341 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	6.2
Advertising portion:	
Zones 1 and 2	8.2
Zone 3	9.4
Zone 4	11.5
Zone 5	14.8
Zone 6	18.2
Zone 7	22.3
Zone 8	26.0

.342 Per Piece Rate. The per piece rate is 5.6 cents.

.343 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may quality for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

.35 Science of Agriculture

.351 General. These rates apply to copies of publications which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of copies furnished during any 12-month period to

subscribers residing in rural areas consists of at least 70% of the total number of copies distributed by any means for any purpose.

.352 Per Pound. Rates per pound of fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zones 1 and 2	10.1
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.8

.353 Per Piece Rates. The three per price rates reflect the level of presort for mailings of 5,000 or more copies per issue. The sortations that must be accomplished to qualify for these rates are prescribed in 460.

	Cents
Level A—Basic. Pieces not qualifying for Level B–5-Digit or Level C—Carrier (3-Digits which are not unique 3-Digit cities, SCF states, mixed states)	12.3
Level B—5-Digit. Packages of six or more addressed pieces for 5-digit, a unique 3-Digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	9.6
Level C—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	7.8

.354 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

* * * * *

.36 Limited Circulation

.361 General. These rates apply to copies of publications (except commingled nonrequester/non-subscriber copies in excess of the 10% allowance (see 411.38), requester, special nonprofit, classroom, and limited circulation science of agriculture) which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of out-of-county copies is less than 5,000.

.362 Per Pound Rates. Rates per pound of fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zones 1 and 2	15.8
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.9

.363 Per Piece Rates. The three per piece rates reflect the level of presort for mailings of less than 5,000 out-of-county copies per issue:

	Cents
Level D—Basic. Pieces not qualifying for Level E—5-Digit or Level F—Carrier (3-Digits which are not unique 3-Digit cities, SCF, states, mixed states)	8.4
Level E—5-Digit. Packages of six or more addressed pieces for 5-digit, a unique 3-Digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level F—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.364 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

* * * * *

.37 Limited Circulation Science of Agriculture

.371 General. These rates apply to copies of science of agriculture publications which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of out-of-county copies is less than 5,000, and when the total number of copies furnsihed during any 12-month period to subscribers residing in rural areas consists of at least 70% of the total number of copies distributed by any means for any purpose.

.372 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zone 1 and 2	10.1
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.9

.373 Per Piece Rates. The three per piece rates reflect the level of presort for mailings of less than 5,000 out-of-county copies per issue:

	Cents
Level D—Basic. Pieces not qualifying for Level E—5-Digit or Level F—Carrier (3-Digits which are not unique 3-Digit cities, SCF, states, mixed states)	8.4
Level E—5-Digit. Packages of six or more addressed pieces for 5-Digit, a unique 3-digit city or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level F—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.374 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable pre-piece rate minus 1.0 cent per addressed piece. SCF's and the area served by each are in Exhibits 122.63c and 122.63d.

* * * * *

CHAPTER 6.—THIRD-CLASS MAIL

610 Rates and Fees

* * * * *

611 Rates

611.2 Bulk Rates (See Exhibit 611.2 a and b)

* * * * *

Special Rates for Authorized Nonprofit Organizations Only—See 623.

Pieces which weigh *more* than 3.5069 ounces and are mailed at the 5-digit or basic rate are subject to the per pound rate and the applicable per piece rate.

		Minimum rate per piece (cents)
Presort level:		
Per pound or fraction		
Basic	21.9 Plus 2.6 per piece.	7.4

		Minimum rate per piece (cents)
5-digit	21.9 Plus 1.5 per piece.	6.3
Carrier route.	21.9	4.8

Pieces which are *equal to or weigh less* than 3.5069 ounces, or 0.21918 pound, or 99.507 grams must be paid at the prescribed minimum per piece rate for each presort level.

Exception: When the postage computed at the bulk third-class rate is higher than a fourth-class rate for which the matter and the mailing could qualify except for weight, the fourth-class rate may be paid without the necessity of adding needless additional weight. *Example:* A piece which weighs less than 1 pound and which meets all prescribed requirements, other than weight, for fourth-class bound printed matter may be mailed at the fourth-class bound printed matter rate. All other requirements of bulk third-class remain applicable.

Exhibit 611.2b—Third-Class (Special Rates)

Up to (ounces)	CAR-RT (cents)	5-digit rate (cents	Basic rate (cents)
1	4.8	6.3	7.4
2	4.8	6.3	7.4
3	4.8	6.3	7.4
3.5	4.8	6.3	7.4
3.6	5	6.5	7.6
3.7	5.1	6.6	7.7
3.8	5.2	6.7	7.8
3.9	5.4	6.9	8
4	5.5	7	8.1
4.1	5.7	7.2	8.3
4.2	5.8	7.3	8.4
4.3	5.9	7.4	8.5
4.4	6.1	7.6	8.7
4.5	6.2	7.7	8.8
4.6	6.3	7.8	8.9
4.7	6.5	8	9.1
4.8	6.6	8.1	9.2
4.9	6.7	8.2	9.3
5	6.9	8.4	9.5
5.1	7	8.5	9.6
5.2	7.2	8.7	9.8
5.3	7.3	8.8	9.9
5.4	7.4	8.9	10
5.5	7.6	9.1	10.2
5.6	7.7	9.2	10.3
5.7	7.8	9.3	10.4
5.8	8	9.5	10.6
5.9	8.1	9.6	10.7
6	8.3	9.8	10.9
6.1	8.4	9.9	11
6.2	8.5	10	11.1
6.3	8.7	10.2	11.3
6.4	8.8	10.3	11.4
6.5	8.9	10.4	11.5
6.6	9.1	10.6	11.7
6.7	9.2	10.7	11.8
6.8	9.3	10.8	11.9
6.9	9.5	11	12.1
7	9.6	11.1	12.2
7.1	9.8	11.3	12.4
7.2	9.9	11.4	12.5
7.3	10	11.5	12.6
7.4	10.2	11.7	12.8
7.5	10.3	11.8	12.9
7.6	10.4	11.9	13
7.7	10.6	12.1	13.2
7.8	10.7	12.2	13.3
7.9	10.9	12.4	13.5
8	11	12.5	13.6
8.1	11.1	12.6	13.7
8.2	11.3	12.8	13.9
8.3	11.4	12.9	14
8.4	11.5	13	14.1
8.5	11.7	13.2	14.3
8.6	11.8	13.3	14.4
8.7	11.9	13.4	14.5
8.8	12.1	13.6	14.7
8.9	12.2	13.7	14.8
9	12.4	13.9	15
9.1	12.5	14	15.1
9.2	12.6	14.1	15.2
9.3	12.8	14.3	15.4
9.4	12.9	14.4	15.5
9.5	13	14.5	15.6
9.6	13.2	14.7	15.8
9.7	13.3	14.8	15.9
9.8	13.5	15	16.1
9.9	13.6	15.1	16.2
10	13.7	15.2	16.3
10.1	13.9	15.4	16.5
10.2	14	15.5	16.6
10.3	14.1	15.6	16.7
10.4	14.3	15.8	16.9
10.5	14.4	15.9	17
10.6	14.5	16	17.1
10.7	14.7	16.2	17.3
10.8	14.8	16.3	17.4
10.9	15	16.5	17.6
11	15.1	16.6	17.7
11.1	15.2	16.7	17.8
11.2	15.4	16.9	18
11.3	15.5	17	18.1
11.4	15.6	17.1	18.2
11.5	15.8	17.3	18.4
11.6	15.9	17.4	18.5
11.7	16.1	17.6	18.7
11.8	16.2	17.7	18.8
11.9	16.3	17.8	18.9
12	16.5	18	19.1
12.1	16.6	18.1	19.2
12.2	16.7	18.2	19.3
12.3	16.9	18.4	19.5
12.4	17	18.5	19.6
12.5	17.1	18.6	19.7
12.6	17.3	18.8	19.9
12.7	17.4	18.9	20
12.8	17.6	19.1	20.2
12.9	17.7	19.2	20.3
13	17.8	19.3	20.4
13.1	18	19.5	20.6
13.2	18.1	19.6	20.7
13.3	18.2	19.7	20.8
13.4	18.4	19.9	21
13.5	18.5	20	21.1
13.6	18.7	20.2	21.3
13.7	18.8	20.3	21.4
13.8	18.9	20.4	21.5
13.9	19.1	20.6	21.7
14	19.2	20.7	21.8
14.1	19.3	20.8	21.9
14.2	19.5	21	22.1
14.3	19.6	21.1	22.2
14.4	19.8	21.3	22.4
14.5	19.9	21.4	22.5
14.6	20	21.5	22.6
14.7	20.2	21.7	22.8
14.8	20.3	21.8	22.9
14.9	20.4	21.9	23
15	20.6	22.1	23.2
15.1	20.7	22.2	23.3
15.2	20.8	22.3	23.4
15.3	21	22.5	23.6
15.4	21.1	22.6	23.7
15.5	21.3	22.8	23.9
15.6	21.4	22.9	24
15.7	21.5	23	24.1
15.8	21.7	23.2	24.3
15.9	21.8	23.3	24.4

Exhibit 611.2d—Individually Metered Mail—Special Rates

CHAPTER 7.—FOURTH-CLASS MAIL

710 Rates and Fees

711 Rates

* * * * *

Kind of mail	Rate (without regard to zone)		
	First pound or fraction of a pound (cents)	Each additional pound or fraction through 7 pounds (cents)	Each additional pound or fraction over 7 pounds (cents)
Books; printed music; bound volumes of adcademic theses; sound recordings; periodicals; other liberary materials; museum and herbarium materials; 16-milimeter or narrower width films, filmstrips, transparencies, slides, microfilms, scientific or mathematical kits, instruments, or other devices; also catalogs, guides or scripts for some of these materials. See 725	50	17	9

Exhibit 711.4.—Library Rates

[FR Doc. 85-22172 Filed 9-16-85; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23824; 70-7143]

Alabama Power Co. et al.; Proposal To Acquire Evidences of Indebtedness

September 6, 1985.

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 33 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32520, Mississippi Power Company ("MPC"), 2992 West Beach, Gulfport, Mississippi 39501, Southern Company Services, Inc. ("SCSI"), 800 Shodes Creek Parkway, Birmingham, Alabama 35202, and Southern Electric International, Inc. ("SEI"), 3500 Piedmont Road, NE., Suite 500, Atlanta, Georgia 30305 (collectively the "Companies"), wholly owned subsidiaries of The Southern Company, a registered holding company, have filed an application with this Commission subject to section 9(c)(3) of the Public Utility Holding Company Act of 1935 ("Act").

Each of the Companies has a program whereby it provides assistance loans to employees to purchase energy efficient facilities and improvements for their primary residences. The Companies propose to extend such loan assistance to: (1) Retired employees; (2) surviving spouses of retired employees; and (3) surviving spouses of employees, (collectively the "Retirees"). Under such program, each of the Companies would

provide loan assistance to Retirees in various amounts up to $10,000 for a period of up to 10 years and at an interest rate of up to 3% per annum. Each company proposes to continue the loan assistance program through October 1, 1990, but may terminate it at any time prior to such date.

After completion of the improvements, the respective company will enter into a security agreement with the Retiree which will grant such company a security interest in the improvements being financed.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants at the addresses 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 manner. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22193 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 3523823; 70-7152]

Allegheny Generating Co.; Proposal To Issue and Sell Commercial Paper; Exception From Competitive Bidding

September 6, 1985.

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, NY 10022, a wholly owned subsidiary of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, which are wholly owned subsidiaries of Allegheny Power System, Inc., a registered holding company, has filed a declaration with the Commission subject to section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

AGC proposed to issue and sell from October 1, 1985 through March 31, 1987, up to $300 million of commercial paper. The commercial paper will be backed by a funding commitment through the $400 million revolving credit agreement ("Revolving Credit Agreement") authorized by the Commission on July 18, 1985 [HCAR No. 23766]. Total short-term debt outstanding, including the Revolving Credit Agreement and this commercial paper issuance, will not at any time exceed $400 million.

There is a commitment fee of 3/16 of 1% per annum of the average daily unused portion of Revolving Credit Agreement. Borrowings under the Revolving Credit Agreement bear interest at either (i) the alternative base rate which is the higher of Chemical Bank's floating prime rate of 3/8 of 1% over the average weekly three-month certificate of deposit rate, (ii) the London Interbank Offer Rate ("LIBOR") plus 3/8 of 1% per annum from the approval date through December 31, 1989 and then the LIBOR plus 1/2 of 1% per annum thereafter until December 31, 1990, or (iii) the CD rate plus 3/8 of 1% per annum from the effective date through December 31, 1989 and then the CD rate plus 1/2 of 1% per annum thereafter until December 31, 1990. The effective cost of borrowing for these three options would range from 8.084 to 9.50 percent. Merrill Lynch Markets, Inc., and Paine Webber Inc. will be designated as the dealers for the commercial paper.

AGC intends to issue commercial paper only if (1) the interet cost thereof is reasonably equal to or less than the effective interest cost at which AGC could borrow the same amount pursuant to the Revolving Credit Agreement at that time or (2) AGC cannot at that time borrow the same amount for the same period of time.

AGC requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of its commercial paper, pursuant to paragraph (a)(5).

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 September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 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 the 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 Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22194 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23822; 70-7135]

CNG Producing Co. and CNG Development Co.; Proposal To Obtain Letters of Credit in Amounts up to $7 Million

September 6, 1985.

CNG Producing Company ("Producing"), Suite 3100, One Canal Place, New Orleans, Louisiana 70130, and CNG Development Company ("Development"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, natural gas exploration and development subsidiaries of Consolidated Natural Gas Company, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

In response to a proposal by Fossil Associates ("Fossil"), located in Denver, Colorado, Producing entered into an operating agreement with Fossil whereby Producing and Fossil would participate in simultaneous drawings for leasehold acreage in the Rocky Mountain area, offered by the United States Bureau of Land Management. Fossil will act as agent for Producing in the drawings. Each application to the Bureau of Land Management for parcels must be accompanied by a $75 filing fee and the first year's rental payment.

Producing now proposes that the most economical means of furnishing its share of funds adequate for the drawing is to obtain a letter of credit in the amount of $300,000 from Whitney National Bank of New Orleans. Whitney National Bank will charge Producing a fee estimated at less than $500 for the letter of credit. The letter of credit will be issued to United Bank of Denver ("United") to cover any advances made to Fossil by United for the benefit of Producing. Any advances to Fossil by United will bear interest at the prime rate of interest as quoted by United plus one-half of one percentage point per year and will fluctuate on the same day as United's prime rate of interest changes. Each advance will be limited to the amount required for the

simultaneous filing, with the letter of credit securing the loan.

Because both Producing and Development are likely to become engaged in similar transactions in greater frequency in the future, Producing and Development propose that they be authorized to obtain letters of credit in amounts larger than in this initial instance. Therefore, they request authorizations to obtain letters of credit in the aggregate amounts of $5,000,000 for Producing, and $2,000,000 for Development. Terms and conditions of future transactions will be filed by post-effective amendment.

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 September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses 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 the 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 Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22195 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23828; 70-6991]

Empire Exploration, Inc., et al.; Proposal to Transfer Assets at Adjusted Valuation

September 9, 1985.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112 a registered holding company, and its subsidiaries National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), and Empire Exploration, Inc. ("Empire"), all located at 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration with this Commission pursuant to section 6(a), 7, 9(a), 10, 12(f) and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(3), 86, 87, 90 and 91 thereunder.

By order dated November 1, 1984 (HCAR No. 23465) and January 30, 1985 (HCAR No. 23585), Supply was authorized to transfer to Empire, a newly acquired oil and gas exploration and development subsidiary (HCAR No. 23082, October 4, 1983), its right to receive from Seneca the repayment of $3.2 million in emergency loans. Additionally, it was authorized to convey to Empire certain oil and gas properties, all in return for 500 shares of Empire common stock, with a $10 par value. Supply could then declare these shares a dividend to National.

Seneca was authorized to convey to Empire certain oil and gas properties in exchange for the discharge of debt in an equal amount. The remaining undischarged debt was to be paid in cash, or if the book value thereof exceeded $3.2 million, Empire would pay the difference to Seneca in cash. All property valuations herein were to be determined as of September 30, 1984.

The Commission has now been informed that certain dollar and acreage limits contained in the application-declaration, as heretofore amended, inadvertently omitted certain assets, and should accordingly be adjusted. In particular, Supply proposes to transfer to Empire title in up to 17 joint operating agreements, not in excess of 20,000 acres; and 175 farmout agreements, not in excess of 175,000 acres. The agreements have no aggregate net book value. Seneca proposes to transfer to Empire certain fee properties, and oil and gas rights and leaseholders, located in New York and Pennsylvania. The acreage will not exceed 500,000, and the net book value will not exceed $1.5 million. Additionally, Seneca will convey to Empire up to 12 farmout agreements, and up to 9,000 acres with no aggregate net book value. The applicants-declarants require an additional year, until September 30, 1986, to accomplish the authorized transfers.

The application-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 October 3, 1985 to Secretary, Securities and Exchange Commission, Washington, DC, 20549, and serve a copy on the applicants-declarants at the addresses 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 of order issued in this matter. After said date the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22196 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23825; 70-7155]

Massachusetts Electric Co. Notice of Proposal To Provide Conservation Loans

September 9, 1985.

Massachusetts Electric Company ("MEC") 25 Research Drive, Westborough, Massachusetts 01582, an electric utility subsidiary of New England Electric System, a registered holding company, has filed with this Commission an application pursuant to sections 9(a)(1) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

MEC proposes to institute a pilot conservation program in two "enterprise zones" encompassing twenty towns within the Commonwealth of Massachusetts. The program includes a residential conservation program under which customers would arrange to have energy saving measures installed by eligible contractors who would be paid with funds borrowed by the customers from MEC. MEC will disburse the funds directly to the contractor selected by the customer to install such measures. The annual interest on loans under this program will be 10%. The term for repayment of all loans shall range from six months to five years at the customer's option. Evidence of the debt will be in the form of unsecured notes given to MEC by the eligible customers.

MEC estimates that the maximum amount of loans to be outstanding in connection with the financing of conservation measures under this pilot program will not exceed $2,000,000 at any one time. Such loans will be financed by MEC with its own funds obtained through normal operations.

The application and any further 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 October 3, 1985 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of the applicant 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 application, as now or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22197 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14709; File No. 812-6011]

Application and Opportunity for Hearing; Metropolitan Tower Life Insurance Co., et al.

September 10, 1985.

Notice is hereby given that Metropolitan Tower Life Insurance Company (the "Company"), Metropolitan Tower Separate Account One ("Separate Account One"), and Metropolitan Tower Separate Account Two ("Separate Account Two"), at One Madison Avenue, New York, New York 10010, filed an application on December 21, 1984, and an amendment thereto on August 5, 1985, requesting, pursuant to section 6(c) of the Act, an amendment to a previous exemptive order to exempt the Company and Separate Account One from sections 9(a), 13(a), 15(a), and 15(b) of the Investment Company Act of 1940 (the "Act") to the same extent as provided in Rule 6e-2(b)(15) (i), (ii), and (iii), notwithstanding the use of the same funding medium for both scheduled and flexible premium variable life insurance policies, and requesting an exemptive order from Rule 6e-3(T)(c)(1) to the extent necessary to permit allocations of amounts provided for investment under flexible premium variable life insurance policies issued by the Company to be allocated to the Company's general account. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Metropolitan Life Insurance Company ("Metropolitan Life"), is a stock life insurance company organized under Delaware law in 1982, and Separate Account One is a separate investment account of the Company that is organized as a unit investment trust under the Act. Applicants state that the Company and Separate Account One Offer and sell scheduled premium variable life insurance policies funded through Separate Account One, and that divisions of Separate Account One invest solely in shares of the portfolios of Metropolitan Series Fund, Inc., (the "Fund"), a management investment company of the series type, organized under Maryland law in 1982. Metropolitan Life serves as the investment manager of each of three portfolios of the Fund, and State Street Research & Management Company, a wholly-owned subsidiary of Metropolitan Life, serves as sub-investment manager with respect to the Fund's Growth and Income Portfolios.

Applicants state that the Company and Separate Account One rely generally on the exemptions afforded by Rule 6e-2 under the Act with respect to their schedule premium variable life insurance ("VLI") policies. Applicants state that Rule 6e-2(b)(15) (i), (ii), and (iii) provide partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act and that the Company and Separate Account One obtained from the Commission an exemptive order to ensure that these exemptions would be available if, in addition to Separate Account One, separate accounts funding variable annuity ("VA") contracts invested in the Fund.

Applicants state that the Company has filed with the Commission a registration statement relating to a flexible premium VLI policy, which will be issued through Separate Account Two, a registered unit investment trust, and funded through the Fund. Applicants state that the exemptions in Rules 6c-3 and 6e-3(T) will generally be relied upon with respect to these or other flexible premium VLI policies issued by the Company or its affiliates. Applicants represent that Rule 6e-3(T)(b)(15) specifically permits the flexible premium VLI policies to rely on its exemptions from Sections 9(a), 13(a), 15(a), and 15(b) notwithstanding that VA contracts and scheduled premium VLI policies will also be funded through the Fund. However, Applicants seek to amend the order previously obtained by the Company and Separate Account One so that exemptive relief comparable to that afforded by Rule 6e-2(b)(15) (i), (ii) and (iii) will be afforded to scheduled premium VLI policies issued by the Company or its affiliates, notwithstanding that flexible premium VLI policies (as well as VA contracts) also will be funded through the Fund. Applicants state that the literal terms of Rule 6e-2(b)(15) may require this relief since that exemption is available only in connection with an underlying fund which offers its shares "exclusively to variable life insurance separate accounts," and Applicants submit that the term "variable life insurance separate accounts" for this purpose could be read to exclude separate accounts used to fund flexible premium VLI policies.

Applicants assert that applying Section 9(a) in full to the Fund merely because it will not be used to fund flexible premium VLI policies would have anomalous results because of the additional number of individuals who would have to be monitored for compliance and the costs of continually monitoring these persons. Applicants assert that the Commission should not administer Rule 6e-2(b)(15)(iii), which provides an exemption from sections 13(a), 15(a), and 15(b), so as to make its exemptive relief unavailable merely because flexible premium VLI separate accounts invest in the Fund. Applicants assert that the Commission deemed this exemption, which permits the Company to disregard voting instructions of policy owners in certain instances, necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposal reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further assert that the Commission will in no way compromise the regulatory goals of sections 9(a), 13(a), 15(a), or 15(b) by granting the requested exemptions, and that by permitting flexible premium VLI policies to be funded through the Fund, the Commission will make possible the elimination of duplication of start-up and administrative expenses, which ultimately must be borne by the purchasers of insurance products. Further, Applicants assert that permitting more products to be funded through the Fund should increase the Fund's assets, thereby making effective portfolio management strategies easier

to implement and promoting other economies of scale.

Applicants state that the previous exemptive order was subject to certain conditions, but in order that the Company and Separate Account One not be subject to two sets of differing conditions, Applicants propose that the amended order be subject to conditions which are in general adapted from the conditions in Rule 6e-3(T)(b)(15). The conditions are summarized as follows: (1) The Fund's Board of Directors (a majority of whom shall not be "interested persons" of the Fund) will monitor the Fund for the existence of any material irreconcilable conflict between the interests of owners of VA contracts and scheduled premium or flexible premium VLI policies for which the Fund serves as an investment medium, (2) The life insurers whose separate accounts invest in the Fund will be responsible for reporting any potential or existing conflicts to the directors, (3) if a material irreconcilable conflict exists, such insurance companies will, at their own expense, take whatever action is necessary to remedy such conflict, including establishing a new registered management investment company and segregating the assets underlying the VA contracts and the scheduled or flexible premium VLI policies, and (4) the Fund's prospectuses will disclose certain matters with regard to its funding both VA contracts and scheduled and flexible premium VLI policies. Applicants represent that should amendments to rule 6e-2 be adopted specifically permitting flexible premium VLI policies to invest in the Fund, Applicants will thereafter rely on and observe any conditions and requirements contained in said amendments, rather than continuing to rely on the amended exemptive order.

Applicants also request an exemption from Rule 6e-3(T)(c)(1) to resolve any uncertainty as to whether the definition of "flexible premium variable life insurance contract," as defined in that provision, includes flexible premium VLI policies under which policy owners may allocate amounts available for investment to the issuing company's general account. Applicants state that under the policies currently proposed to be issued through Separate Account Two, policyowners will be able, subject to certain limitations, to allocate or transfer all or part of the amount provided for investment to the general account of the Company. Applicants assert that the Commission's past administration of variable life insurance pursuant to both Rules 6e-2 and 6e-3(T) and administration of variable annuities, among other matters, are consistent with a Commission intention to have Rule 6e-3(T) permit allocation of net premiums to general accounts under flexible premium variable life insurance policies. Applicants further assert that the general account option will provide a beneficial or desirable alternative for many policyowners, and represent that all charges imposed in connection with use of the general account option will be computed at the same rates and in the same manner as the corresponding charges in connection with separate account investment options under the flexible premium variable policies. Applicants state that they understand that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the propriety or impropriety of registration or non-registration of either interests in the general account as securities under the Securities Act of 1933 or the general account as an investment company under the Investment Company Act. Accordingly, Applicants request an exemptive order pursuant to section 6(c) of the Act from Rule 6e-3(T)(c)(1) to the extent necessary to permit allocations of amounts provided for investment under flexible premium VLI policies issued by the Company to be allocated to the Company's general account.

Notice is further given that any interested person wishing to request a hearing on the application may, not later then October 4, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22198 Filed 9-16-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSIONS

[Release No. 35-23820; 70-6951]

New England Electric System et. al; Proposal to Increase Short Term Borrowing

September 6, 1985.

New England Electric System ("NEES"), a registerd holding company, and five of its subsidiaries, Granie State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Power Company ("NEP"), and New England Power Service Company, all located at 25 Research Drive, Westbrough, Massachusetts 01582, have filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

By order of the Commission dated November 19, 1984 (HCAR No. 23484), authorization was extended through December 31, 1987 for NEP to borrow up to $195 million outstanding at any one time from banks, and the NEES Money Pool and through dealers in commercial paper. NEP now requests an increase in such short-term borrowing authority to up to $300 million outstanding at any one time.

As previously described in this proceeding, NEP was required to demonstrate to the Seabrook Joint Owners an ability to finance its share of the costs of complete Seabrook Unit 1. NEP had planned to issue up to $100 million of long-term debt and/or other permanent capital. NEP does not currently have regulatory approval for any such long-term financing. As a result, NEP now plans to finance its share of Seabrook Unit 1 through a combination of internally generated cash and temporary external financing sources.

In the event that NEP experiences increased construction costs and/or decreased cash flow due to (i) extended delays in the current schedules for completion of two jointly-owned nuclear generating units in which it participates, (ii) certain possible adverse regulatory rulings or legislation, and/or (iii) passage of proposed tax legislation, NEP would require significant additional external funds. Pending receipt of regulatory approvals to issue long-term securities, these external funds would have to be in the form of additional short-term borrowings. This could raise the level of NEP's short-term debt $300 million.

The amended application-declaration and any amendments thereto is 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 October 3, 1985 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants 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 manner. After said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22199 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14710; File No. 812-6143]

Application and Opportunity for Hearing; Providentmutual Variable Life Insurance Co., et al.

September 10, 1985.

Notice is hereby given that Providentmutual Variable Life Insurance Company (the "Company"), Providentmutual Variable Life Growth Account ("Growth Account"), Providentmutual Variable Life Money Market Account ("Money Market Account"), Providentmutual Variable Life Bond Account ("Bond Account") (the latter three collectively referred to as the "Separate Accounts"), and Market Street Fund, Inc. (the "Fund") (together referred to as "Applicants"), at 1600 Market Street, Philadelphia, Pennsylvania 19103, filed an application on July 1, 1985, and amendment thereto on September 5, 1985, requesting an order of the Commission (1) pursuant to section 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) of the Act to the extent necessary to permit each of the Separate Accounts to transfer its portfolio assets to the Fund in return for shares of a corresponding portfolio of the Fund and to permit a simultaneous reorganization, (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to the extent necessary to permit each of the Separate Accounts to transfer its portfolio assets to the Fund in return for shares of a corresponding portfolio of the Fund and to permit a simultaneous reorganization, and (3) pursuant to section 6(c) of the Act to exempt certain life insurance companies and variable life insurance separate accounts from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit shares of the Fund to be sold to variable annuity and variable life insurance separate accounts of the Company and of affiliated and unaffiliated life insurance companies, and to exempt the Company and the Separate Accounts from sections 26(a) and 27(c)(2) to the extent necessary to permit the deduction of the cost of insurance in connection with the offering of scheduled premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company is a stock life insurance company organized in 1981 under the laws of the Commonwealth of Pennsylvania, and is a wholly-owned subsidiary of Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"). Applicants state that the Company offers a scheduled premium variable life insurance policy. The Separate Accounts, which were established by the Company in 1983 under Pennsylvania law, are separate investment accounts to which assets are allocated to support benefits payable under variable life insurance policies, and are registered as open-end diversified management investment companies. The Separate Accounts receive investment advice from Provident Mutual Investment Management Company (the "Adviser"), all the outstanding voting stock of which is owned by Provident Mutual through a wholly-owned subsidiary. The Adviser employs Shearson/American Express Asset Management, Inc., to provide it with investment advice to be used in connection with the Growth Account. The Fund, which was organized under Maryland law on March 21, 1985, is an open-end diversified management investment company that currently has four portfolios: the Growth Portfolio, the Money Market Portfolio, the Bond Portfolio, and the Managed Portfolio. Applicants submit that the investment objectives, policies, and restrictions of these portfolios will be identical to those of the corresponding Separate Accounts following adjustments, subject to policyowner approval, to the investment policies and restrictions of the Separate Accounts immediately prior to the reorganization.

Applicants state that subject to approval by the Separate Accounts' policyowners, after the Separate Accounts modify their investment policies and restrictions to permit additional types of investments, the Separate Accounts will be reorganized as unit investment trusts, which shall be registered collectively as a single unit investment trust. The Separate Account will invest exclusively in shares of a corresponding portfolio of the Fund, which will mirror the amended investment policies and restrictions of the corresponding Separate Account immediately prior to the reorganization. Another separate account organized as a unit investment trust also will be registered with the Commission as part of the registered unit investment trust and will invest in the Fund's Managed Portfolio. The registration statement of the Growth Account will be amended to reflect the proposed reorganization, and following the reorganization the Money Market and Bond Accounts will file an application to deregister under section 8(f) of the Act. Applicants represent that the Fund will succeed to the portfolio assets and related liabilities of the Separate Accounts and will be the continuing funding vehicle for the scheduled premium variable life insurance policies offered by the Company. Applicants further state that in the future, shares of the Fund will be available to the unit investment trusts and to other separate accounts of the Company, Provident Mutual, and other affiliated insurance companies, and may be made available to separate accounts of unaffiliated insurance companies to fund variable contracts.

Applicants submit that, pursuant to an Agreement and Plan of Reorganization, ("the Plan") on the proposed effective date of the reorganization, the Company will transfer the portfolio assets and related liabilities of each of the Separate Accounts to the Fund in return for shares of a corresponding portfolio of the Fund. The number of shares of the applicable portfolio to be issued to each Separate Account will be determined by dividing the value of the net assets to be transferred by each Separate Account by the initial per share value of the portfolio Fund shares, which has been established at $10.00 for the Growth Portfolio, $1.00 for the Money Market

Portfolio, and $10.00 for the Bond Portfolio. Applicants submit that the interests of all policyowners in the Growth, Money Market, and Bond Accounts immediately following the reorganization will be equivalent to their interests in the same Accounts immediately prior to the reorganization. Applicants submit that the Company will assume all costs to be incurred in effecting the reorganization and that the reorganization will not have any adverse economic impact on policyowners' interests under the Company's existing scheduled premium variable life insurance policy. Further, the Applicants submit that the reorganization will not alter the total amount of fees and charges assessed, directly or indirectly, under each such existing policy. Applicants represent that the Fund will bear certain operating expenses, such as custodial expenses, not currently charged against the Separate Accounts, but that with respect to the Company's scheduled premium variable life insurance policies currently outstanding and all future policies which may be issued on the same policy form, the Company will make adjustment in policy values to fully offset the effect of any and all expenses of a type or in an amount which would not have been borne by the Separate Accounts had the reorganization not occurred.

Section 17 Relief

Applicants state that each Applicant may be deemed to be an affiliated person of each other or an affiliated person of an affiliated person under section 2(a)(3) of the Act, and that the reorganization may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants. Therefore, Applicants assert, the Plan and the reorganization may require an exemption from section 17(a) of the Act pursuant to section 17(b) of the Act. Applicants represent that the terms of the proposed transactions are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each Separate Account, and are consistent with the general purposes of the Act. Applicants submit that the proposed reorganization will benefit existing and future owners of the Company's scheduled premium variable life policies by increasing the current investment opportunities and facilitating the future expansion of investment alternatives under the existing policy. To the extent the Fund is used to fund other variable contracts of the Company as well as variable contracts issued by other participating companies, Applicants assert that policyowners will benefit from the economies of scale with regard to the level of fixed administrative expenses, thereby resuting in a reduced ratio of fees and expenses.

Applicants assert that the reorganization may be deemed to be a transaction that is prohibited under section 17(d) and may require an order pursuant to Rule 17d–1 thereunder. Applicants submit that they believe that the participation of each Account in the proposed Plan will be on a equal basis and will not result in advantages to any one of the Separate Accounts to the detriment of any other Separate Account. Applicants assert that there should be no liquidation of assets of any of the Separate Accounts or the Fund as a result of the reorganization, that none of the Separate Accounts or the Fund will incur any extraordinary costs such as brokerage commissions in effecting the transfer of assets, and that none of the Separate Accounts or the Fund will bear any of the costs of the reorganization. Further, Applicants assert that the exchange of portfolio securities of each Separate Account for corresponding Fund shares will be effected on the same basis in conformity with section 22(c) of the Act and Rule 22c–1 thereunder, so there will be no dilution of value for any of the Separate Accounts or the Fund. Applicants further assert that although the voting rights under the new unit investment trust structure will be different from the voting rights under the Separate Account structure, Applicants believe that these rights, in all fundamental respects, will be unaffected since, under the proposed Plan, the Company will vote the shares in accordance with instructions from policyowners in proportion to their respective interests in such shares at the time of the vote.

Mixed Funding and Shared Funding Relief

Applicants state that in the future, the Fund may offer its shares to separate accounts of the Company, Provident Mutual, and to any other affiliated or unaffiliated insurance companies in order to fund variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

Applicants request exemptive relief from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit shares of the Fund to be offered and sold to both variable annuity and variable life insurance separate accounts ("mixed funding") and to permit shares of the Fund to be sold to separate accounts of unaffiliated life insurance companies ("shared funding"). Applicants seek this relief for themselves and for the class consisting of life insurers and separate accounts investing in the Fund. Applicants state that they believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investor and purposes fairly intended by the policy and provisions of the Act.

With respect to section 9(a), Applicants believe it is unnecessary to apply that section to the individuals in various unaffiliated insurance companies that may utilize the Fund as the funding medium for variable contracts, where those persons play no role in the management or administration of the Fund. Under the relief requested, Applicants submit, section 9 would still work and insulate the Fund from those individuals who are disqualified under the Act.

Applicants assert that the Commission deemed the exemption from sections 13(a), 15(a) and 15(b) in Rule 6e–2(b)(15) necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further assert that Rule 6e–3(T)'s corresponding provisions were undoubtedly adopted in recognition of the same factors.

Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard policyowners' voting instructions are not inconsistent with mixed funding of different insurance products or shared funding by unaffiliated insurers. In any event, Applicants assert that the conditions in the application are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer will be permitted to withdraw its separate account's investment in the Fund, and this provision will be provided for in agreements that will be entered into by participating insurers with respect to participation in the Fund. Further, Applicants assert that if a particular insurer's disregard of voting instructions could conflict with the majority of policyowner voting instructions, then if the insurer's judgment represents a

minority position or would preclude a majority vote, the insurer will be permited to withdraw its separate account's investment in the Fund. Applicants represent that this provision will be provided for in the agreements entered into with respect to participation in the Fund.

Applicants submit that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing. Applicants further assert that mixed and shared funding should benefit owners of variable contracts by eliminating a significant portion of the cost of establishing and administering separate funds, and that granting the requested relief should result in an increased amount of assets available for investment by the Fund. This may benefit owners of variable contracts by promoting economies of sale, by permitting greater safety through greater diversification, and by making the addition of new portfolios of the Fund more feasible.

Applicants state that to the extent required by the Commission, they consent to certain conditions, which are summarized as follows: (1) A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund. (2) The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the policyowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretation letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by participating companies or by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of policyowners. (3) Participating insurance companies and the Adviser will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever policyowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interest of the policyowners. (4) If it is determined by a majority of the Board of the Fund or a majority of its disinterested directors that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors) take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected policyowners and, as appropriate, segregating the assets of any appropriate group that votes in favor of such segregation, or offering to the affected policyowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of policyowners. The Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of policyowners materially adversely affected by the irreconcilable material conflict. (5) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all participating insurance companies. (6) Participating insurance companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies, and this shall be a contractual obligation of all participating insurance companies. The Company will vote shares of the Fund held in the Separate Accounts in accordance with instructions received from policyowners. The Company also will vote shares of the Fund held in the Separate Accounts for which no timely instructions from policyowners are received, and shares of the Fund held in its general account, in the same proportion as those shares for which instructions are received. (7) The Fund will notify all participating insurance companies that the prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. (8) The Fund and/or the participating insurance companies shall comply with Rules 6e-2, 6e-3(T), and, if adopted, 6e-3, if and to the extent they are amended to provide exemptive relief with respect to mixed or shared funding. (9) All reports received by the Fund's Board and all action with regard to a conflict will be properly recorded in the minutes of the Board or other appropriate records. Applicants further represent that the Fund's By-Laws provide that the Fund will conform its investment objectives, policies and restrictions to the insurance law requirements of the Commonwealth of Pennsylvania, and an insurer whose actions conflict with these requirements will be presumed to be the insurer creating the irreconcilable material conflict.

Other Relief

Applicants seek additional relief pursuant to section 6(c) of the Act, exempting the Company and the Separate Accounts from the provisions of sections 26(a) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the cost of insurance. Applicants state that a charge for the cost of insurance protection is deducted from the cash value daily and from the

amount provided for investment annually.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with request.

After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22200 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23827; 70-7141]

Vermont Yankee Nuclear Power Corp. Proposal To Issue Short Term Debt; Exception From Competitive Bidding

September 9, 1985.

Vermont Yankee Nuclear Power Corporation ("VYNPC"), R.D. 5, Ferry Road, Box 169, Brattleboro, VT 05301, a wholly owned subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application with the Commission subject to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) thereunder.

VYNPC proposes to establish a revolving credit facility in an aggregate principal amount at any one time outstanding of not more than $75 million for a period of five years. Any borrowings under the revolving credit facility will be evidenced either by promissory notes ("Notes") to a group of major international banks ("Banks"), pursuant to a Eurodollar Credit Agreement, with Societe Generale acting as agent bank ("Agent Bank") for the other banks in the group, or by commercial paper notes ("Commercial Paper") to be sold to Paine Webber, Inc., as dealer, for resale to its cutomers. The Commercial Paper would be supported by irrevocable letters of credit issued by the Agent Bank which will result in the Commercial Paper having the highest rating and therefore the lowest cost. The Notes and Commercial Paper will be secured by a security agreement providing a security interest in VYNPC's nuclear fuel at the plant site, including assemblies ready for loading, fuel in the core and spent fuel. The purpose of the financing is to establish a revolving credit facility, which replaces and expands an existing facility, for the purposes of meeting VYNPC's anticipated short term financing requirements for its general corporate expenditures, including fuel costs, spent fuel disposal payments and plant additions.

The letter of credit facility would require a fee of ½ of 1% per annum on the average daily outstanding amount of letters of credit. VYNPC will also pay a commitment fee during the term of the credit facility of ¼ of 1% per annum of the unused portion of the total facility and will pay additional fees and expense.

The revolving credit facility would permit VYNPC to select from time to time interest periods of one, two, three or six months' duration for each revolving credit loan. The interest rate on each revolving credit loan will be either the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected plus ⅛ of 1%, or the adjusted certificate of deposit rate plus ⅝ of 1%; in each case the interest rate being established by the arithmetic average of the rates of four representative lending banks.

Based on prevailing rates on July 11, 1985: assuming a one-month LIBOR of 7.81% and borrowings of $75 million, the effective cost of borrowings would be 8.31%; assuming a one-month ajusted certificate of deposit rate of 7.7% and borrowings of $75 million, the effective cost of borrowings would be 8.33%; assuming a 30-day commercial paper rate of 7.55%, use of the letter of credit facility would have an effective cost of 8.30%. To the extent that these borrowings are participated out to other banks the cost to VYNPC would be reduced. VYNPC does not intend to utilize the letter of credit facility if the effective cost would exceed that of the revolving credit facility. VYNPC has the right at any time to terminate in whole or reduce in part (by $5 million decrements) the unused portion of the facility.

VYNPC requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of commercial paper, pursuant to paragraph (a)(5).

The application 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 October 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant 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 application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22201 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No PA-10]

Privacy Act of 1974, Modification of System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of modification of an existing system of records.

SUMMARY: The Commission is modifying an existing system of records which was previously identified in the **Federal Register**, 41 FR 41591, on September 22, 1976, as SEC-49, Office of Personnel Employment and Staffing Files.

EFFECTIVE DATE: November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott (202-272-2474) or Jeanne Carter (202-272-2447), Office of the General Counsel.

SUPPLEMENTARY INFORMATION: The system of records known as the "Office of Personnel Employment and Staffing Files" contains information on applicants for SEC employment and present and past employees. The system inlcudes nine categories of records, only one of which, category (h), is affected by the planned modification. Category (h) includes information concerning an employee's work history at the Commission (e.g., promotions, salary, awards, etc.). This information is maintained by each division and office, and each regional and branch office only on the employees assigned to the specific unit. Currently, this information is maintained on employee record cards.

Following the modification, an office will maintain this information on either employee records cards or on micro computer diskettes.

The modification allows the Commission's divisions and offices to utilize computerized recordkeeping. As a result, the system will be less cumbersome and time-consuming to use.

The Commission is amending SEC–49 to reflect this enhancement to the Office of Personnel Employment and Staffing Files. The Commission is also making several non-substantive changes, such as substituting the name of the Office of Personnel Management for the Civil Service Commission, which has been abolished, wherever it appears. The applicable changes are set forth below. The amended portions of the notice are italicized.

1. In "Categories of records in the system," add that records may be maintained on micro computer diskettes, and substitute the Office of Personnel Management for the Civil Service Commission.

2. In "Routine uses of records maintained in the system, including categories of users and the purposes of such uses," substitute the Office of Personnel Management for the Civil Service Commission.

3. In "Storage," delete reference to "Kardex," which is no longer in uses, as the particular type of file drawer in which records are kept; add that records in category (h) may be kept in diskette jackets.

4. In "Safeguards," add that micro computer diskettes are kept under lock, as are employee record cards; and clarify that it is the national office in Washington, D.C., which has a 24-hour security guard.

5. In "System manager(s) and address," change the street address of the Commission.

6. In "Notification procedure," change the street address of the SEC Public Reference Room, and substitute the Privacy Act Officer as the person to whom written requests should be mailed.

7. In "Record access procedures," substitute the Privacy Act Officer as the person to whom access inquires should be addressed.

SEC–49

SYSTEM NAME:

Office of Personnel Employment and Staffing Files—SEC.

SYSTEM LOCATION:

Securtities and Exchange Commission, Washington, D.C. 20549. (Items (h) and (i) below are kept in Washington, D.C. headquarters and in the Commission's Regional and Branch Offices across the country. Each Regional and Branch Office maintains records on only the employees assigned to it).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on applicants for SEC employment and present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the following category of records: (a) Applicant files (Standard Forms 171 and resumes, attorney supplements to applications, applicant correspondence and evaluations, and summer employment files); (b) Official personnel folders *(Office of Personnel Management Files);* (c) Service record cards; (d) Merit promotion posting files, including supervisory appraisals for jobs advertised under SEC Merit Promotion Program; (e) Request to *Office of Personnel Management* for Schedule C personnel actions; (f) Chronological copies of personnel actions (Standard Forms 50); (g) *Office of Personnel Management* clerk-typist and clerk-steno examination papers for applicants tested under SEC's delegated recruiting authority; (h) Division/Office/Region employee record cards *or micro computer diskettes;* (i) Regional Office employee files, including copies of applications and notifications of personnel action (Standard Forms 50) on the employee concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR, Sections 213, 293, 302, and 335; 5 U.S.C. 3109 and Civil Service Regulations promulgated thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained in these records may be used as follows:

1. Records in category (a) above are used by SEC staff to make referrals to supervisors or administrative assistants in offices with vacancies for which applicants may be considered. Offices may retain copies of applications/resumes and evaluations of candidates they interview whom they feel may be contenders for employment offers later in the year.

2. SEC staff uses records in category (b) above for (i) retention of official personnel documents; (ii) verification of employment; (iii) determination of qualifications for jobs and elegibility for training; (iv) processing of personnel actions.

3. SEC staff uses records in category (c) above for (i) computation of personnel strength of divisions/offices; (ii) verification of employment for credit checks or job applications; (iii) recording of personnel actions processed.

4. SEC staff uses records in category (d) above to maintain records required by *the Office of Personnel Management* of competitive promotion actions, including (i) records to determine how an announcement for a particular job reads; (ii) records for statistical reports; (iii) records for program effectiveness studies (to send questionnaires to supervisors who made selections under the program, for example). Supervisory appraisals are scored and used in determining employee's overall standing among all applicants for the job; they are sent to selecting supervisors for review if the employee is certified for consideration (interview).

5. SEC staff uses records in category (e) above to identify *Office of Personnel Management* control numbers for Schedule C positions and to aid in preparing new submissions.

6. SEC staff uses records in category (f) above for statistical reports.

7. SEC staff forwards records in category (g) above to the *Office of Personnel Management* at the end of each month if the applicant is not hired; if applicant is hired, records are retained for one year and then destroyed.

8. SEC staff uses records in category (h) above to monitor personnel actions concerning their staffs (i.e., date of employee's last promotion, employee's position description number, etc.) and to record date personnel action requests and reports were forwarded to the Office of Personnel.

9. SEC Regional Offices use records in category (i) above as a reference in preparing personnel actions requests on employees, determining employee eligibility for training or career development counseling and for back-up data in preparing award nominations, etc.

10. Any of the records described above may be used by the Commission in connection with any action or proceeding brought by an employee before another agency or a court of law to review personnel action taken by the Commission or the failure by the Commission to take action.

11. In any proceeding where the Federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity.

12. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local governmental authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

13. A record from this system of records may be disclosed to a Federal, State or local governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

14. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

15. To aid in responding to inquiries from an employee, Member of Congress, the press or others concerning personnel action taken with respect to a specified employee or employees.

Records in this system may, in the discretion of the Commission's staff, be disclosed to any person during the course of any inquiry or investigation conducted by the Commission staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of inquiry.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in categories (a) and (d)–(f) are kept in folders in file cabinets. Records in categories (b) and (g) are kept in a Diebold power file. Records in category (c) are kept in file drawers. Records in category (h) are kept in file drawers, file boxes *or diskette jackets.* Records in category (i) are kept in folders in locked cabinets.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records in categories (a)–(g) are pulled and refiled by Office of Personnel staff only and that Office is locked each evening. Access to official Personnel Folders is limited to employee concerned, his/her supervisors and administrative assistant, supervisors/administrative assistants considering him/her for a job or employee's designated representative; access by other individuals on official business is on a need-to-know basis as approved by the Director or Assistant Director of Personnel. Personnel folders are locked in the Diebold file each evening. Division/Office Directors and Regional Administrators are responsible for keeping employee record cards, *micro computer diskettes* or employee files (Regional Offices only) under lock and for assuring that their confidentially is maintained. The *national office in Washington, D.C.* has a 24-hour security guard.

RETENTION AND DISPOSAL:

Records in category (a) are retained 6 months and then destroyed. Records in caregory (b) are fowarded to Federal Records Center 30 days after the employee leaves the SEC by retirement, resignation or death or forwarded to agency to which employee transfers as soon as new agency requests them. Records in category (c) are retained indefinitely. Records in category (d) are retained two years and then destroyed. Records in category (e) are retained indefinitely. Records in category (f) are retained 5 years and then destroyed. Records in category (g) are sent to the *Office of Personnel Management* at the end of the month if the applicant is hired. If the applicant is not hired, records are retained one year and then destroyed. Records in category (h) are retained indefinitely. Records in category (i) are retained while employee is assigned to office and forwarded to new SEC office if he/she transfers or destroyed if employee leaves the SEC.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be made in person during normal business hours at the SEC Public Reference Room at 450 Fifth Street NW., Washington, D.C., or by mail addressed to the Securities and Exchange Commission, *Privacy Act Officer,* Washington, D.C. 20549.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contract or address their inquiries to the Securities and Exchange Commission, *Privacy Act Officer,* Washington, D.C. 20549.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Records in category (a) are obtained from applicant concerned and interviewer evaluating the applicant. Records in category (b) are obtained from employee and supervisors concerned. Records in category (c) are obtained from official personnel folder of the employee concerned. Records in category (d) are obtained from employees applying for job and their supervisors. Records in category (e) are obtained from employees and supervisors concerned. Records in category (f) are obtained from employees and supervisors concerned. Records in category (g) are obtained from applicant. Records in category (h) are obtained from official personnel actions, employees and supervisors concerned. Records in category (i) are obtained from official personnel actions, employees and supervisors concerned.

By the Commission.

John Wheeler,

Secretary.

September 11, 1985.

[FR Doc. 85–22210 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22386; File No. SR-CBOE-85-31]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Discretionary Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that July 25, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Note: Additions are italicized.

Discretionary Transactions

Rule 6.75. No Floor Broker shall execute or cause to be executed any order or orders on this Exchange with respect to which such Floor Broker is vested with discretion as to: (1) the choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold, or (3) whether any such transactions shall be one of purchase or sale; however, the provisions of this paragraph shall not apply to any discretionary transaction executed by a Market-Maker for an account in which he has an interest. *Under normal market conditions, and in the absence of a "not held" instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to codify the rule that floor brokers should not hold marketable non-discretionary agency orders and work them against other orders in their deck, instead of immediately executing them. By codifying this rule, the Exchange believes off-floor orders will be handled in a more expeditious and uniform fashion. This is consistent with existing Exchange rules, including Rules 8.8 (separation of principal and agency functions) and 6.53(a) (Market order definitions as an order to be executed at the best price obtainable when the order reaches the post).

A customer has a reasonable expectation of the soonest possible execution on his order. His order, if marketable, therefore, should be executed and not held back by the floor broker to aid the floor broker in serving as the contraside of the other orders represented by the broker.

On the other hand, floor brokers may require time discretion to acquit their obligation of due diligence to customer orders in unusual market conditions, including where he believes the quoted market is insufficient. Thus, this amended language to Rule 6.75 is not intended to vitiate the floor broker's due diligence responsibilities, enumerated in Rule 6.73 and Interpretations and Policies thereto.

The proposed rule change is consistent with the provisions of the Act and in particular section 6(b)(5) in that the rule change is designed to protect public customer orders and encourage the efficient and uniform handling thereof.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

This rule change is the implementation of one of the recommendations of the CMTF which was endorsed by a membership vote concluded on November 20, 1984.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22202 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22387; File No. SR-CBOE-85-33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change; Relating to Extension of the RAES Pilot Program

Introduction and Background

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on July 23, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the CBOE's retail automatic execution system ("RAES") pilot program, which permits the automatic execution of certain public customer market orders in a limited number of

OEX series.[1] The proposal would extend the operation of the pilot program from August 3, 1985 through November 8, 1985.[2] The CBOE applied for an extension of time because it has requested the Commission to consider, by November 1985, a companion rule filing wherein the CBOE requests that the RAES pilot in OEX be made permanent. In the interim, the Exchange seeks to continue RAES in OEX on a pilot basis.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commision release (Securities Exchange Act Release No. 22275, July 29, 1985) and by publication in the **Federal Register** (50 FR 31266, August 1, 1985). The Commission did not receive any comments with respect to the proposed rule change.

Discussion

In its January and August Orders, the Commission expressed concern about the reduced priority accorded public customer limit orders on the book which may result from the absence of a linkage between RAES and the public customer limit order book. Based upon the CBOE's representations, however, that even though RAES may by-pass public customer limit orders at the same pirce, those limit orders generally are executed, the Commission found that an extension of the pilot until August 1985 was not inappropriate. The Commission did, however, request the CBOE to monitor the execution of booked limit orders to verify that they are, in fact, executed.

The CBOE recently has responded to the Commission's request.[4] The CBOE states that, based upon a comparison of various trade match data and disseminated book data collected in May 1985, it continues to believe "the vast majority of booked limit orders are being executed promptly when entitled under prevailing market quotations."[5] The CBOE estimates that the average time interval between a RAES trade execution at the best bid or offer on the book and all orders on the book at that price being executed is 8.8 minutes, and that in 60% of these instances, all orders on the book at the price of a RAES trade are executed in less than five minutes from that trade. CBOE concludes that only 3.8% of RAES trades were executed at the booked bid or offer when all orders on the book at the price of the RAES trade were not executed the same day.

In addition to these estimates, CBOE represents that the pilot continues to operate successfully and without technical or other difficulties. On May 2, 1985, RAES was expanded to handle customer market orders of up to 10 contracts, and on July 1, 1985, series in the second term options were incorporated into the pilot. As of July 8, 1985, 15 CBOE member firms were participating in the pilot, and transactions executed through RAES accounted for approximately 10% of the most active firms' public customer orders. By comparison, during March 1985 RAES transactions accounted for 7% of the public customer orders of member firms on the system.

In light of the CBOE's representations discussed above, the Commission finds that an extension of the pilot program to November 8, 1985, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, in particular, sections 6(b)(5) and 11(A) of the Act. It does not appear that extending the duration of the pilot until this time will impose any undue burdens on public customers of OEX, or on any other public customers.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1985

John Wheeler,

Secretary.

[FR Doc. 85-22203 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[1] A more complete description of RAES is provided in the Commission's initial order approving CBOE's implementation of the RAES pilot program. *See* Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823 (File No. SR-CBOE-84-30) ("January Order").

[2] The Commission previously has approved one other extension of time for the RAES pilot program. The program as originally proposed expired on April 30, 1985. *See* January Order, *id.* Thereafter the Commission extended the pilot, as modified in certain respects, until August 2, 1985. *See*, Securities Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19832 (File No. SR-CBOE-85-14) ("August Order").

[3] *See* Securities Exchange Act Release No. 22274 (July 29, 1985), 50 FR 31264 (File No. SR-CBOE-85-32). The CBOE also has filed with the Commission a proposed rule change to extend the RAES system to certain classes of individual stock options on a six month pilot basis. *See* Securities Exchange Act Release No. 22279 (July 26, 1985), 50 FR 31449 (File No. SR-CBOE-85-16, Amendment No. 2).

[4] *See* letter to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, from Frederic M. Krieger, Assistant General Counsel, CBOE, dated July 8, 1985 ("CBOE Letter").

[5] CBOE Letter, *id* at 2.

[Release No. 34-22392; File Nos. SR-MCC-85-4 and SR-MCC-85-5]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Changes

The Midwest Clearing Corporation ("MCC") on June 25 and August 23, 1985, submitted proposed rule changes (File Nos. SR-MCC-85-4 and SR-MCC-85-5, respectively) to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). MCC's proposals revise MCC procedures to reflect implementation of Phase V of the National Municipal Comparison System. The Commission is publishing this notice to solicit public comment on the proposals.

The National Municipal Comparison System is an automated comparison system for municipal securities transactions operated by the National Securities Clearing Corporation through links with Midwest Clearing Corporation and other registered clearing agencies.[1] Prior to implementation of Phase V of that system, processing was limited to "regular-way" municipal securities transactions, *i.e.*, transactions with a standard five day settlement period. Phase V permits processing of "when-issued" municipal securities transactions (where settlement of trades is delayed until issuance) and other transactions where the parties agree on a settlement date beyond the five day industry standard. Phase V is intended to expand the number of municipal securities transactions processed through the National Municipal Comparison System.

MCC's proposals also include several Phase V processing changes. First, the Demand Withhold instruction (including Demand Withhold Advisory) has been discontinued. That instruction, which allowed participants unilaterally to delete transactions from comparison, was not being used. Incorrect trades still may be deleted through submission of Withhold instructions from both parties. Second, participants no longer may accept partially Demand As-Of Advisory instructions. Partial deliveries are prohibited by Municipal Securities Rulemaking Board Rules G-12 and G-15, and partial acceptance of Demand As-Of Advisories violates that prohibition. Third, terminal screen displays on MCC's MST System will be changed to reflect these changes. MCC's proposals

[1] Stock Clearing Corporation of Philadelphia and Pacific Clearing Corporation also participate in the National Municipal Comparison System.

adopt these processing changes on a pilot basis (File No. SR–MCC–85–4) and formally incorporate them into MCC procedures (File No. SR–MCC–85–5).

MCC believes that the proposals will facilitate municipal bond trade comparison, thus assisting the establishment of a national system for clearance and settlement of securities transactions. MCC further believes that the proposals provide for the prompt and accurate clearance and settlement of municipal securities transactions. MCC thus believes that the proposals are consistent with the Act in general, and in particular with section 17A of the Act.

MCC's proposals have become effective under section 19(b)(3)(A) of the Act. At any time within 60 days the proposals were filed, however, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of the proposals and all related documents, other than those that may be withheld under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC, and at MCC's principal offices. Please refer to File Nos. SR–MCC–85–4 and SR–MCC–85–5 and file six copies of comments on the proposals with the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, by October 8, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22204 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cuyahoga and Geauga Counties, OH

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 (EIS) will be prepared for a proposed highway project in Cuyahoga and Geauga Counties, Ohio

FOR FURTHER INFORMATION CONTACT: Mr. Marvin I. Espeland, Division Administrator, or Mr. Thomas M. Wahtola, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone (614) 469–6896 or 469–5148.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of approximately 11.5 miles of four-lane, median strip divided, limited access highway on new location. The project is to connect a completed section of four-lane freeway at SR–91 in Solon, Ohio with a completed four-lane section of US–422 at Auburn Corners, Ohio. Interchanges would be provided at SR 306 and SR 44 to allow access for both east and west bound traffic and fourteen bridges would be constructed as part of the project.

The proposed action is consistent with regional transportation plans and has been under consideration since the late 1950's.

In 1962, ODOT prepared a report titled *Preliminary Engineering Report for the Proposed Relocation of U.S. Route 422 in Cuyahoga and Geauga Counties,* which investigated possible alterantives. The alternatives studied were designed to connect up with the then proposed I–271/Randal Interchange and the completed section of U.S. 422 across LaDue Reservoir, built in 1960.

On October 30, 1962, a public hearing was held on the relocation of U.S. 422 from I–271 to Route 44. All feasible alternatives were considered before a selection was made.

The selected alignment east of Route 91, the subject of this Notice of Intent, was journalized by the Director of Ohio Department of Transportation on November 23, 1962. The portion west of Route 91 was not journalized until a second public hearing was held on January 8, 1963 to address public concerns raised at the previous public hearing. The western portion from I–271 to Route 91 was built between 1973 and 1975, opening in December 1975.

Design of the preferred alignment began in 1963 and was completed in 1969. State funded property acquisition began in 1966 on CUY/GEA 422–18. 40/0.00 and in 1970 for GEA–422–3.19. All right-of-way has been purchased and all households and commercial establishments have been relocated.

Since 1976, when the last parcels were acquired, the proposed action has been delayed pending completion of the necessary environmental documentation and lack of funds to build the two sections. If and when funds become available and the project has received all the necessary environmental clearances, it is likely that the project would be built in two stages, the first priority being the completion of U.S. 422 between S.R. 91 and S.R. 306 in Bainbridge. The remaining section would be completed at a later date depending upon the availability of funds. It is envisioned that involvement with the public and other agencies will continue througout the development of the proposed project and, therefore, it is not anticipated that a formal scoping meeting will be held.

A Corps of Engineers 404 permit may be required. To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding state and local clearing house review of Federal and federally assisted program and projects apply to this program)

James J. Steele,

Assistant Division Administrator, Columbus, OH.

[FR Doc. 85–22152 Filed 9–16–85; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 37]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Prestige Casualty Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Guard Casualty and Surety Insurance Company, of Indianapolis, Indiana, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27259, July 2, 1984.

With respect to any bonds currently in force with Prestige Casualty Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial

Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2350.

Dated: August 5, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-22170 Filed 9-16-85; 8:45 am]

BILLING CODE 4810-35-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30724]

Wisconsin and Calumet Railroad Co., Inc.; Notice of Modified Certificate of Public Convenience and Necessity

September 12, 1985.

By notice served February 14, 1985, in Finance Docket No. 30620, the Chicago, West Pullman & Southern Railroad Company (CWPS) was authorized, pursuant to a modified certificate of public convenience and necessity under 49 CFR 1150 Subpart C, to operate two lines of railroad for a period of 120 days beginning January 31, 1985. The first was a 58.95-mile line segment acquired, in separate portions, by the State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission (SCWR) following consummation of the abandonment authorized by this Commission in Docket No. AB-43 (Sub-No. 28), *Illinois Central Gulf R. Co.-Abandonment—Betw. Freeport, IL and Madison, WI* (not printed), served December 22, 1980. The second was a 79.6-mile line segment acquired by WISDOT pursuant to an order of abandonment issued January 21, 1980, in Case No. 77 B 8999, *In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor* (U.S. Dist. Ct. Northern District of Illinois, Eastern Division). The two line segments are controlled by SCWR and the Pecatonia Rail Transit Commission (PRTC), each a public agency of the State of Wisconsin.

On August 23, 1985, the Wisconsin and Calumet Railroad Company, Inc. (WCR), which, like CWPS, is a wholly-owned subsidiary of Chicago West Pullman Corp., submitted a notice of permanent continuation of previously authorized temporary operations and transfer of modified certificate within corporate family. Although WCR's notice was submitted for filing in Finance Docket No. 30620, and was originally recorded in that docket, I have concluded that a separate modified certificate should be issued in the name of WCR. Therefore, the notice has been redocketed in Finance Docket No. 30724.

WCR is now authorized to operate over the two line segments in question for a period of 96 years pursuant to respective operating agreements which it has entered into with SCWR and PRTC. The 58.95-mile segment extends from milepost 2.42 near Freeport, IL to milepost 61.37 at Madison, WI, while the 79.6-mile segement extends from milepost 11.0 at Jonesville, WI to milepost 90.6 at Mineral Point, WI. WCR will interchange with the Illinois Central Gulf Railroad Company at Freeport, IL and with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee,) at Madison, WI. Assuming successful agreements are reached for WCR to operate over Milwaukee's line between milepost 9.46 and milepost 11.0 in Jonesville, WCR also will interchange with Milwaukee at Jonesville.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22410 Filed 9-16-85; 12:04 pm]

BILLING CODE 7035-01-M

FEDERAL RESERVE SYSTEM

Ellinwood Bankshares, Inc.; Formation of; Acquistion by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 28, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ellinwood Bankshares, Inc.*, Salina, Kansas; to become a bank holding company by acquiring 94 percent of the voting shares of The Peoples State Bank and Trust Company, Ellinwood, Kansas.

Board of Governors of the Federal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22397 Filed 9-16-85; 11:19 am]

BILLING CODE 6210-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

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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1

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 16, 23, 30, and October 7, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 16

Tuesday, September 17

10:30 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)
2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Wednesday, September 18

9:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Week of September 23—Tentative

Thursday, September 26

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 30—Tentative

Tuesday, October 1

2:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, October 3

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 7—Tentative

Wednesday, October 9

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting)

Thursday, October 10

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

September 12, 1985.

[FR Doc. 85-22333 Filed 9-13-85; 3:36 pm]

BILLING CODE 7990-01-M

2

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [50 FR 36183 September 5, 1985].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATES PREVIOUSLY ANNOUNCED: August 29, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting held on Tuesday, September 10, 1985, following the 2:30 p.m. open meeting.

Formal order of investigation.

Chairman Shad and Commissioners Cox and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, pleade contact: Douglas Michael at (202) 272-2467.

John Wheeler,

Secretary.

September 12, 1984.

[FR Doc. 85-22246 Filed 9-12-85; 4:46 pm]

BILLING CODE 8010-01-M

Federal Register

Tuesday
September 17, 1985

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Announcement of Preliminary Consultation on Two Potential Sites for Designation as National Marine Sanctuaries; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Preliminary Consultation on Two Potential Sites for Designation as National Marine Sanctuaries

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is announcing preliminary consultation on two sites for potential National Marine Sanctuary designation: (1) At Norfolk Canyon, (off the cost of Virginia) and (2) Ten Fanthom Ledge/Big Rock (off the coast of North Carolina). Preliminary consultation is the first step toward designation of a National Marine Sanctuary. NOAA will review and consider public comments in determining whether these sites should become active candidates for possible designation. If a site is selected as an active candidate, an environmental impact statement will be prepared under the National Environmental Policy Act and NOAA will conduct public hearings. After selection as an active candidate, the complete Sanctuary designation process could take from 2–5 years. The public, and state, local and Federal Governmental agencies are invited to comment on the potential of making these sites active candidates for formal considerations as National Marine Sanctuaries. NOAA intends to designate no more than one Sanctuary per year.

DATE: Comments on the Preliminary Consultation will be accepted until November 18, 1985.

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235, (202) 634–4236.

FURTHER INFORMATION CONTACT: Mr. Edward Lindelof, Senior Policy Analyst, at the above telephone and address.

SUPPLEMENTARY INFORMATION:

I. Selection Procedures

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 *et seq.* (the Act), authorizes the Secretary of Commerce to designate ocean waters, as far seaward as the outer edge of the continental shelf and over which the United States exercises jurisdiction, consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for those conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the Natonal Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuary Program Division (SPD).

On August 4, 1983, NOAA published the Site Evaluation List (SEL) (48 FR 35568) consisting of 29 sites that could possibly be considered for National Marine Sanctuary status through 1988. Each site has been placed on the SEL because it possesses high natural resource value, and may warrant further analysis to determine its feasibility as an Active Candidate (formal proposal for consideration as a National Marine Sanctuary).

Before a site is selected as an Active Candidate, the current regulations at 15 CFR Part 922, § 922.30(c), require that NOAA undertake preliminary consultation with relevant local, state and Federal government agencies; the appropriate Fishery Management Council; any relevant international agencies, and the public. The 1984 amendments to the Act (Title I of Pub. L. 98–498, codified to 16 U.S.C. 1431–1439) also require consultation with the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transporation of the Senate.

The purpose of this preliminary consultation is to seek relevant information about the sites to aid NOAA in its determination as to whether to designate one or both as Active Candidates. Evaluating a site for placement on the list of Active Candidates represents the next stage in the National Marine Sanctuary designation process.

After a 60-day review of comments and relevant information, NOAA will evaluate these sites in terms of the Active Candidate criteria. Therefore, information relevant to this analysis would be particularly useful. These criteria are:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity; maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(2) The area's historical, cultural, archaeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commerical and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in subparagraphs (1), (2), (3);

(5) The existing state and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purpose and policies of this title;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

(9) The socioeconomic effects of sanctuary designation.

Within 180 days after publication of this notice NOAA shall determine which, if any, of the two sites described below will become Active Candidates and publish a notice of this determination in the **Federal Register** describing how each site meets the criteria. If a site is not selected, a short statement of the reasons for the negative determination shall be specified in the notice.

Selection as an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process. At this stage NOAA begins preparation of a draft management plan and draft environmental impact statement, including a resource assessment report. Subsequent steps include a public hearing, preparation of a final environmental impact statement, and a recommendation of approval to the Secretary of Commerce. Congress then has the opportunity to disapprove the designation. Opportunities for public comment exist throughout this process and will be advertised in the local media, and other appropriate channels.

II. Preliminary Consultation

Consistent with the current final regulations for designating national marine sanctuaries, NOAA is undertaking preliminary consultation on two sites: Ten Fathom Ledge/Big Rock and Norfolk Canyon. Although Norfolk Canyon does not appear on the SEL, it is eligible for consideration.

At the time of development of the Site Evaluation List the following sites were under consideration for designation by NOAA: Cordell Bank (California), Norfolk Canyon (South Atlantic), La Parguera (Puerto Rico); Monterey Bay (California), Hawaiian waters and Fagatele Bay (American Samoa). The scientific teams responsible for making recommendations were instructed not to consider these sites for SEL listing since they had already been selected by NOAA for further evaluation. At that time a contract had been awarded to the Virginia Institute of Marine Sciences for the purpose of synthesizing information on the physical and biological features of Norfolk Canyon. This site is the last of the pre-SEL candidates to be actively considered.

(1) Norfolk Canyon

Latitude: 37° 03. 3' N.
Longtitude: 74° 38. 4' W.

This site which is located approximately 60 nautical miles off the coast of Virginia is the southernmost submarine canyon in a series of prominent, deep water features on the eastern continental margin of the United States (Figure 1). Like their counterparts on land, submarine canyons are some of the most rugged features on the face of the earth, with deep V-shaped valleys, steep, rocky and often unstable walls and swift currents. In spite of its ruggedness and depth, the Norfolk Canyon supports an abundance of marine life, of which its huge Alcyanarian tree corals and "pueblo villages" (*i.e.*, areas along the canyon wall where large invertebrates and some finfish dig extensive depressions, caves and burrows for their lodging) are especially prominent.

The topographic expression of Norfolk Canyon begins in the shelf-break region at depths of 80 to 100 meters. The head of the Canyon is characterized by high relief (up to 400 meters between shelf and canyon floor) and a symmetrical V-shaped cross section. It incises the shelf approximately 16 to 19 km and is 6 km wide near the shelf break. Other major canyons in the Middle Atlantic are less symmetrical, having more abrupt profiles on their northeastern flanks as opposed to southwestern flanks. Terraces in the head of Norfolk Canyon are found on the canyon walls, clustered at various depths on the upper slope. They are more numerous at the shallower depths (100–250) and on the northeast sandy, foraminiferal-rich mud distinct from the gravelly, shell-rich sands characterizing the shelf. The depth of transition between the shelf and slope faces generally occurs between 250 and 300 meters in Mid-Atlantic Canyons, but has not been reported precisely for Norfolk Canyon.

The deep-sea biota of the eastern continental margin, both in and out of canyon systems, is best known with respect to its megafaunal components. The megafauna include both mobile benthopelagic or epibenthic forms such as decapods and echinoderms. Less abundant, but often observed, are various anthozoans, particularly soft-bottom forms such as sea pens and tube anemones.

The same faunal elements seen on the open slope and rise occur in canyon areas as well, although sometimes in greater abundance than observed outside of canyon systems. In addition to the usual deep-sea assemblages, many canyon areas also support a much greater variety of hard-bottom forms than can be found in the inter-canyon areas. This is due to the generally much greater availability of hard substrates in canyons, particularly at upper to mid-slope depths and various soft corals, especially gorgonians, at deeper levels. In general, the bathymetric distributions of most species are broad.

Another distinctive feature of canyon systems is the extensive bioerosion of canyon walls often observed in the heads of these systems. This creates a unique habitat both for the primary eroders and many additional species which make use of these areas, referred to as "pueblo village" communities.

The mobile megabenthos of the Norfolk Canyon area is quite similar compositionally to that found at comparable depths along the eastern continental margin. The demersal fish fauna is dominated by macrourids, morids, gadids, zoarcids, and the Synaphobranchid eel, *Synaphobranchus kaupi*. The longfin hake, *Phycis chesteri*, is dominant on the upper slope; the blue hake, *Antimora rostrata*, is a major constituent of the fauna on the lower slope; and the rattail species, *Corphaenoides armatus*, is dominant on the rise.

Decapods commonly observed on the upper slope include lobsters, *Cancer* crabs, and the galatheid crab, *Munida iris iris*. Over a broad range of mid-slope depths, red crabs (*Geryon quinquedens*) dominate the decapod fauna. On the lower slope and rise, a variety of crangonid, polychetid, nematocarcinid and galatheid species are observed.

In the head of Norfolk Canyon, diverse habitat types, including boulder-covered bottom, bioeroded areas, and terraced areas supporting extensive

stands of a very large, hard-bottom gorgonian, *Paragorgia arborea*, have been observed during submersible and photographic surveys. From the data available, the development of the *Paragorgia* stands appears to be more extensive than in other Mid-Atlantic canyons. A variety of other soft and hard corals are also found in the Canyon to depths of more than 2000 meters. Several of these (e.g. *Primnoe reseda*) may not be common in east coast or Mid-Atlantic canyons, although more data are required before this can be known with certainty.

Human Uses

Major human activities pursued on the eastern continental margin include commercial and recreational fisheries, mineral resources development, ocean dumping and military operations. Although the Norfolk Canyon area may not provide uniquely important fishing grounds compared with other canyon or intercanyon areas on the outer shelf or upper slope, it is visited regularly by vessels from a variety of fisheries. Squid, red crabs, lobsters, and scallops are actively fished in this area, and it is trawled for various demersal finfish as well. Other species sought commercially in this area include butterfish, offshore mackeral, and swordfish. Tilefish, landed both north and south of Virginia and caught primarily in canyon areas, are not fished in Norfolk Canyon.

Because of its distance from shore (60 nm), Norfolk Canyon is not as heavily used by recreational fishermen as are nearshore waters. However, various offshore pelagic species are sought in this area, among which the white marlin (*Teptrapturus albidus*) is the most important.

No mineral resources are currently mined in the vicinity of Norfolk Canyon. Those resources with the greatest near-term potential for development are oil and gas. Upcoming lease sale number 111 in the Mid-Atlantic area is tentatively scheduled for February 1986.

Although no ocean disposal of wastes is occurring at present in Norfolk Canyon, the area has been used previously for the dumping of radioactive wastes. There are two former dumpsites, one located at about the 1000-meter isobath, the other, more extensive, lying at depths between about 2000 and 2500 meters. Both occur on or near the axis of the Canyon.

The U.S. Atlantic Fleet claims to make use of the waters and airspace above Norfolk Canyon for gunnery practice and for transiting surface and submerged ships.

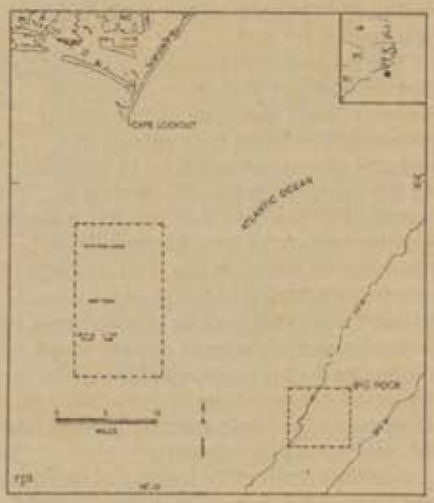
(2) Ten Fathom Ledge/Big Rock

Latitude/Longitude:

Ten Fathom Ledge
34°26' N. 76°37' W.
34°13' N. 76°37' W.
34°26' N. 76°29' W.
34°13' N. 76°29' W.

Big Rock Area
34°12' N. 76°15' W.
34°07' N. 76°15' W.
34°12' N. 76°10' W.
34°07' N. 76°10' W.

The proposed Ten Fathom Ledge/Big Rock site includes six separate hard ground ledges of varying relief, displaying similar tropical algal and coral communities representing the northernmost extension of hard ground habitats that occur off Florida, Georgia, and South Carolina (Figure 2). Two separate areas are included.



LOCATION
TEN FATHOM LEDGE/ BIG ROCK
FIGURE 2

The inner shelf site, called the Ten Fathom Ledge area, is approximately 15 mi. offshore and includes such features as Ten Fathom Ledge, West Rock Area, Thirty-mile Rock area, and a World War II submarine wreck (total area: 135 mi^2 or 350 Km^2). The outer shelf site, some 36 mi. (58 km) offshore, includes the Big Rock area encompassing 36 mi^2 (90 Km^2). Both sites lie entirely within Federal waters, offshore of North Carolina.

A wide variety of unique habitats is included in the study areas. The nearshore live-bottom areas harbor shallow-water subtropical populations. Due to the influence of seasonal temperatures, subtropical communities are not permanently established. The offshore sites, whose benthic communities are not as influenced by seasonal water temperature changes, offer permanent residence to subtropical species. These permanent offshore communities, as well as the "Gulf Stream transport," supply recruits to the near shore areas. Water temperature is the main factor influencing the distribution of the subtropical biota; depth is of secondary importance. Many of these subtropical flora and fauna in the Cape Lookout area are at the northern extension of their range.

The algae, invertebrates and fishes of Ten Fathom Ledge (a high relief area 3–16 ft: 1–5 m), have been identified from the Ledge; most have southern affinities. The area harbors commercially and recreationally sought species such as black sea bass, gag, scamp, longspine porgy, whitebone porgy, tautog, sheepshead, and gray triggerfish. At least 40 algal species, dominated by brown algae, have been recorded from the ledge. The algae are seasonal in occurrence and abundance, with fluctuations in red algae species most noticeable. Ten Fathom Ledge is used recreationally by fishermen and scuba divers; commercial use is predominantly harvesting of black sea bass.

Live bottom areas in the transitional depths of 100–130 ft (30–40 m), such as West Rock and Thirty-Mile Rock, show

an increase in the dominance of subtropical biota which is less influenced by seasons than the nearshore areas. The fauna includes deep-water components, rare in the shallower depths. Purple reef fish, yellowtail reef fish, sportfin hogfish, spanish hogfish, hogfish, bank butterflyfish, red snapper, vermilion snapper, red porgy, and knobbed porgy are examples of species occurring on habitats at these depths. Scuba, hook and line, and submersible data have indicated the presence of at least 100 species of fishes at the two mentioned locations. Diving and commercial and recreational fishing occur on live-bottom sites of these depths.

Diversity of fishes peaks on offshore live-bottom areas in the depth range of 130–246 ft (40–75 m). These areas are typically low in profile (less than 6 ft; 2 m) and offer stable temperatures. Epinepheline groupers, lutjanids, and red porgy dominate the recreational and commercial catches of these areas. Species such as reef butterflyfish, bigeye, and tattler, rare in shallower environments, have been collected in depths of this range. These sites are fished recreationally and commercially.

The Big Rock area marks the seaward boundary of the area under consideration. The Big Rock is a large area on the continental shelf break, ranging in depth from 200–400 ft (60–120m). The deepest areas, although decreased in diversity due to cold-water upwelling from the continental slope, maintain several fish populations of commercial importance. Trolling for billfish is a frequent activity in the area.

Nearby Beaufort inlet provides easy access for fishermen, divers, and researchers. The proposed area receives high recreational and commercial use. The predominant commercial activity is hook and line fishing, but some trapping for sea bass occurs; trawling activities are negligible. Adjacent (within 30 mi 50 km) to the proposed site are calico scallop beds which are periodically dredged.

Human Uses

The major human use of the Ten Fathom Ledge/Big Rock complex is recreational. Scuba-diving clubs and recreational fishermen visit the area. Commmercial trawling occurs over some low-relief hard grounds. A significant commercial headboat (i.e., commercial boats which take private rod-and-reel fishermen out for a day of recreational fishing) fishery makes use of the hard grounds.

Scientific research has been conducted in varying degrees at the different live bottoms since 1920, and increased research emphasis on these habitat is anticipated.

Commercial and recreational fishing, using hand and long lures, occurs in the area and there is an increasing utilization of potentially destructive fishing gear (i.e., roller trawls) designed to fish reef habitats, for grouper and snapper. Although the trawlers may avoid high-relief areas, some of the coral colonies occur on relatively flat bottom away from the pinnacles.

Ten Fathom Ledge/Big Rock areas may have potential for mineral resources including oil and gas, phosphate, and possibly uranium associated with phosphate. Both Ten Fathom Ledge and Big Rock may be considered for oil and gas leasing as part of the OCS lease sales for the South Atlantic tentatively scheduled for July 1989.

(Federal Domestic Assistance Catalog No. 11.419, Coastal Zone Management Program Administration)

Dated: August 30, 1985.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–21672 Filed 9–16–85; 8:45 am]

BILLING CODE 3510–08–M

Federal Register

Tuesday
September 17, 1985

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

Requirements for Cargo Tanks; Proposed Rulemaking and Public Hearing

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178 and 180

[Docket Nos. HM-183, 183A; Notice No. 85-4]

Requirements for Cargo Tanks

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration (DOT).

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: MTB proposes to revise and clarify the Hazardous Materials Regulations (HMR) (49 CFR Parts 171–179) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks (including specifications not authorized for new construction). This proposal would revise and clarify certain commodity sections in Part 173, organize the cargo tank specifications in Part 178, provide for vacuum-loaded cargo tanks, and establish a new Part 180, Subpart E, containing requirements governing the maintenance, use, inspection, repair, retest and requalification of cargo tanks used to transport hazardous materials.

This action is being taken to correct certain deficiencies in the requirements pertaining to cargo tanks that have been brought to the attention of MTB and the Bureau of Motor Carrier Safety (BMCS), Federal Highway Administration, through research findings, petitions for rulemaking, requests for interpretation of the regulations, and recommendations from other agencies. The intended effect of this action is to enhance the safe transportation of hazardous materials in cargo tanks.

DATES: (1) *Written Comments:* Comments must be submitted on or before February 11, 1986.

(2) *Public briefing.* A public briefing will be held on October 15, 1985, 8:30 a.m. to 1:00 p.m., Rosemont, Illinois.

(3) *Public hearings.* Public hearings will be held on—December 4, 1985, 9:00 a.m. to 5:00 p.m., Burlingame, California; and January 9, 1986, 9:30 a.m. to 5:00 p.m., Washington, D.C.

ADDRESS: The public briefing and hearings will be held at the following locations:

1. October 15, 1985—Hyatt Regency O'Hare (Rosemont B), 9300 West Bryn Mawr Ave., Rosemont, Illinois 60018.

2. December 4, 1985—Days Inn (Bayside I, II, III), 777 Airport Blvd., Burlingame, California 94010.

3. January 9, 1986—U.S. Department of Transportation (Room 2230, Nassif Bldg.), 400 Seventh Street, SW, Washington, DC 20590.

Any person wishing to present an oral statement at the briefing may notify the Dockets Branch no later than October 11, 1985, by telephone. Any person wishing to present an oral statement at a public hearing may notify the Dockets Branch, by telephone or in writing, at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of oral statements should be presented to the hearing officer prior to the oral presentation. *Written comments* should be submitted to Dockets Branch, Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in 5 copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, Telephone number (202) 426–3148. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
James O'Steen, Jose Pena or Charles Hochman (202) 755–4906, Office hours are 8:00 a.m. to 4:30 p.m., Office of Hazardous Materials Regulation, Materials Transportation Bureau; or
Joseph J. Fulnecky (202) 755–1011, Office hours are 7:45 a.m. to 4:15 p.m., Bureau of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This proposal includes provisions—

1. To require that all manufacturers of cargo tanks hold a current ASME certificate of authorization.

2. To require that each cargo tank designed with an internal design pressure of 15 psig or greater be "constructed and certified in conformance with the ASME Code", and each cargo tank with an internal design pressure less than 15 psig be "constructed in accordance with the ASME Code".

3. To require that all new specification cargo tanks be certified by an Authorized Inspector who is commissioned by the National Board of Boiler and Pressure Vessel Inspectors (National Board).

4. To require that ring stiffeners on a cargo tank be of a design that can be visually inspected.

5. To authorize the use of external self-closing stop valves in place of internal self-closing stop valves in certain circumstances.

6. To require that the strength of connecting structures on a multitank cargo tank be equal to that required of the cargo tank motor vehicle.

7. To specify minimum standards for the strength and size for a manhole on all new cargo tanks.

8. To require retrofit of any manhole closures not conforming to the prescribed strength requirement, within five years from the effective date of the final rule.

9. To specify the accident damage protection required for cargo tank motor vehicles.

10. To specify in Parts 173 and 177 the relationship between the cargo tank and its lading to guide manufacturers and shippers.

11. To clarify that the prescribed minimum thickness for the tank shell and heads excludes materials added for cladding, lining or corrosion allowance.

12. To specify the parameters to be considered in determining the effective stresses on a cargo tank.

13. To clarify that a remote means of closure for all internal or external self-closing stop valves is required.

14. To require that on all cargo tanks constructed after (the effective date of the final rule) all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device.

15. To revise the MC 307 and MC 312 cargo tank specifications to provide for the manufacture of vacuum-loaded cargo tanks.

16. To specify a minimum design pressure of 15 psig for Specification MC 312 cargo tanks.

17. To require that all specification cargo tanks be pressure retested.

18. To require that all specification cargo tanks be visually inspected every year.

19. To require that the shell and head of an unlined cargo tank in a service corrosive to tank metal be thickness tested at least once every two years.

20. To specify certain additional safety control measures for a cargo tank used to transport a lading having more than one hazard class.

21. To require that a cargo tank used to transport a poison B material and certain hazardous materials having

multiple hazards have a minimum design pressure of 25 psig.

22. To require that a cargo tank inspector or tester meet certain minimum knowledge and experience qualifications.

23. To require that major repairs on cargo tanks be performed by a facility that is a holder of a ASME U stamp, a National Board R stamp or be witnessed and certified by an Authorized Inspector.

24. To require that an owner of a cargo tank used in the transportation of hazardous materials retain certain records.

I. Background

Cargo tanks are used for the bulk transport by highway of vast quantities of liquid and gaseous hazardous material essential to the support of our Nation's economy. This transportation over our Nation's highways represents a significant potential collective risk to the public and requires a continuing examination of safety control measures to ensure that the risk is minimized.

Each year MTB receives a large number of incident reports on the release of hazardous materials as a result of cargo tank motor vehicle collisions, overturns and loading/unloading accidents. As a result of these reports, BMCS and MTB jointly initiated in 1975 a long term research and development program. The objective of the research has been to evaluate the records of cargo tank accidents, re-examine existing HMR pertaining to cargo tanks, and document typical industry practices with respect to all DOT cargo tank specifications, except the recently adopted MC 338 cryogenic cargo tank. The industry practices portion of the research program included the examination of industry design, fabrication, operation, inspection, maintenance, test, and repair practices and procedures.

The initial focus of the program was on the MC 306 type cargo tank which is the major highway transport vehicle used to transport flammable and combustible liquids, such as gasoline and fuel oils. For the purpose of the research, the MC 306 type cargo tank included the MC 306 and its predecessors, the MC 300, MC 301, MC 302, MC 303, and MC 305 cargo tanks. Research findings showed that the MC 306 type cargo tank is highly susceptible to leakage and presents a substantial fire risk when the tank is involved in overturn accidents. Based on these findings, MTB and BMCS issued an advance notice of proposed rulemaking (ANPRM), which was published in the **Federal Register** under Docket HM-183, on June 28, 1982 (47 FR 27876). In the ANPRM, MTB and BMCS solicited comments on the advisability of revising the HMR covering MC 306 type cargo tanks to reduce the risk of release of lading from the cargo tank in overturn accidents. Comments to Docket HM-183 are included in the subject and the section-by-section discussions herein.

The second cargo tank type studied was the specification MC 331 and its predecessor, the MC 330. The MC 331 type cargo tank is used to transport liquefied gases, such as ammonia (NH_3) and liquefied petroleum gas (LPG). Because of the high pressure integrity required to contain these gases and the high potential risks associated with their release, cargo tanks used to transport these gases are designed, constructed and certified to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code. The ASME Code prescribes requirements for manufacturer qualification, manufacturing quality control and independent inspection and certification. Research findings confirmed that, while these cargo tanks are for the most part adequately designed and constructed, in some cases they are not being properly maintained and requalified. External corrosion which caused leaks, particularly in hidden areas such as the fifth wheel and stiffening rings, frequently went undetected. A large percentage of the pressure relief valves failed the basic operating tests. The study also found a substantial amount of stress-corrosion cracking, a condition that may severely degrade the integrity of a cargo tank. The regional geographical distribution of cargo tanks showing evidence of stress corrosion cracking suggests that shippers in certain locales are offering hazardous materials for transportation in cargo tanks when those materials are not compatible with the tank material. The research contractor, Dynamics Sciences, Inc., pointed out that such practices were most probably induced by improper quality control procedures for the lading. Additionally, HMR contain no requirement pertaining to the qualification of cargo tank testers and research findings indicate that cargo tank tests are not always being performed by persons who are qualified to perform those functions.

The third group of cargo tanks studied was the MC 307 type cargo tank including its predecessor, the MC 304; and the MC 312 type cargo tank including its predecessors, the MC 310 and MC 311. The MC 307 and MC 312 type cargo tanks are used to transport high vapor pressure flammable liquids, poisonous materials, corrosive materials, and hazardous materials meeting two or more of these hazard classes. The variety of hazardous materials transported in these cargo tanks is substantial. Like the MC 331 type cargo tank, the MC 307 and MC 312 type cargo tanks with higher design pressures are required to conform with the ASME Code. As with the other types of cargo tanks, research findings have shown that poor maintenance, repair and requalification of these cargo tanks are major problems. Corrosion (external and internal) resulting from the road environment, lading spillage and chemical reaction between the lading and the tank materials, is a predominant problem. Another serious problem that has been identified is leakage of lading during loading and unloading operations due to malfunctioning valves.

MTB and BMCS believe these research findings have identified many shortcomings, inconsistencies and ambiguous requirements that currently exist in the cargo tank regulations. These deficiencies have resulted in situations, in which improper procedures have been used (intentionally as well as unintentionally) in the construction, operation, repair, and testing of cargo tanks.

MTB and BMCS agree with the research findings that cargo tank integrity and therefore safety in the transportation of hazardous materials in cargo tanks could be improved by revising and clarifying the HMR. This proposal is intended to accomplish that goal as follows:

(1) Sections 173.33, 177.814 would be completely revised. The requirements dealing with the continuing qualification, maintenance, and periodic testing of cargo tanks contained in those sections would be removed and placed in proposed Part 180, Subpart E. Other requirements pertaining to the manufacturing of cargo tanks contained in those sections have been removed and placed in the appropriate specifications in Part 178.

(2) Sections 178.340, 178.341, 178.342, and 178.343 would be revised for clarity. Identical requirements applicable to MC 306, MC 307, and MC 312 cargo tanks would be contained in the general section, § 178.340. The sections in the

individual specifications, i.e., §§ 178.341, 178.342, 178.343, would be arranged to correspond with the sections contained in § 178.340. For example, § 178.340–10 contains requirements on pressure relief devices applicable to MC 306, MC 307 and MC 312 cargo tanks. Any specific requirement applicable to an individual specification appears in § 178.341–10 for MC 306 cargo tanks, § 178.342–10 for MC 307 cargo tanks, and § 178.343–10 for MC 312 cargo tanks.

In the past years, MTB has received in excess of 25 petitions for rulemaking, granted in excess of 40 exemptions, and issued numerous telephonic and written interpretations on regulations pertaining to cargo tanks. In preparing this NPRM, MTB and BMCS have considered all the comments to Docket HM–183, the applicable outstanding petitions for rulemaking interpretations issued by the MTB and BMCS, and the recommendations made by the research contractors, and the National Transportation Safety Board (NTSB), as well as some found in general literature.

Both MTB and BMCS have participated in the development and issuance of the research contracts, the ANPRM and this NPRM. In the interest of brevity "we" is used hereinafter in referring to "MTB and BMCS."

II. Specification Design and Construction Requirements

A. Cargo Tank Overturn Integrity

Research conducted by the States of Michigan and California and DOT has shown that failures of the tank shell, manhole closures and pressure relief valves occur frequently in cargo tank overturn accidents. In a substantial number of instances, these failures resulted in serious leakage, sometimes resulting in fires. These research studies showed that leakage resulted from tank shell puncture, tank shell rupture, weld failure, manhole closures being blown off or badly deformed and, thereby, not reseating, and failure of pressure relief valves and vents.

As an example, a December 1981 study by the California Highway Patrol titled "California Tank Truck Accident Survey" provides insight into the problem. The report analyzed 131 tank truck accidents that occurred from February 1, 1980 to January 31, 1981. The report states: "Spills occurred in 79 percent of the overturns and 16 percent of the nonoverturns spills." With respect to frequency of fires, the study states: "Fires occurred in 22 percent of the spill accidents and two percent of those without spills" and "Forty-four (44) percent of the fires were with cargoes of gasoline, whereas this type of cargo was being carried in only 23 percent of all tank truck accidents."

With respect to the source of spills, the report states: "Most of the spills for which the source was reported occurred through cracks, ruptures, and punctures (52 percent). Another 44 percent occurred through dome covers, vents, or safety valves. The domes also leaked or came open in 11 of the 33 cases of ruptures or punctures of the tank."

The identification of manhole closures as a major source of spills in overturn accidents has resulted in many manufacturers developing a manhole closure of greater integrity. Many cargo tank owners have equipped their new cargo tanks and, in some cases, retrofitted existing cargo tank with these higher integrity manhole closures. Further, the Truck Trailer Manufacturers Association (TTMA) has adopted a recommended practice, RP#61–82, that all manhole closures be capable of withstanding a minimum static pressure of 36 psig without leakage or permanent deformation. We are proposing that all manhole closures on construction of new cargo tanks be designed and tested to a minimum static pressure of 36 psig without leakage or permanent deformation. Because of the severe consequences of manhole closure failures and the fact that cargo tanks may remain in service for 30 years or more, we believe that the retrofitting of manhole closures on existing cargo tanks is necessary. To minimize the economic impact of any retrofitting, we are proposing that the retrofitting be accomplished over a five-year period, with at least 20% of the affected cargo tanks being retrofitted each year. We believe a five year period will permit scheduled replacement that can coincide with normal tank testing, repair, and component replacement, thereby minimizing the cost of retrofit. Based on comments to Docket HM–183 and the research program, the estimated cost of such a retrofit ranges between $20 and $250 per manhole when included as part of scheduled maintenance and testing.

Substantially increasing the tank wall thickness is often proposed as a countermeasure to tank puncture and rupture. We believe that a cargo tank should retain its lading in an overturn on the roadway if the cargo tank does not strike a substantial obstacle. Many cargo tanks have survived such accidents without loss of lading. However, we believe that requiring a substantial increase in cargo tank wall thickness to eliminate tank puncture or rupture would constitute such a major action that more detailed accident analyses, engineering analyses and the consideration of costs and benefits should be studied before such an action is initiated. Although we are not proposing an increase in wall thickness in this rulemaking, we are proposing greater manufacturing quality controls on cargo tanks, improved accident damage protection and more comprehensive and systematic consideration of cargo tank overturn integrity. Discussion of these issues are found later in this preamble.

B. Design Pressure of Cargo Tanks

We are aware that the present regulations do not clearly state a specific relationship between the design pressure of the cargo tank and the properties of the lading. Further, the regulations do not specify a consistent relationship between the design pressure and operational factors such as loading and unloading pressures and the pressure of gas paddings. The lack of such a specific set of relationships can result in: (1) The release of a hazardous material under normal transportation conditions; and (2) the uncontrolled release of a hazardous material as a result of an overturn accident even when the cargo tank is not severely damaged.

As an example, the MC 306 cargo tank has a design pressure of not less than the static pressure generated by the lading, and the pressure relief devices are set-to-discharge at 3 psig. Section 173.119 permits the transportation in cargo tanks of a flammable liquid with a vapor pressure of 16 psia (1.3 psig) at 100 °F. Some of these ladings have a vapor pressure as high as 5.8 psig at 115° F. Thus such a lading would continuously vent under normal transportation conditions. Further, in an overturn accident the pressure relief device is required to withstand both the vapor pressure and the static pressure of the lading. For a typical MC 306 cargo tank the static pressure of the lading at the bottom of an inverted vehicle is in the range of 1 to 2 psig. The resulting pressure on a pressure relief device set-to-discharge at 3 psig could be as high as 7.4 psig. This condition would result in the uncontrolled release of the flammable liquid lading though the pressure relief system of an inverted cargo tank that is not in motion (static condition) even though the system is undamaged and operating as designed. Such potential releases are unacceptable and are not limited to MC 306 cargo tanks. MC 307 and 312 cargo tanks are vulnerable under similar conditions. MC 307 cargo tanks often transport ladings protected by a gas pad at or near the tank's design pressure. The pressure from this pad, in addition

to the vapor pressure and static pressure from the lading, could result in an uncontrolled release of the lading in an overturn accident. The MC 312 cargo tank specification has no minimum design pressure limit and yet such a cargo tank is often used to transport high density ladings that can produce substantial static pressures.

We believe that such conditions may present an unacceptable risk. Accordingly, we are proposing to specify both design and shipper requirements for relating the cargo tank design pressure to both operational factors and lading physical properties. Included would be a design reference temperature of 115 °F. for liquid hazardous materials transported in cargo tanks, the same as presently specified for liquefied gases in uninsulated cargo tanks. The proposal would require that the design pressure be greater than or equal to the largest of the following:

(1) The minimum pressure prescribed in the individual specification;

(2) The pressure prescribed for the lading in Part 173;

(3) 120 percent of the sum of the vapor pressure of the lading at 115 °F., the pressure of any gas pad (including air) in the ullage space, and the maxmium static pressure exerted by the lading; or

(4) The maximum pressure used to load or unload the lading.

The design pressure requirement would apply to cargo tanks constructed after the effective date of the final rule and could result in an increase in the design pressure of some cargo tanks which are used for the transportation of certain materials. We believe, however, that the design pressure of cargo tanks used for most ladings, including gasoline, will not be significantly affected by this necessary change.

Under proposed § 173.33, shippers would be required to verify that the design pressure of the cargo tank is adequate for their hazardous material. In some cases, certain hazardous materials will no longer be authorized for transportation in the lower pressure cargo tanks. We believe this change will affect a relatively small percentage of hazardous materials being transported in cargo tanks and will not have a substantial effect on most shippers and carriers.

We are aware that:

(1) Many MC 305 and 306 cargo tanks have been manufactured and marked with a design pressure of zero psig in non conformance with § 178.341–1(b) which states, "The design pressure of each cargo tank shall be not less than that pressure exerted by the static head of the fully loaded tank in the upright position";

(2) The present MC 312 cargo tank specification authorizes a design pressure of zero psig;

(3) The MC 300, 301, 302, 303, and 305 cargo tank specifications do not address design pressure and do not require the marking of the design pressure; and

(4) The MC 310 and 311 cargo tank specifications require the marking of maximum allowable working pressure (MAWP) and maximum working pressure (MWP), respectively, but not the design pressure.

Notwithstanding these marking and manufacturing inconsistencies, each MC 300, 301, 304, 303, 305, 306, 310 and 311 cargo tank has been pressure tested to at least 3 psig. Accordingly, proposed § 173.33 would not preclude the use of a cargo tank having a design pressure of less than 3 psig or without a marked design pressure, nor would it preclude the remarking of the marked design pressure on a cargo tank.

Specifically, we are proposing that:

(1) Any existing MC 306 type or MC 312 cargo tank whose pressure relief system is set-to-discharge at 3 psig may be marked with a design pressure not greater than 3 psig;

(2) Any existing MC 300, 301, 302, 303, 304, 305, 306, 307, 310, or 312 cargo tank may be marked or remarked with a design pressure based on the design requirements of proposed § 178.340–1(l);

(3) MC 300, 301, 302, 303, 305, 306, and 312 cargo tanks with no marked design pressure or a design pressure of less than 3 psig may be used for authorized ladings where the largest pressure derived from the design pressure requirements in proposed § 173.33 is less than or equal to 3 psig; and

(4) MC 310 and MC 311 cargo tanks may be used for authorized ladings where the largest pressure derived from the design pressure requirements in proposed § 173.33 is less than or equal to the marked MAWP and MWP, respectively.

C. Accident Damage Protection

We believe the cargo tank design should take into consideration: (1) The need to protect the structural integrity of the head, shell, and piping in collision and overturn accidents; (2) the puncture, abrasion, and crush resistance of the head and shell; and (3) the distribution of loads transmitted into the head and shell by projections, fittings, appurtenances and protection devices. We have observed cargo tanks where little or no consideration was given to the distribution of accident loads from roll-over guards into the tank shall. The involvement of these cargo tanks in accidents in some cases has resulted in the puncture or tearing of the tank shell and the subsequent loss of lading. To clarify the requirement that the cargo tank motor vehicle has to be considered as a system with respect to accident damage protection, it is proposed that accident damage protection devices or projections be designed to distribute any potential accident load into the tank shell so that the stress resulting from the specified loads in combination with the stresses resulting from maximum design pressure during transportation do not result in a stress in the tank shell greater than 75 percent of the ultimate strength of the tank material at that point. We believe that any projections from a tank shell, fitting, or closure that retain lading under any tank orientation should reasonably be able to withstand the forces to which they may be subjected due to collision with other vehicles or objects or in cargo tank rollover or else be adequately protected. Accordingly, in the proposal on accident damage protection, both general and specific requirements are prescribed where we believe the present requirements have allowed questionable design practices.

D. Vacuum-Loaded Cargo Tanks (Waste Tanks)

MTB received two petitions (P–870, P–883) requesting the addition of provisions to the HMR covering the transportation of hazardous waste materials in vacuum-loaded cargo tanks. The petitions requested that MTB add a new vacuum-loaded cargo tank specification based on the present MC 307 or MC 312 cargo tank specification modified to allow (a) the use of external self-closing valves that are protected by the truck's suspension and frame in place of internal self-closing valves, (b) the use of circumferential reinforcements placed much farther apart than prescribed in the regulations and compensated for by a thicker cargo tank shell, (c) design and construction with a minimum internal design pressure of 25 psig and external design pressure of 15 psig because of the partial vacuum developed in the tank.

We have included these provisions in the proposed MC 307 and MC 312 cargo tank specifications. We are not proposing to restrict transportation in MC 307 and MC 312 vacuum-loaded cargo tanks to hazardous wastes. We believe that the structural integrity of these cargo tanks would be adequate for other hazardous materials and that there is no significant difference in the risks associated with the transportation of hazardous wastes and other types of hazardous materials. If adopted in a

final rule, these provisions would eliminate the need for over 40 exemptions authorizing the use of vacuum-loaded cargo tanks.

E. Cargo Tank: Manufacturer Qualification, Quality Control, and Certification

The present DOT certification system for cargo tanks, with the exception of ASME Code cargo tanks, allows the manufacturer to certify that a cargo tank conforms with all requirements of the appropriate specification. The manufacturer's technical knowledge and skill, integrity and product liability are some factors that assure the cargo tank purchaser and the public that the cargo tank is in conformance with the HMR and adequate for the safe transport of hazardous materials. The HMR provides no specific criteria for the assessment of any of these factors. Most cargo tank manufacturers exhibit great knowledge, skill and integrity. On the other hand, however, a number of manufacturers have demonstrated very limited knowledge and skill with respect to matters such as stress analyses, welding, metallurgy, recognized good design and quality control practices, and the HMR.

In contrast, a plumber or an electrical contractor involved in the construction of a building in most cases has to demonstrate knowledge and skill with respect to his trade including knowledge of local regulations. Further, a plumber's or electrician's work is generally inspected by a State, city, county, insurance inspector or an independent engineering firm to assure the building is adequately constructed, and provides an acceptable level of safety for the public. The construction of boilers and pressure vessels used in buildings are similarly regulated. We believe that the risk to the public from the transport of bulk quantities of hazardous materials in cargo tanks over our streets and highways is no less than that presented by a building's plumbing, electrical systems and boilers or pressure vessels. For this reason, we believe that a qualification system is necessary for cargo tank manufacturers and repair facilities. Further, we believe that an independent inspector is needed to assure cargo tank design construction, and test quality. Pursuant to this goal, we are proposing that all cargo tank manufacturers hold a current ASME certficate of authorization and that each cargo tank be certified in accordance with the ASME Code and the appropriate specifications by an Authorized Inspector holding a valid commission from the National Board of Boiler and Pressure Vessel Inspectors (National Board). The National Board "is organized for the purpose of promoting greater safety to life and property by securing concerted action and maintaining uniformity in the construction, installation, inspection and repair of boilers and other pressure vessels and their appurtenances, thereby assuring acceptance and interchangeability among Jurisdictional Authorities responsible for the administration and enforcement of the various sections of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code". Its inspectors are employees of states or cities or work for an "Authorized Inspection Agency," such as an insurance company.

Most States in the United States and every Province in Canada now require pressure vessels having a design pressure of 15 psig or greater to be designed, fabricated, and inspected in conformance with the ASME Code by a National Board Authorized Inspector. Presently, the HMR require ASME Code construction on MC 330, MC 331 and MC 338 cargo tanks, MC 307 cargo tanks with a design pressure in excess of 50 psig, and MC 312 cargo tanks that are unloaded with a pressure in excess of 15 psig. This proposal would align the Federal standards for cargo tanks having a design pressure of 15 psig or greater with the system of quality assurance used by most of the States. For cargo tanks built with a design pressure of 15 psig and greater, both the manufacturer and the Authorized Inspector must certify on the cargo tank certificate that the cargo tank is constructed and certified in conformance with the appropriate MC specification and the ASME Code.

Cargo tanks built with a design pressure less than 15 psig are below the lower boundary of applicability defined by the ASME Code. We are proposing to use the ASME Code for tanks in this lower pressure range in order to gain the many benefits of the ASME Code. Because ASME makes no provisions for certification and stamping of such tanks, we are proposing that both the manufacturer and the Authorized Inspector certify on the cargo tank certificate that the cargo tank meet the appropriate cargo tank specification and, thereby, "constructed in accordance with the ASME Code".

We realize that the cargo tank specifications contained in this proposal would differ in some respect from the requirements in the ASME Code. These differences result because a cargo tank is a highway transport vehicle and is subject to different accident scenarios and dynamic shock loadings during transportation. These forces are not considered by the ASME Code, which basically establishes standards for stationary pressure vessels. Therefore, we have provided for these additional factors, which are unique to the road transport of hazardous materials.

We recognize also that at the present time many Authorized Inspectors are not knowledgeable about the requirements contained in the DOT cargo tank specifications. It is very important that an Authorized Inspector be knowledgeable of the specification requirements to insure the adequacy of the overall cargo tank motor vehicle. To achieve this goal, we intend to work in combination with the National Board to develop a qualification process for Authorized Inspectors desiring to certify DOT specification cargo tank motor vehicles.

III. Increased Testing and Inspection

A major problem uncovered during the research program was that maintenance and testing of cargo tanks is inadequate. This is particularly true where the requirements for cargo tank retesting and reinspection are concerned. The requirements in § 177.824 are generally assumed to apply to the testing and inspection of repaired cargo tanks rather than to an ongoing test and inspection program. Several commenters to Docket HM-183 stated that it was not clear whether § 177.824 applied to cargo tank repairs or to an ongoing test and inspection program.

In reviewing the existing regulations concerning the maintenance, testing and inspection of cargo tanks, we have found that there are no well defined requirements for an ongoing cargo tank maintenance program. We have placed too much reliance on the provisions of § 173.24(d) which states "For specification containers, compliance with the applicable specifications in Parts 178 and 179 of this subchapter shall be required in all details, except as otherwise provided in this subchapter" for the continuing qualification, maintenance and testing of cargo tanks. This reliance on § 173.24(d) has led many shippers and carriers who are not fully aware of all the requirements of the HMR to think that no ongoing cargo tank maintenance program is required. Several omissions regarding the requirements of the HMR which have surfaced are:

(1) Other than a 2 year visual inspection, there is no requirement for an ongoing cargo tank maintenance system;

(2) There is no requirement for cargo tanks to be subject to a formalized and systematic maintenance program; and

(3) Cargo tank corrosion is not adequately addressed in the present HMR.

We agree with both the research findings and commenters that the maintenance, inspection and testing of cargo tanks are inadequate. Further, we believe that the present requirements are inadequate to properly protect the public and are therefore unacceptable. This conclusion is supported by the enactment in October 1984 of Pub. L. 98-554 (Motor Carrier Safety Act of 1984), specifically section 210(b), which states:

> The Secretary shall, by rule, establish Federal standards for inspections of commercial motor vehicles and retention by employers of records of such inspections. Such standards shall provide for annual or more frequent inspections of commercial motor vehicles unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. For purposes of this title, such standards shall be deemed to be regulations issued by the Secretary under section 206.

While not a part of the Hazardous Materials Transportation Act, the authority for the HMR, this law is an example of the public's and Congress' understanding of the importance placed on the maintenance and inspection of parts and accessories necessary for safe operation of a commercial motor vehicle, including a cargo tank motor vehicle. It is obvious that maintenance and inspection of a cargo tank containing a hazardous material during transportation is even more critical to public safety than a commercial motor vehicle used to transport food products. Accordingly, we are proposing requirements for annual and other periodic inspections as well as a requirement for a formal tank maintenance program for cargo tanks. These proposed requirements would be in addition to the requirements in the FHWA Federal Motor Carrier Safety Regulations governing maintenance and inspection of equipment.

The present § 177.824(a) requires inspection and retesting of all authorized specification cargo tanks, except for a cargo tank having a capacity of 3,000 gallons or less used exclusively for flammable liquids. There is litle basis in terms of safety for such an exception. Such cargo tanks are built to the same specifications, operated under similar conditions, and operated over the same roads with the same hazardous materials as typical 4,000 to 9,000 gallon cargo tanks motor vehicles. Although smaller in capacity than a typical cargo tank motor vehicle, a vehicle transporting 3,000 gallons of flammable liquid may pose a risk to the public in an accident. Further, we believe that periodic maintenance, inspection, and retest of any vehicle transporting hazardous material must be an integral part of any responsible operator's safety management program. For these reasons, we are proposing that all cargo tank motor vehicles be subject to test and inspection requirements.

In order to ensure that all DOT specification cargo tanks undergo a formalized maintenance program, we have expanded and placed all the requirements for the maintenance and retesting of cargo tanks presently contained in §§ 173.33 and 177.824 in Subpart E to Part 180. Subpart E of Part 180 would be entitled, "Cargo Tanks: Qualification, Maintenance and Use." Proposed § 180.307(a) Table shows the specific type of testing and inspection required for each DOT Specification cargo tank. The table also specifies the test and inspection interval for various cargo tank configurations. Other provisions contained in this subpart are procedures for the test, inspection, repair and modification of a cargo tank. To ensure that all work is properly performed, requirements for the qualification of persons performing and certifying this type of work are also proposed.

Part 180 would contain all requirements applicable to persons who perform functions relating to maintenance and continuing qualification of packagings, such as the prescribed inspections, testing, reconditioning and repair requirements. Persons performing these functions include retesters, reconditioners, approval and inspection agencies, shippers and carriers. We believe that consolidating all the qualification, maintenance and use requirements in one part of the HMR will result in regulations that are easier to understand. Also, this action removes test and inspection criteria from regulations applicable to shippers in Part 173 and to carriers in Parts 174-177. An outline of the subparts that would be contained in part 180 and the present sections containing these requirements is as follows:

Part 180—Continuing Qualification and Maintenance of Packagings

Subpart A—General.

Subpart B—Non-bulk packagings (except cylinders); Qualification and maintenance (§ 173.28).

Subpart C—Cylinders; Qualification and maintenance (§ 173.34).

Subpart D—Portable Tanks; Qualification and maintenance (§ 173.32, 173.32a, 173.32b, 173.32c).

Subpart E—Cargo Tanks; Qualification and maintenance (§ 173.33).

Subpart F—Tank Cars; Qualification and maintenance (§173.31).

Only the requirements contained in subpart E are addressed in this proposal.

IV. Transportation of Hazardous Materials in Cargo Tanks

A. Flammable Liquids or Pyrophoric Liquids

We propose to eliminate several discrepancies pertaining to the transportation of flammable liquids and pyrophoric liquids in cargo tanks. In this proposal, § 173.119 and certain other sections in Subpart D are revised to clarify and reiterate the following:

(a) MC 310, MC 311 and MC 312 cargo tanks that are used in flammable liquid service must be equipped with pressure relief devices having venting capacities adequate for flammable liquid ladings. We are proposing that pressure relief system on these cargo tanks when used in flammable liquid service must be equivalent to a pressure relief system required for a MC 307 cargo tank.

(b) Any cargo tank with bottom outlets would have to be equipped with self-closing stop valves capable of being remotely operated by both thermal and mechanical means as required for MC 306 and MC 307 cargo tanks.

(c) Under the present § 173.119(m), there is no requirement for safeguards to assure the containment integrity of a cargo tank used to transport flammable liquids with secondary hazards. Based on a petition (P-607), parameters would be provided to allow the use of certain cargo tanks for a lading with more than one hazard class. In the proposal, a cargo tank used to transport a flammable liquid that is also corrosive must be constructed of, or lined with a material that is compatible with the lading or be constructed with added shell thickness for a corrosion allowance. A cargo tank transporting a flammable liquid that is also a poison B liquid must have a design pressure of 25 psig. These design parameters agree with the requirements of subparts F and H of the HMR.

(d) The use of air pressure to unload a cargo tank containing a lading having a flash point of 20°F. closed cup or less would be prohibited. We believe the unloading procedure may pose a potential risk of fire should an air enriched atmosphere at or near the flammability range of the flammable liquid lading be created in the vapor space of the tank.

(e) The use of non-reclosing pressure relief devices would be prohibited except when such devices are arranged in series with a spring loaded pressure relief valve. Nonreclosing pressure relief devices present the risk of a continuous release of lading as compared to a partial release to relieve pressure. Such a continuous release of a flammable lading in the event of a fire could produce catastrophic results.

Sections that would be affected by these revisions are as follows: 173.119, 173.135, 173.145

B. Flammable Solids, Oxidizers and Organic Peroxides

We believe that certain flammable solids, oxidizers and organic peroxides have hazardous characteristics similar to flammable liquids and pyrophoric liquids. Therefore, we are proposing that cargo tanks equipped with bottom outlets when used to transport these hazardous materials have self-closing stop valves capable of being remotely operated by both thermal and mechanical means as required for other cargo tanks used in flammable liquid service.

Sections that would be affected by this revision are as follows: 173.154, 173.190, 173.224.

C. Corrosive Materials

Requirements for corrosive materials in cargo tanks would be standardized. We are proposing that a cargo tank used to transport a corrosive material be constructed of, or lined with a material that is compatible with the lading or have added shell thickness for a corrosion allowance. Further, cargo tanks equipped with bottom outlets when used to transport corrosive materials would be required to be equipped with self-closing stop valves that are capable of being remotely operated by mechanical means.

Sections that would be affected by this revision are as follows:

173.245, 173.247, 173.248, 173.249, 173.250a, 173.252, 173.253, 173.254, 173.255, 173.257, 173.262, 173.263, 173.264, 173.266, 173.267, 173.268, 173.271, 173.272, 173.273, 173.274, 173.276, 173.280, 173.289, 173.292, 173.294, 173.295, 173.296, 173.297

D. Poison B Materials

Requirements for poison B materials in cargo tanks would be standardized. Given the substantial acute and environmental risks associated with the release of a poisonous material, we are proposing that a cargo tank used to transport a poison B material have a design pressure of 25 psig. Any cargo tank equipped with bottom outlets used to transport a poison B liquid would be required to have self-closing stop valves capable of being remotely controlled by both thermal and mechanical means. The type of cargo tank authorized to transport poison B solids would be based on the specific properties of these materials.

Sections that would be affected by these revisions are as follows:

173.346, 173.347, 173.352, 173.358, 173.359, 173.369, 173.373, 173.374

V. Other Issues

Question eight in Docket HM 183 asked "Should the scope of this docket be expanded to address the design and construction of the MC 306 cargo tank in its entirety?" "No!", with some qualification was the anwer given by all manufacturers and operators of MC 306 cargo tanks. The commenters stated that the basic design of the MC 306 cargo tank was adequate and major changes were not justified. On the other hand, several commenters stated that gains in safety and productivity are probable in a major redesign of cargo tanks. These commenters stated, and we agree, that to achieve such gains would require considering the cargo tank motor vehicle as a system and, further, the highway and vehicle as part of a transportation system. Such an effort involves vehicle size and weight laws and vehicle design standards and is a large, long term undertaking.

A number of cargo tank operators commented that more uniform requirements and a greater level of enforcement are necessary to stimulate improvement in cargo tank maintenance. We agree with these commenters. Aiding enforcement personnel by removing the many regulatory shortcomings, inconsistencies and ambiguous requirements is a goal of this NPRM.

Additionally, the DOT has been active in fostering adoption of the Federal regulations by States and supporting them in their enforcement efforts. MIB's State Hazardous Materials Enforcement Development program provided monies to States to adopt and enforce the HMR. Concommitant with this program is the training of enforcement personnel in the technical aspects of the regulations dealing with the transport of hazardous materials. BMCS also has an ongoing program, titled the Motor Carrier Safety Assistance Program, whose objective is to substantially increase commercial motor vehicle enforcement programs by providing development and implementation grants to States in return for their agreeing to adopt Federal safety programs, including the Federal Motor Carrier Safety Regulations and the HMR, or compatable requirements, and establishing enforcement policies and programs. Again, many State personnel have and are being trained in enforcement procedures and regulatory compliance requirements.

New training courses in cargo tank regulations have been developed by BMCS in an effort to provide better training of enforcement personnel. Emphasis areas dealing with such requirements as minimum shell thickness measurements during inspections provide for uniform compliance on the part of industry.

Many commenters stated the driver qualifications and trainings are as important to controlling safety as packaging integrity. We agree that driver qualification and training are critical to the safe transport of any commodity and particularly hazardous materials. The strengthening of driver qualification and training requirements will be addressed in future rulemaking actions.

Review By Section

The following is an analysis and explanation, by section, of the more significant features of this regulatory proposal.

Section 171.3. This section would permit the continued use of a non DOT specification cargo tank for transportation a hazardous waste provided it is operated exclusively by an intrastate motor carrier in a State where its use is permitted by that State.

Section 171.7. This section would incorporate the latest edition of the ASME Code, as requested by petitioners (P-794, P-824); extend applicability to include Sections II and V of the ASME Code; reflect a change in the reference numbering of the American Welding Society (AWS) Code from 3.0 to 2.1 (and a change in address); incorporate additional ASTM and CGA standards; and add references to certain publications of the Rubber Manufacturers Association and the American Society for Non-Destructive Testing.

Section 171.8. Definitions of "Authorized Inspector" and "Authorized Inspection Agency" would be added to clarify who is qualified to perform inspections as required by the HMR. The definition of "cargo tank" would be revised to clarify that the term includes all attached appurtenances, reinforcements, fittings and closures. A definition of "cargo tank motor vehicle" would be added for clarity and to provide for consistent use of terminology when referring to the transport vehicle.

Section 172.203. This section would remove the reference "173.315(a)(1)" and insert in its place "173.315(a)" for consistency with a change made in that section.

Section 173.33. This section would be completely revised and entitled "Hazardous materials in cargo tank motor vehicles". It would contain only general shipper requirements for the use of cargo tanks transporting hazardous materials. For example, this section would provide a means for a shippper to determine if the design pressure of a cargo tank is adequate for a particular commodity. Present requirements pertaining to commodities, cargo tank design, qualification, maintenance and use of cargo tanks would be revised and placed as appropriate in Parts 173, 177, 178 and 180. Highlights of other proposed changes are:

(1) MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 and MC 312 cargo tanks with no marked design pressure or marked with a design pressure of less than 3 psig may be used for authorized ladings where the largest pressure derived under paragraph (d) is less than or equal to 3 psig.

(2) MC 310 and MC 311 cargo tanks may be used for authorized ladings where the largest pressure derived from paragraph (d) is less than or equal to the marked MAWP or MWP, respectively.

(3) "MC 306 type" cargo tanks may be upgraded to the MC 306 cargo tank specification; MC 304 cargo tanks to the MC 307 specification; and "MC 312 type" cargo tanks to the MC 312 specification.

(4) Non-reclosing pressure relief devices are prohibited on a cargo tank used in flammable liquid service unless such device is in series with a spring loaded pressure relief valve.

(5) A cargo tank may not be loaded with a hazardous material if a dangerous reaction may occur in the tank between a contaminant or a residue and the new lading.

(6) No two or more materials, the mixing of which may produce an unsafe condition, may be transported in a cargo tank motor vehicle.

Sections 173.119—173.374. These sections would be revised as discussed earlier in this preamble under the heading "Transportation of Hazardous Materials in Cargo Tanks." In addition, certain other changes would be made for clarity.

Section 173.131 would remove the reference to 178.340–10; 178.341–4 and 178.341–5 and insert in their place references to §§ 178.340–14 and 178.340–16, 178.341–10 and 178.341–11, as applicable.

Section 173.250a would delete paragraph (a)(2) as unnecessary since these requirements are contained in paragraph (a)(1).

Section 173.252 would clarify that the ⅜ inch minimum thickness prescribed for the tank shell and head is exclusive of any lining, cladding or corrosion allowance.

Section 173.272 would clarify that the temperature of the lading may not exceed the design temperature of the cargo tank.

Section 173.289 would delete paragraph (a)(4) as unnecessary since the requirement is contained in paragraph (a)(1).

Section 173.292 would delete paragraph (a)(2) as unnecessry since the requirement is contained in paragraph (a)(1).

Section 173.294 would clarify that the tank must be made of, or lined with, pure nickel or stainless steel.

Section 173.295 would clarify that cargo tanks made of steel are authorized for stabilized benzyl chloride only. The requirements in paragraph (a)(10) pertaining to cargo tanks made of nickel would be removed and placed in paragraph (a)(9). Paragraph (a)(10) would be reserved.

Section 173.315 would remove references to § 173.33 and add the applicable reference to Part 180. Additionally, the present provisions of §§ 173.33(f)(7)(8) and (9) would be removed and placed in §§ 173.315(h)(4), 173.315(n) and 173.315(o), respectively.

Section 173.318 would add the present requirements contained in § 173.33(d)(1)(ii) as new § 173.318(g)(4).

Section 176.76. The requirement in § 173.33(a)(1) authorizing a cargo tank motor vehicle containing a hazardous material to be transported aboard a vessel would be removed and placed in § 176.76(b)(1).

Sections 177.800, 177.801 and 177.802. Sections 177.800 and 177.801 would be simplified and revised for clarity. Section 177.802 would be removed and a new section governing the inspection of carrier facilities and records would be added. These inspection requirements are similar to those applicable to rail and air carriers.

Section 177.814. The existing provisions on record retention and reporting requirements of this section would be removed and placed in § 180.317. A new § 177.814 would reference those requirements.

Section 177.824. The existing provisions on the inspection and retest of cargo tanks of this section would be removed and placed in Part 180 of this sub-chaper. A new § 177.824 would reference those requirements.

Section 177.840. Paragraph (f) would inform carriers of certain equipment testing requirements applicable to the transportation of chlorine that are contained in § 173.315(o).

Section 178.337. This section would add those requirements presently found in § 173.33 which pertain to the manufacture of a DOT Specification MC 331 cargo tank.

In § 178.337–1, paragraph (a) would remove a reference to § 173.33(i) and insert in its place a reference to paragraph (e). Paragraph (e) would remove a reference to § 173.33(i). The requirements presently contained in § 173.33(i) would be added in new paragraph (e)(2).

Section 178.337–2(c) would remove the reference to § 173.33(g)(1) and add those requirements presently contained in § 173.33(g)(1). Also a provision to allow the use of properly joined aluminum baffles would be added.

Section 178.337–3 would revise the minimum thickness formula contained in paragraph (b), as discussed earlier in this preamble under § 178.340–3.

Section 178.337–4(b) would require that welding procedure and welder performance tests be performed in accordance with the ASME Code.

Section 178.337–6(a) would be revised to require manholes on all cargo tanks.

Section 178.337–8(b) would remove the references to § 173.33(f)(9), (h)(4) and (5). The special requirements for chlorine angle valves contained in paragraph (b) would be placed in § 178.337–9(b).

Section 178.337–9 would contain requirements for piping, pipe fittings, pressure devices, hoses and other pressure parts. New paragraph (b)(7) would incorporate certain special requirements for chlorine cargo tanks now found in §§ 173.33 and 178.337–8.

Paragraph (d)(1) would incorporate the provision now found in § 173.33(j) permitting mounting a refrigeration unit on a motor vehicle.

Section 178.337–11(a) would remove all references to § 173.33(h) and add those requirements presently contained in § 173.33(h) through (h)(2) and certain provisions presently contained in § 178.337–11(c). A new paragraph (a)(4) would incorporate certain special requirements for chlorine excess flow values that are presently contained in § 173.33(h)(4). Paragraph (b) would remove the reference to § 173.33(h)(3) and add the requirements contained in that paragraph. Paragraphs (f) and (g) would require that cable linkages for the internal valve be corrosion resistant.

Section 178.337–14(b) would remove the reference to § 173.33(f)(7) and add

the requirements contained in that paragraph.

Section 178.337–15 would remove the references to § 173.33(f) (6) and (10) and add the requirements contained in those paragaphs.

Section178.338. This section would be revised by adding those requirements presently found in § 173.33 which pertain to the manufacture of a DOT Specification MC 338 cargo tank.

Section 178.338–8(b) would remove the reference to § 173.33(f) and add certain applicable requirements contained in § 173.33 (f) through (f)(5).

Section 178.338–17 would remove the references to §§ 173.33(f)(6) and 173.318(a)(4) and add the requirements now contained in those paragaphs.

Section 178.340. This section contains the general design and construction requirements applicable to MC 306, MC 307 and MC 312 cargo tanks. This section would add a table of headings covering §§ 178.340–1 through 178.340–14 for easier reference of the requirements contained in these sections.

Section 178.340–1. In this section, over 30 terms would be defined for clarity. New terms would be used whenever existing terms are found inappropriate. For example, "fail safe" device would replace the term "shear section" to permit the use of any device designed to fail in order to protect a major part. This proposal considers each "compartment" a separate cargo tank. Similarly, a multiple compartment tank is a series of connected cargo tanks. Thus, the term "compartment" will no longer be used.

This section would specify the ASME Code as well as the appropriate specification as the basis for cargo tank motor vehicle design and construction. Each cargo tank with a design pressure of 15 psig or greater would have to be "constructed and certified in conformance with the ASME Code" and code stamped. Each cargo tank with a design pressure of less than 15 psig would have to be "constructed in accordance with the ASME Code", but may not bear on ASME code stamp. In either case, the design and construction techniques would be the same and the design and construction would be certified by an Authorized Inspector. This procedure will provide shippers, cargo tank motor vehicle owners, and insurance carriers with greater assurance that each specification cargo tank motor vehicle conforms to spsecification requirements.

Based on satisfactory experience under the exemption program and several petitions (P–537, P–768, P–870, P–883), vacuum-loaded cargo tanks made to the MC 307 and MC 312 cargo tank specifications would be authorized.

Design parameters for connecting structures would provide for the over-all structural integrity of the cargo tank motor vehicle based, in part, on NTSB recommendations H–83–25 through –30.

The structural requirements specified for connecting structures are the same as those specified for a cargo tank with the exception of pressure.

Section 178.340–2. Requirements for construction materials, including the thickness of these materials, would be contained in this section. All construction materials for the cargo tank shell, heads, bulkheads and baffles would be of a metal suitable for building pressure vessels in conformance with the ASME Code. This provision, in response to a petition for rule change (P–870) and satisfactory exemption experience, would expand the types of construction materials authorized and, thereby, eliminate the need for an exemption for cargo tanks made of metallic materials other than steel or aluminum.

Two petitioners (P–310, P–452) requested that the minimum thicknesses for shells, heads, bulkheads and baffles be expressed in decimals in place of gauge. These petitions are denied as unnecessary since the proposed specifications would require conformance with the ASME Code.

The present requirement that cargo tanks in corrosive service must be designed for a 10-year service life would be removed. We believe this requirement restricts the economic optimization of the tank design and does not provide assurance that the tank shell thickness is greater than the prescribed minimum thickness. We are proposing that cargo tanks may be designed for any service life. An acceptable level of safety would be maintained by new inspection and thickness monitoring requirements specified in proposed subpart E, of Part 180. Tanks with shells below the minimum thickness must be repaired or the specification plate must be removed.

Section 178.340–3. Requirements for the structural integrity of cargo tanks would be contained in this section. The shell thickness and cargo tank structure would conform with the structural requirements prescribed in this section, in addition to the minimum shell and head thickness requirements in the individual specification and the accident damage protection requirements in § 178.340–8. Further, the cargo tank manufacturer must consider all structural loading and damage that would result from accidents, such as an overturn on the roadway.

The proposal contains a requirement that stresses resulting from specific operating loadings be evaluated in the design of a cargo tank in place of the present general loading requirement. We are proposing to specify the same loadings presently prescribed for the MC 331 cargo tank. We believe the MC 331 loading requirements adequately take into account the forces actually encountered in transportation. For frameless cargo tank motor vehicles, where the tank shell serves as the vehicle frame, the basic structural integrity of a cargo tank would be calculated using a specific formula. The proposed formula is an improved version of that specified in § 178.337–3 of the MC 331 cargo tank specification. The proposed formula was developed as a part of the MC 331 cargo tank integrity study by the research contractor, Dynamic Sciences, Inc., and its industry advisors. The proposed formula includes shear stresses resulting from internal pressure, a factor not included in the present formula in § 178.337–3. For cargo tanks mounted on a frame or built with integral structural supports, the stress analysis appropriate to the tank and structural configuration would be made using the required loadings. Since conformance with the ASME Code would be required, the present 5:1 safety factor would be relaxed to the 4:1 safety factor allowed by the ASME Code.

Section 178.340–4. Requirements for the joints in the tank would be contained in this section. Joint preparation, welding procedures and welder performance are as prescribed in the AMSE Code. This Code includes supervision of welding, information on proper type and size of electrodes used, number of passes, etc., and in addition, require that work drawings indicate details and tolerances as well as verification of welder competence all of which are necessary to assure the structural integrity of the tank.

Since conformance with the ASME Code would be required, the confusing requirements of optimum fabrication techniques and efficiency determination would be removed. Any welding technique and its corresponding allowable weld efficiency permitted by the ASME Code would now be acceptable. Conformance with the ASME Code would also obviate the need for the compliance test in addition to ASME Code requirements.

Section 178.340–5. Manhole requirements would be contained in this section. Under the proposed rule, a manhole closure would have a structural strength much greater than that presently prescribed. A minimum

manhole size would also be prescribed. Additional comments and changes to this section are addressed earlier in this preamble under the heading "Cargo Tank Overturn Integrity".

Section 178.340–6. Supports and anchoring requirements would be contained in this section. The minimum dynamic loadings specified for the cargo tank would be applicable to the tank supports and anchoring systems. See earlier preamble discussion under § 178.340–3.

Section 178.340–7. Circumferential reinforcement requirements would be contained in this section. These requirements are relaxed to permit, under certain conditions, the unreinforced portion of the shell to exceed 60 inches. This relaxation is based on a petition (P–537) and the satisfactory experience of cargo tanks made to this requirement under exemption. This section would also prohibit any type of reinforcement that precludes visual inspection of the tank shell or head. The placement of reinforcement rings over circumferential shell joints would be prohibited.

Section 178.340–8. Requirements for protection from accident damage would be contained in this section. This proposal is organized into both general requirements and individual requirements for the following accident protection zones: the bottom damage protection zone (the lower ⅓ of the tank), the roll over damage protection zone (the upper ⅔ of the tank), and the rear-end tank protection zone (area subject to rear-end or backing collisions).

The general requirements for accident damage protection would require a cargo tank, its piping, closures and valves that may contain lading to be designed and constructed to minimize the potential for loss of lading resulting from an accident. Projections from the cargo tank shell that retain lading such as domes and sumps would be required to be designed to minimized the possibility of the loss of lading in an accident, be constructed of a material having a strength equivalent to that of the tank shell, and have a thickness at least equal to that specified by the appropriate specification. Any projection that extends more than two inches from the tank shell would be required to be protected from accident damage. To provide for maximum design freedom and to minimize cargo tank cost, projections that have a strength of at least 125 percent of the requirements specified for the appropriate accident damage protection device would not be required to have accident damage protection. Additfonally, such projections may be considered as accident damage protection devices for the protection of fittings, piping, etc.

a. *Bottom damage protection.* Bottom damage protection devices are intended to protect any outlet, projection, sump, or piping located in the bottom damage protection zone from accidental damage such as a collision with another vehicle or with a road side structure, such as a guard rail.

The present specifications require the use of internal self-closing stop valves to provide lading rention in collision accidents. Vacuum-loaded cargo tanks, operating under DOT exemption, are authorized to have external self-closing stop valves which are protected by bottom accident damage protection. These cargo tanks have demonstrated a high level of intergrity. The bottom accident damage protection used on vacuum-loaded cargo tanks consists of the vehicle frame, rear wheels, suspension system and rear end tank protection. Because of the excellent safety record of vacuum-loaded cargo tanks, we are proposing to allow external self-closing stop valves with bottom accident damage protection as an alternative to the internal self-closing stop valves on all MC 307 and MC 312 cargo tanks.

Accident data from studies of under-ride accidents indicate that a significant percentage of under-ride accidents occur at or near highway speed limits. Based on these studies, we are proposing that the bottom accident damage protection system must be capable of absorbing or deflecting an energy of 275,000 foot-pounds based on the ultimate strength of the material. This is equivalent to the impact of a 4,000 pound automobile at a speed of 50 miles per hour or the impact of a 80,000 pound truck backing into a stationary structure at 10 miles per hour. This impact energy is applied to the bottom damage protection device at any point and from any direction, i.e. front, rear, side or bottom, over an area not greater than 6 square feet.

Also, requirements would be relaxed to allow the use of valve protection features other than a shear section to provide greater flexibility for cargo tank manufactures and operators.

b. *Rollover damage protection.* The most common highway accident involving the loss of cargo tank lading is a rollover. Such accidents generally result in damage to the upper ⅔ of the cargo tank. The most vulnerable areas are the cargo tank sides, top and front head. Present requirements allow the lateral strength of rollover damage protection devices to be only ¼ the strength required normal to the shell. In a rollover accident, the rollover damage protection system can receive lateral loads that equal or exceed the normally applied load. For this reason, we are proposing that the rollover damage protection system on each cargo tank motor vehicle be designed for a lateral load equivalent to twice the gross weight of the loaded cargo tank motor vehicle. If more than one rollover protection device is used, each device must be designed for a lateral load no less than one-half the gross weight of the loaded cargo tank motor vehicle.

c. *Rear-end tank protection.* A petitioner (P–452) maintains that the present rear bumper requirements serve two functions. First, as required by § 178.340–8 the bumper must protect the cargo tank and any tank component that may retain lading from damage as a result of a collision with another vehicle or with a structure during backing. Second, as required by 49 CFR 393.86 the bumper serves as a rear-end under-ride protection device to protect occupants of any vehicle that may collide with the rear-end of the cargo tank. The petitioner requested that the regulations be revised to separate the two functions.

We agree and are proposing to relax the requirement for rear-end protection by allowing a rear-end tank protection device which may be different from the rear-end under-ride protection device. This would be accomplished by removing the height restriction for the location of the rear-end tank protection. The placement of the rear-end tank protection device would protect the cargo tank and any piping, fittings, etc., from collision damage. The strength requirements for the rear-end tank protection device would remain unchanged. The rear-end under-ride device must conform with the design and strength requirements specified in 49 CFR 393.86.

MTB has received several petitions (P–904, P–911, P–923) for rule change requesting that rear-end tank protection be required only on the rearmost unit of a "double" cargo tank motor vehicle configuration. The petitioners argued that the present requirement adds cost and weight to the cargo tank configuration with no safety benefits. We do not agree. We believe that the forward unit of a "double" is vulnerable to rear-end tank damage particularly in turning maneuvers. This vulnerability increases in proportion to the length of the draw bar between the cargo tank units. The forward unit of a "double" is at times operated without the protection afforded by the rear units. Operation of such a forward unit, whether with a full load or with only residual lading

presents an unacceptable risk. Furthermore, we believe that the removal of the location restriction on rear-end tank protection devices, as proposed in this rule, would eliminate the need for a heavy supporting structure and minimize the cost and weight of the protection device. For these reasons, these petitions are denied.

Section 178.340–9. This section would contain and clarify the present requirements relative to pumps, piping, hoses, connections, etc. contained in §§ 178.340–8(d) (3), (4), (5) and (6). It would also contain a provision that hose couplings must be designed for a burst pressure of not less than 120 percent of the design burst pressure of the hose.

A requirement would be added that loading/unloading and charging lines be of sufficient strength or be protected by a fail-safe device in order to prevent damage to the cargo tank that could result in loss of lading from any forces applied by loading/unloading or charging lines attached to the cargo tank. This should prevent the uncontrolled loss of lading from the cargo tank should the cargo tank motor vehicle be moved while the loading/unloading or charging lines are still attached to the facility's tanks. Finally, a provision would be added to authorize the use of nonmetallic piping, valves or connections located outboard of the lading retention system.

Section 178.340–10. Pressure relief device requirements would be contained in this section. The proposal differs from existing regulations as follows:

1. Provisions for possible arrangements, types, location and pressure setting of pressure relief devices are expanded and revised for clarity. This section contains requirements currently found in §§ 178.341–4, 178.342–4 and 178.343–4.

2. Research and experiments have shown that cargo tanks can experience short duration pressure surges of up to 50 psig in a rollover. This has been shown to cause the release of about two gallons of lading through the pressure relief devices on a typical MC 306 cargo tank. The proposal clarifies the fact that the present regulations require pressure relief systems to be capable of withstanding a pressure surge without leakage of lading and yet be capable of operating when there is a sustained pressure rise in the tank.

3. We are not aware of a valid reason for a normal vent valve set-to-discharge at 1 psig since, in many rollover conditions, the static head of the lading would open and operate such a valve. Additionally, the vapor pressure of some ladings exceeds 1 psig in transportation resulting in continuous venting. Therefore, we are proposing to prohibit the use of normal vent valves.

4. We propose to revise the procedures used to establish the rated flow capacity for pressure relief devices. The proposal requires that a manufacturer of a pressure relief device certify that the pressure relief device model (design, size and set pressure) is designed, tested and meets the requirements contained in this section and the applicable cargo tank specification. Each pressure relief device model would be flow capacity tested prior to its first use. The rated flow capacity for each pressure relief device model would be based on testing of at least three prototype pressure relief devices. The marked rated flow capacity of the pressure relief device would not be greater than 90 percent of the average value for the devices tested. Additionally, we are proposing that an Authorized Inspector witness and approve the flow capacity test for each pressure relief device model and sign the manufacturers certification for that model.

5. We believe that the risk from hazardous material transportation is substantially reduced when packaging is designed to retain the lading in non catastrophic accidents and to minimize the quantity of lading released when release is inevitable. However, in a cargo tank accident, particularly an overturn followed by a fire, the functioning of a frangible disc or a fusible element would result in the release of a substantial quantity of lading. A reclosing pressure relief device on the other hand would minimize the quantity of lading released. Further, we believe that frangible disc and fusible elements particularly in low pressure applications are much more likely to fail as a result of impact and liquid surge than reclosing pressure relief devices. Accordingly, for all cargo tanks constructed after the effective date of the final rule, we are proposing that all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device.

Section 178.340–11. Requirements for tank outlets would be contained in this section. In this proposal, the present requirements contained in §§ 178.341–5, 178.342–5 and 178.343–5 are revised to provide practical guidelines for the design of cargo tank openings, outlets and their attached piping, connections and appurtenances.

Requirements for remote closure of a cargo tank loading/unloading outlet would be clarified. Each cargo tank self-closing stop valve used for loading and/or unloading would be required to have a remote means of closure. When used to transport a flammable liquid, pyrophoric liquid, oxidizer or Poison B liquid, a cargo tank would be required to be equipped with a self-closing stop valve capable of being remotely operated by both thermal and mechanical means. These requirements presently are contained in § 173.119 but have not been consistently required for all flammable liquids and other hazardous materials presenting similar risks. Non self-closing stop valves with mechanical means of remote closures would be authorized for corrosive materials.

Based on a petition [P–537] and on exemption experience, requirements for internal outlet self-closing stop valves would be relaxed to allow the use of an external self-closing stop valve in certain cases. See the preamble discussion of § 178.340–8 on accident damage protection.

Provisions regarding top outlets would be clarified. An opening in the top of a cargo tank that is securely closed during transportation with a welded or bolted blank flange or by a threaded plug would not be considered an outlet. Such openings would be considered projections and if they extend more than two inches from the tank shell or head accident damage protection would be required. See proposed § 178.340-8(a)(1).

Section 178.340–12. Gauging device requirements would be contained in this section. Existing requirements for gauging devices are applicable only to MC 307 cargo tanks. These requirements would be revised and made applicable to MC 306 and MC 312 cargo tanks. As proposed, any method that measures the maximum permitted liquid level or amount of the lading to an accuracy of 0.5 percent would permitted. Sight glass gauging devices would continue to be prohibited.

Section 178.340–13. This section would contain the general pressure testing requirements presently found in §§ 178.341–7, 178.342–7 and 178.343–7. This section would also contain a general pressure test procedure which emphasizes that a cargo tank must be subjected to a prescribed test pressure to assure the pressure integrity of the cargo tank.

The proposal authorizes pneumatic pressure testing for all DOT Specification MC 306, MC 307 or MC 312 cargo tanks. If pneumatic testing is used, the cargo tank must be inspected for leakage or other signs of defects at the inspection pressure specified in the applicable specification. The pneumatic inspection pressure specified would be

lower than test pressure due to the potential hazards involved in a pneumatic pressure test.

Section 178.340–14. This section would revise and clarify the cargo tank marking requirements presently contained in § 178.340–10. The required markings will all be found on the cargo tank nameplate or the cargo tank motor vehicle specification plate. It would also require that all markings must be in English.

Since all DOT Specification MC 306, MC 307 and MC 312 cargo tanks will either be "constructed and certified in conformance with the ASME Code" or "constructed in accordance with the ASME Code", each cargo tank nameplate would be required to contain all the information required by the ASME Code. In addition, the nameplate would also be required to contain other markings such as cargo tank design pressure, cargo tank test pressure, cargo tank design temperature range, material specification (shell and heads), minimum shell and head thickness, and maximum design density of the lading.

The marking of the cargo tank design pressure would be required because shippers of hazardous materials must be able to determine if a cargo tank has adequate lading retention capability for the commodity to be shipped. The cargo tank design temperature range marking would make shippers and carriers aware of the temperature range at which the cargo tank can be safely operated. Operating the cargo tank at temperatures outside this range might affect the strength and physical properties of the cargo tank's material of construction. Marking the minimum shell thickness for the cargo tank top, side and bottom, would acknowledge the industry practice, especially in MC 306 cargo tank construction, of building a cargo tank with thicker top and bottom plates and a thinner sidewall. Marking the maximum design density of the lading on the nameplate should prevent the loading of a cargo tank with a lading which is heavier than the design density of the cargo tank.

Additionally, each cargo tank motor vehicle would be required to have a specification plate providing safety and operational data. The specification plate would contain such information as exposed surface area, maximum loading and unloading rates, heating system design pressure and temperature, lining material, the name of the cargo tank and cargo tank motor vehicle manufacturer and the cargo tank motor vehicle certification date.

The marking of the exposed surface area would provide a means of determining the required venting capacity. The marking of the maximum loading and unloading rates and the heating system design pressure and temperature would provide shippers and carriers with important operational information about the cargo tank motor vehicle. For example, this information could prevent the use of a heating medium which is warmer than the design temperature of the system.

The proposal allows the combination of the nameplate and specification plate on an uninsulated cargo tank. In this case, the combination plate would be welded or brazed to the cargo tank. For an insulated cargo tank, the nameplate would be required to be welded or brazed to the cargo tank and the specification plate would be welded, brazed, or riveted to the insulation jacket or to an integral supporting structure of the cargo tank motor vehicle. The ASME Code requires that the nameplate be visible after insulation is applied. Additionally, paragraph UG–119(f) of the ASME Code contains provisions for installation of a duplicate nameplate on the insulation jacket. The use of duplicate plates is also important on ASME Code cargo tanks if the specification plate is lost or becomes illegible. The nameplate which is on the cargo tank would serve to verify ASME Code construction and would enable the owner to replace the specification plate.

Secton 178.340–15. This section would revise and clarify the certification requirements presently contained in § 178.340–10. The proposal requires that in addition to a responsible official of the manufacturer that an Authorized Inspector would also be required to sign a certificate certifying that the cargo tank or cargo tank motor vehicle is designed, fabricated, tested and completed in conformance with the application specification.

Additionally, the proposal requires that the manufacturer of each stage of a cargo tank motor vehicle construction not only must furnish a certificate covering its work to any succeeding manufacturer, but also must pass along any certificates received from earlier manufacturers. This will ensure that at the end of staged construction, the final manufactuer will possess certificates covering the entire construction process. The proposal also would require that the manufacturer furnish the owner with all certificates and other documentation required by this section.

Section 178.341. Individual specification requirements applicable to an MC 306 cargo tank motor vehicle are contained in this section.

The MC 306 type cargo tank is a low pressure cargo tank used mostly for the transportation of low vapor pressure flammable liquids. The research contractor estimates that there are approximately 102,500 cargo tanks of all specifications in hazardous materials service and that approximately 57 percent (57,900) of these are MC 306 type cargo tanks. The MTB incident data base for the years 1980 through 1983 shows that MC 306 type cargo tanks accounted for about 88 percent of the deaths reported for cargo tanks of known type in hazardous material service. We believe that this data depicts the combined high risk potential of the highly flammable hazardous materials transported and the comparatively low integrity of MC 306 type cargo tanks relative to other specification cargo tanks. MC 306 type cargo tanks have a thin shell and heads that require additional reinforcement to accommodate the prescribed environmental loads.

Because we do not have sufficient data to assess the suitability of the basic shell integrity of MC 306 type cargo tanks in accidents or to evaluate various countermeasures such as increased shell and head thickness and improved roll stability, we have not proposed any revision of the regulations on this issue. This proposal, however, does address the matching of hazardous material properties with tank design parameters.

Presently there are no requirements for the design pressure specified for the MC 306 cargo tank except that the tank must be designed for a "Design Pressure" not less than the static head of the fully loaded tank in the upright position. Several petitioners (P–562, P–827) requested revision of the requirement that the tank shell be designed to withstand a pressure not less than that exerted by the static head of the lading. The petitioners claim that the design pressure of a typical MC 306 cargo tank is zero. We disagree. At present, MC 306 cargo tanks must have a design pressure of not less than the static head of a fully loaded tank and be pressure tested at 3 psig. The low capacity normal vent is set-to-discharge at one psig. The emergency pressure relief devices for fire conditions are set-to-discharge at 3 psig and are flow rated at 5 psig. The unloading relief protection system is designed to prevent pressure in the tank from exceeding 3 psig. The tank is in effect normally operated at up to 3 psig and in an emergency situation at 5 psig which is 166 percent of the test pressure.

MC 306 cargo tanks should be designed for a test pressure of 5 psig, the pressure at which the pressure relief valve is rated. Section 173.119 permits MC 306 cargo tanks for ladings with a

vapor pressure of 16 psia at 100 °F. or 1.3 psig. Some of these ladings have a vapor pressure of 5.8 psig at 115 °F, the reference design temperature. For a typical MC 306 cargo tank of elliptical cross section, minor axis of 61 inches, typical ladings can produce a static pressure of 1.5 to 2.0 psig. For example, pentane should be transported in a cargo tank with a design pressure of at least 8.7 psig [1.2 times [vapor pressure at 115 °F=5.8 psig; plus the static head =1.4 psig for a tank 60 inches high]]. Given the potential magnitude and the variability of these properties over the vast number of hazardous materials authorized, we believe a design pressure of not less than 3 psig is necessary. A maximum design pressure of 14.9 psig is being proposed for the MC 306 cargo tank.

The pressure design parameters for a tank are generally based on the vapor and static pressure of the lading and the loading/unloading pressure. For most cargo tanks, the tank test pressure is 150 percent of the design pressure and the emergency relief devices are set-to-discharge and flow rated at not lower than the design pressure and not above the test pressure. This philosophy assures that the emergency relief devices would not operate under normal transportation conditions and yet during an emergency condition would operate at less than or equal to a pressure for which the tank has been proof-tested.

Based on this discussion, we propose to revise the MC 306 specification as follows:

1. A minimum design pressure of 3 psig would be specified for MC 306 cargo tanks. This design pressure is consistent with the setting presently used for both loading/unloading and emergency relief devices.

2. The maximum design pressure for MC 306 cargo tanks would be increased to 14.9 psig. This is a relaxation of the present requirements and will be consistent with § 173.119 which allows the MC 306 for a lading with a vapor pressure of 16 psia at 100 °F. and takes into account that some ladings will have higher vapor pressures at 115 °F.

3. A test pressure of 150% of the design pressures, and in no case less than 5 psig, would be required for MC 306 cargo tanks. This is an extension of the present requirement of flow rating the relief devices at 5 psig (1.66 times 3 psig). We believe this 1.66 ratio is adequate for a 3 psig design pressure and is compatible with the presently used operating and emergency venting pressures.

4. The minimum set-to-discharge pressure for any pressure relief valve would be the design pressure [3 psig minimum]. The pressure relief valve must close at not less than the design pressure.

5. For a cargo tank designed to be loaded or unloaded with the dome cover closed, the cargo tank must be equipped with a vacuum relief device to limit the vacuum to 1 psig and a pressure relief valve to limit the tank pressure to design pressure based on the product transfer rate marked on the cargo tank specification plate. This change allows greater flexibility for cargo tanks having a design pressure greater than 3 psig.

6. The use of the existing relief valve for normal venting conditions (set-to-discharge at 1 psig) would be prohibited. This relief valve has been shown by research to be a source of leakage in a cargo tank rollover and allows the release of lading under normal transportation conditions. The release of lading through these valves does not conform to the no leakage requirement in § 178.341–4(d)(2) of the present regulations. The leakage in a rollover may be due to static pressure plus vapor pressure of lading acting on the device.

Certain other revisions to the MC 306 cargo tank motor vehicle specification would also be made. The use of rupture discs would continue to be prohibited in cargo tanks intended for a flammable liquid lading. As stated earlier in the preamble discussion to § 178.340–5, the required strength of the manhole would be increased to that used by most of the tank manufacturers.

Section 178.342. Individual specification requirements applicable to a MC 307 cargo tank motor vehicle are contained in this section. Based on exemption experience, construction of a vacuum-loaded cargo tank motor vehicle designed in conformance with the MC 307 cargo tank motor vehicle specification would be authorized.

Petitioners (P–262, P–327) have requested a revision that would change the maximum allowable stress of ⅛ of the ultimate strength of the metal used to ¼. This suggested revision has been incorporated by the adoption of the ASME Code.

Section 178.343. Individual specification requirements applicable to a MC 312 cargo tank motor vehicle are contained in this section. Based on exemption experience, construction of a vacuum-loaded cargo tank motor vehicle with an internal design pressure of 25 psig and an external design pressure of 15 psig designed in conformance with the MC 312 cargo tank specification would be authorized. Given the substantial acute and environmental risks associated with the release of corrosive materials, we are proposing a minimum design pressure of 15 psig for MC 312 cargo tank motor vehicle.

Section 180 Subpart E. The requirements for the continuing qualification, maintenance and periodic testing of MC 300 thru MC 312, MC 330, MC 331 and MC 338 cargo tank motor vehicles presently found in §§ 173.33, 177.814 and 177.824 would be contained in this new subpart.

Section 180.405 This section would contain general requirements for the use of cargo tank motor vehicles. The requirements are based on the regulations presently found in § 173.33 or have been developed as a result of the research programs described earlier in the preamble. The requirements would provide for the continued use of—an existing cargo tank motor vehicle made to an obsolete specification, cargo tank motor vehicles conforming with and used under a DOT exemption whose provisions have been incorporated into the HMR, and DOT Specification cargo tank motor vehicles having no marked design pressure or a marked design pressure of less than 3 psig (see earlier preamble discussion titled "Design Pressure of Cargo Tank"). These requirements would assure that the level of safety of each cargo tank motor vehicle would be in accordance with the intent of the regulations.

As stated earlier in the preamble discussion to § 178.340–5, research findings have shown that in a rollover condition manhole covers frequently fail or are deformed, causing lading leakage. To correct this problem, proposed § 180.305(g) would require a retrofit on certain cargo tank manhole closures within 5 years of the effective date of the final rule with at least 20 percent of the affected cargo tanks being retrofitted each year. Each manhole closure would be required to be capable of withstanding a static internal pressure of at least 36 psig or the cargo tank test pressure, whichever is greater, without leakage or permanent deformation.

Presently § 173.33(b)(2) authorizes MC 304 cargo tanks to have pressure relief devices and outlets which conform with DOT Specification MC 307 cargo tanks. We can find no valid reason why other DOT Specification cargo tanks made to an obsolete specification cannot be similarly modified. This proposal would allow MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks to have pressure relief devices and outlets which conform with MC 306 cargo tanks, MC 310 and MC 311 cargo tanks to have pressure relief devices and outlets which conform with MC 312 cargo tanks, and MC 330 cargo tanks to have

pressure relief devices and outlets which conform with MC 331 cargo tanks.

Section 180.407. This section would contain all the requirements for the test and inspection of DOT Specification cargo tank motor vehicles. It would contain the general requirements presently in §§ 173.33 and 177.824, in addition to the proposed new requirements which have been developed as a result of the research program. Among the revisions to the general requirements is a clarification of the test requirements and the required test and inspection frequency in tabular format. The proposed test frequency would be consistent with and justified by the research program and associated recommendations and findings. Additionally, this section would emphasize the need to have trained and experienced inspectors.

Paragraph (d) would contain the requirements for an annual external visual inspection and testing. This section would contain the present periodic testing and inspection requirements contained in § 177.824(b) and the following new requirements:

(a) The annual external visual inspection would be expanded to include DOT Specification MC 330, 331 and 338 cargo tank motor vehicles based on the need demonstrated by the research studies;

(b) Provisions on the inspection and testing of remote closure devices and the inspection of other appurtenances and accessories (that the research studies have shown should be inspected) would be added.

Paragraph (e) would provide the conditions under which an annual internal visual inspection is required. This section would contain some of the present requirements contained in § 177.824(b).

Paragraph (f) would contain the retesting requirements on all lined cargo tanks. These are proposed new requirements which resulted from the research program and NTSB recommendations.

Paragraph (g) would specify the pressure retest requirements for all cargo tanks. This section would contain the requirements presently found in §§ 177.824(c), (d) and 173.33(d), and the following revisions or additions:

(a) Specify the retest pressure for all cargo tanks in tabular form.

(b) Specify that each cargo tank must be pressurized to test pressure, except that the inspection for leaks and damage at design pressure would be permitted if the cargo tank is pneumatically retested.

(c) Require that pressure bearing parts of a cargo tank heating system be hydrostatically tested at a minimum of one and one-half times the heating system design pressure once every five years. The test pressure is based on several petitions for rulemaking (P–262, P–316, P–327).

(d) Require that each pressure retest be witnessed and certified by an Authorized Inspector. Additionally, each cargo tank motor vehicle would be required ferred to have an external and internal visual inspection performed by an authorized inspector every five years as part of the pressure retest. To minimize the economic impact of pressure retesting all affected DOT specification cargo tanks, we are proposing that at least 20% of each owner's affected cargo tanks be retested each year.

(e) Establish a requirement that each MC 330 and MC 331 cargo tank constructed of QT steel be subjected to periodic internal fluorescent magnetic particle reinspection when used for the transport of liquefied petroleum gas or any lading that may cause stress corrosion cracking, the same as is now required for cargo tanks in ammonia service. Research on the integrity of MC 330 and MC 331 cargo tanks shows that the incidence of stress corrosion cracking is increasing and not limited to cargo tanks in anhydrous ammonia service. We believe requiring fluorescent magnetic particle reinspection is necessary for cargo tanks that transport any material that may cause stress corrosion cracking, except those constructed of other than part UHT materials that are postweld heat treated. We are specifically soliciting comments and rationale as to whether this proposed requirement should be extended to cargo tanks made of steel that are not postweld heat treated and to cargo tanks of less than 3500 gallons capacity without a manhole.

(f) Paragraph (h) would require an annual leakage test on all cargo tanks. This would be a new requirement based on the results of the research studies which found numerous leaks in the majority of cargo tank compartments tested. In order to limit cost and equipment down time, the test prescribed in the Environmental Protection Agency's "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" is an acceptable alternative test.

(g) Paragraph (i) would require thickness testing of cargo tank motor vehicles under certain conditions. This requirement is based on the need shown by analysis of accidents involving cargo tank motor vehicles in corrosive service. This requirement is consistent with a rule-related notice that was published in the **Federal Register** (48 FR 15127; April 7, 1983) requiring the owner to assure himself that the cargo tank motor vehicle conforms at all times with the specification under which it was constructed.

Thickness testing would be required when:

1. Visual inspection at any time indicates significant corrosion.

2. A cargo tank motor vehicle is unlined and is in corrosive service or is exposed to a corrosive environment capable of affecting the structural integrity of the cargo tank motor vehicle.

Section 180.409. This section would establish minimum qualification standards for any persons performing or witnessing a test or inspection required in § 180.407. Specific qualification standards are prescribed for each required test or inspection. This section would be included to assure that all cargo tanks are tested and inspected by experienced and qualified personnel who are familiar with both the cargo tank motor vehicle specifications and proper testing methods. This section addresses a finding in the cargo tank research program that showed some testers are unqualified.

Section 180.411. This section would establish pass-fail criteria for each required test and inspection contained in § 180.407. The establishment of pass-fail criteria would ensure that the results of each required test and inspection in § 180.407 would be evaluated in the same way.

Section 180.413. This section would contain the repair, replacement of appurtenances, and modification requirements presently prescribed in §§ 173.33–(d)(11), (e) and 177.824, and the following revisions:

1. Repair requirements for MC 300 thru MC 305, MC 310 and MC 311 cargo tanks would be specified. Such requirements are merely implied in the existing regulations.

2. All cargo tank repairs would be required to be performed in a facility having a current certificate of authorization from the ASME for Section VIII (Division 1), having a current certificate from the National Board, or under the direct supervision of an Authorized Inspector.

3. Modification, stretching, and rebarrelling parameters would be specified and qualifications for facilities performing such work would be prescribed. The facility requirements would be identical to those specified for repairs.

Section 180.415. This section would contain the marking requirements presently contained in § 177.824(h) plus a new requirement to identify the type

of test or inspection performed. This new requirement would enable shippers, carriers and enforcement personnel to readily determine if a cargo tank motor vehicle has been tested or inspected as required by proposed § 180.407.

Section 180.417. This section would contain the reporting and record retention requirements presently prescribed in §§ 173.33 and 177.824, and the following revisions:

1. A requirement that each owner of a cargo tank motor vehicle retain in its files a certificate or manufacturer's data report certifying that the cargo tank motor vehicle is in conformance with the specification under which it was constructed. This proposed requirement has been added based on the results of the research program which indicated that a significant number of owners did not have these documents in their possession. Additionally, the research program showed that most owners did not have drawings or calculations for their equipment. This information will be of great assistance to the owner and other persons in verifying that a cargo tank conforms with the regulations. If a manufacturer's certificate is unavailable, owners of non-ASME Code stamped cargo tanks manufactured before the effective date of the final rule would be permitted to certify their equipment when supervised by an Authorized Inspector, owners of ASME Code stamped cargo tanks would be able to obtain a copy of the manufacturer's data report from the National Board or copy the information contained on the cargo tank nameplate and ASME Code plate. In both cases, the owner and the Authorized Inspector would be required to sign the certificate stating that the cargo tank fully conforms to the appropriate specification.

2. This section would expand the information required on the cargo tank test or inspection report presently required in § 177.824. The additional information will make readily available to all concerned parties exactly what type of testing or inspection was performed along with the results of each test or inspection. This proposed requirement was based upon the recommendations of the research program and comments to Docket HM-183 recommending close monitoring of compliance with the HMR.

3. Reporting requirements for MC 330 and MC 331 cargo tanks carrying liquefied petroleum gas or any other material that may cause stress corrosion cracking would be specified. This is presently required for MC 330 and MC 331 cargo tanks in anhydrous ammonia service. We believe that this requirement is justified because research has shown that the incidence of stress corrosion cracking is increasing and is not limited to cargo tanks in anhydrous ammonia service.

Comments

MTB and BMCS are requesting that interested persons submit constructive comments, together with supporting data, for or against the rules proposed in this notice. The submission of general comments without supporting data or documentation will not assist MTB and BMCS in the development of a final rule. In order to fully consider the impact of this complex and technical proposal on public safety and the regulated industry, commenters are strongly encouraged to provide substantive data, calculations and test results to support their views. Commenters are requested to make their comments in a manner that will clearly identify the particular matters on which they are commenting. Unless comments are general in nature pertaining to the entire Notice, it is requested that each paragraph of comments be identified in the following manner:

"*Part 176.* We think ——" or "*Section 172.503* We believe ——".

MTB and BMCS are particularly interested in receiving constructive comments in the following areas:

(1) What would be the incremental cost and benefits to the public and to cargo tank motor vehicle purchasers of requiring ASME Code construction of new cargo tank motor vehicles?

(2) What would be the incremental cost and benefits of requiring the use of National Board Authorized Inspectors and requiring that an Authorized Inspector certify that a cargo tank motor vehicle conforms with the applicable DOT specification?

(3) What would be the incremental cost and benefits of requiring that repairs to a cargo tank be performed by the following: a cargo tank manufacturer holding an ASME "U" stamp; a repair facility holding a "R" stamp; or under the direct supervision of an Authorized Inspector who certifies the repair as being acceptable?

(4) What would be the incremental savings on insurance to cargo tank manufacturers and cargo tank motor vehicle operators on cargo tank motor vehicles built to the ASME Code and certified by an Authorized Inspector?

(5) What would be the incremental savings realized by authorizing the use of external self-closing stop valves as proposed in § 178.340-11(a)?

(6) What would be the incremental savings realized if the rear end tank damage protection requirements as proposed in § 178.340-8(d) were adopted?

(7) Should we require National Board registration for all new construction of cargo tank motor vehicles?

(8) Should we require that an Authorized Inspector perform and approve or witness and approve all the tests and inspections specified in Part 180 of this proposal?

(9) What would be the impact of no longer authorizing the use of MC 300, MC 301, MC 302, MC 303, or MC 305 cargo tank motor vehicles for transporting hazardous materials?

(10) Should we limit the service life of a cargo tank motor vehicle in hazardous materials service? If so, what should this service life limit be?

(11) Are there any hazardous materials presently authorized in MC 306 type cargo tanks that are too hazardous to be transported in such tanks?

(12) Is it likely that a lined cargo tank with external insulation could have corrosion that significantly reduces its structural integrity yet would still pass the prescribed pressure test? If so, what test or inspection procedures could be used to identify and prevent this condition?

(13) Should MTB required special construction, test, operational or restricted lading authorizations on a cargo tank fitted with a very large closure (e.g. an openable rear head) located below the normal liquid level of a full cargo tank?

(14) In addition to answers to the above questions, MTB solicits comments on the overall cost effectiveness (and the incremental cost change) if the rules proposed in this Notice are adopted.

VII. Administrative Notice

A. Executive Order 12291

The effect of this rule, as proposed, does not meet criteria specified in § 1(b) of Executive Order 12291 and is, therefore, not a major rule, but is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This proposed rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et sq.) A regulatory evaluation and flexibility analysis is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning size and nature on entities likely affected by this proposed rule, I certify this proposal will not, if

promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal. A preliminary regulatory flexibility analysis is available for review in the docket.

C. Paperwork Reduction Act

Information collection requirements contained in this proposal are being submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. Law 96-511).

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 172

Hazardous materials transportation.

49 CFR Part 173

Gases, Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Cargo vessels.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 180

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 171, 172, 173, 176, 177 and 178 of Title 49, Code of Federal Regulations, would be amended and a new Part 180 would be added to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53(e).

2. In § 171.3, paragraph (f) would be added to read as follows:

§ 171.3 Hazardous waste.

* * * * *

(f) A nonspecification cargo tank motor vehicle manufactured prior to (effective date of final rule) may continue to be used for the transportation of a hazardous waste if the cargo tank motor vehicle—

(1) Was manufactured to a standard reasonably equivalent to a DOT MC 307 or MC 312 specification cargo tank;

(2) Was used to transport a hazardous waste prior to (effective date of final rule);

(3) Has a capacity of 3,500 gallons or less;

(4) Is operated exclusively by an intrastate motor carrier in a State where its operation was permitted by the laws of that State prior to (effective date of final rule);

(5) Is operated in that State in accordance with all other requirements of this subchapter; and

(6) Is maintained, retested and inspected as specified for a MC 307 or MC 312 cargo tank motor vehicle in Subpart E, Part 180, of this subchapter.

3. In § 171.7, paragraphs (c)(21), (d)(1) and (d)(15)(i) would be revised; paragraphs (c)(32), (c)(33), (c)(34), (d)(3)(x), (d)(28), (d)(29) and (d)(30) would be added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(21) AWS: American Welding Society, 550 NW LeJeune Rd., Miami, Florida 33126.

* * * * *

(32) ASNT: American Society for Nondestructive Testing, P.O. Box 21124, Columbus, Ohio 43221.

(33) RMA: Rubber Manufacturers Association, 1400 K St., N.W., Washington, D.C. 20005.

(34) National Board: National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(d) * * *

(1) ASME Code means Sections II (Parts A and B), V, VIII (Division 1), and IX of the 1983 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code" and addenda thereto through December 31, 1984.

* * * * *

(3) * * *

(x) CGA Technical Bulletin TB-2 is titled, "Guidelines for Inspection and Repair of MC 330 and MC 331 Cargo Tanks," 1980 edition.

* * * * *

(15) * * *

(i) AWS Code 2.1 is titled, "Standard Qualification Procedure," 1984 edition.

* * * * *

(28) ASNT Recommended Practice No. SNT-TC-1A is titled "Personnel Qualification and Certification in Nondestructive Testing," 1980 edition, and applicable supplements.

(29) RMA Technical Bulletin 13 is titled "Procedure for Spark Testing Elastomeric Sheet Lining," 7-1985 edition.

(30) National Board Inspection Code is titled "National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors" NB-23, Rev. 4, 1983 edition.

* * * * *

4. In § 171.8, the definition of "cargo tank" would be revised and a definition for "Authorized Inspector", "Authorized Inspection Agency" and "cargo tank motor vehicle" would be added in alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Authorized Inspector" means an Inspector who is currently commissioned by the National Board of Boiler and Pressure Vessel Inspectors and employed as an Inspector by an Authorized Inspection Agency.

"Authorized Inspection Agency" means (1) a jurisdiction which has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement and has a representative serving as a member of the ASME Conference Committee, or (2) an insurance company which has been licensed or registered by the appropriate authority of a State of the United States or a Province of Canada to write boiler and pressure vessel insurance in such State or Province.

* * * * *

"Cargo tank" means a tank (including the appurtenances, reinforcements, fittings and closures) having a capacity over 110 gallons that is premanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which by reason of its size, construction or attachment to a motor vehicle is loaded and unloaded without being removed from the motor vehicle. For "tank", see § 178.340-1(c). A packaging fabricated under a specification for cylinders, portable tanks, tank cars or multi-unit tank car tanks is not a cargo tank.

"Cargo tank motor vehicle" means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

5. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53(e).

6. In § 172.203, paragraph (h)(2) would be amended by removing the reference "§ 173.315(a)(1), Note 15" and inserting in its place the reference "§ 173.315(a), Note 15".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53(e).

8. Part 173, Subpart B of the Table of sections would be amended by revising the entry for § 173.33 to read as follows:

Supbart B—Preparation of Hazardous Materials for Transportation.

Sec.

* * * * *

173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

9. In § 173.22, the introductory text to paragraph (a)(2) and paragraph (b) would be revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(2) The shipper must determine that the packaging or container is an authorized packaging, including all special requirements, and that the packaging has been manufactured, assembled and marked in accordance with:

* * * * *

(b) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under Subchapter B of this chapter, that person must perform the function in accordance with that specification, approval or exemption, as appropriate.

* * * * *

10. Section 173.33 would be revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

(a) *General requirements.* (1) No person may offer a hazardous material for transportation in a cargo tank motor vehicle except as authorized by this subchapter.

(2) No two or more materials, the mixing of which may produce an unsafe condition, may be shipped in a cargo tank motor vehicle.

(3) A cargo tank motor vehicle for which the prescribed periodic retest or reinspection under subpart E of Part 180 of this subchapter is due may not be filled and offered for transportation until the retest or inspection has been successfully completed. This paragraph does not apply to any cargo tank motor vehicle filled prior to the retest or reinspection due date.

(b) *Loading requirements.* (1) A hazardous material may not be loaded in a cargo tank if any part of the tank in contact with the hazardous material during transportation would have a dangerous reaction with the hazardous material.

(2) A cargo tank may not be loaded with hazardous material that:

(i) May combine chemically with any residue or contaminants in the tank to produce an unsafe condition.

(ii) Has a density exceeding the maximum density of lading specified on the tank specification plate.

(iii) Is warmer or colder than the design temperature range specified on the tank specification plate.

(3) Air pressure may not be used to load or unload any lading if it may create an air-enriched mixture within the flammability range of the lading in the vapor space of the tank.

(4) The loading or unloading rate used must be less than or equal to that indicated on the cargo tank specification plate, except as specified in § 173.315 or § 173.318.

(c) *Design pressure.* (1) Prior to a cargo tank motor vehicle being filled and offered for transportation, the shipper must confirm that the cargo tank motor vehicle conforms with the specification required for the lading and that the design pressure of the cargo tank is greater than or equal to the largest of the following:

(i) 120 percent of the sum of the vapor pressure of the lading at 115 °F., the tank static head exerted by the lading, and any pressure exerted by the gas padding, including air in the ullage space or dome;

(ii) The pressure prescribed in Subpart B, D, E, F, G or H, as applicable; or

(iii) The maximum pressure used to load or unload the lading.

(2) Any Specification MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank motor vehicle with no marked design pressure, or marked with a design pressure of 3 psig or less may be used for an authorized lading where the largest pressure derived from § 173.33(d) of § 178.340–1 of this subchapter is less than or equal to 3 psig.

(3) Any Specification MC 310 or MC 312 cargo tank motor vehicle may be used for an authorized lading where the largest pressure derived from § 173.33(d) or § 178.340–1(l) of this subchapter is less than or equal to the MAWP or MWP respectively, as marked on the specification plate.

(4) Any material that meets the definition of a Poison B material must be shipped in a cargo tank motor vehicle having a design pressure of 25 psig or greater.

(5) Any material that meets the definition of more than one hazard class must be transported in a cargo tank motor vehicle having a design pressure of 25 psig or greater.

(d) *Relief system.* (1) A non-reclosing pressure relief device, except when installed in series with a pressure relief valve, should not be fitted in a cargo tank used to transport hazardous materials. However, a cargo tank constructed before (effective date of final rule) that is fitted with a non-reclosing pressure relief device installed paralled to a pressure relief valve may continue to be used in hazardous material service.

(2) Each cargo tank used to transport a gaseous hazardous material must have a pressure relief system that provides the venting capacity prescribed in § 178.340–10(e) of this subchapter.

(3) A cargo tank made to a specification listed in column 1 may be ungraded or have the relief devices or outlets modified to conform with the applicable requirement for the specification listed in column 2 without changing the markings on the tank's specification plate.

Column 1	Column 2
MC 300, MC 301, MC 302, MC 303, MC 305	MC 306.
MC 304	MC 307.
MC 310, MC 311	MC 312.
MC 330	MC 331.

(e) *Excess flow valves and back flow check valves.* Each MC 330 and MC 331 cargo tank used to transport a flammable liquid must have each liquid or vapor discharge opening equipped with a remotely controlled internal self-closing stop valve conforming to § 178.337–11(a) of this subchapter.

11. In § 173.119, paragraphs (m)(11) and (m)(12) would be removed and reserved; the introductory text of paragraphs (a) and (b), and paragraphs (a)(17), (b)(1), (e)(3), and (m)(10) would be revised; and paragraph (b)(12) would be added to read as follows:

§ 173.119 Flammable liquids not specifically provided for.

(a) *Flammable liquids with flash point 20 °F., or below.* Flammable liquids with flash points of 20 °F., or below and having a vapor pressure (Reid [1] test) not over 16 pounds per square inch, absolute, at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in specification containers constructed of materials that will not react dangerously with or be decomposed by the lading, as follows:

* * * * *

(17) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.341, 178.342, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be equipped with a pressure relief system conforming to § 178.341–10 or § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

(b) *Flammable liquids with flash points above 20 °F. to 73 °F.* Flammable liquids with flash points above 20 °F. to 73 °F. having vapor pressure (Reid [1] test) not over 16 pounds per square inch, absolute, at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in specification containers constructed of materials that will not react dangerously with or be decomposed by the lading, as follows:

(1) Containers as prescribed in paragraph (a) of this section, except paragraph (a)(17). Openings greater than 2.3 inches in diameter in barrels and drums are authorized when permitted by the specification.

* * * * *

(12) Any cargo tank motor vehicle as prescribed in paragraph (a)(17) of this section, except that top unloading is permitted. (See § 173.33(b)(3).

* * * * *

(e) * * *

(3) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.342, 178.337, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

(m) * * *

(10) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.337, 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Not authorized for a flammable liquid which is also an organic peroxide, oxidizer or radioactive material.

(ii) A cargo tank used to transport a flammable liquid that is also a Poison B material must have a design pressure of at least 25 psig.

(iii) A cargo tank used to transport a flammable liquid that is also a corrosive liquid must conform to the corrosion protection requirements of § 178.340–2 or § 178.343–2 of this subchapter.

(iv) The design pressure must be at least 25 psig or as prescribed in § 178.340–1(l) of this subchapter whichever is greater.

(v) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specifications MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(vi) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

(11)–(12) [reserved]

* * * * *

12. In § 173.123, paragraph (a)(6) would be revised to read as follows:

§ 173.123 Ethyl chloride.

(a) * * *

(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

13. In § 173.131, the introductory text to paragraph (a) and paragraph (a)(2) would be revised to read as follows:

§ 173.131 Road asphalt, or tar, liquid.

(a) Road asphalt, or tar, liquid must be packed in containers as follows:

* * * * *

(2) A nonspecification cargo tank motor vehicle that is at least equivalent in design and construction to a Specification MC 306 (§ 178.340, 178.341 of this subchapter) cargo tank motor vehicle, except for the requirements of §§ 178.340–14, 178.340–15, 178.341–5, 178.341–10, and 178.341–11 of this subchapter.

14. In § 173.134, paragraph (a)(6) would be revised to read as follows:

§ 173.134 Pyroforic liquids, n.o.s.

(a) * * *

(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 175 psig.

(ii) Each pressure relief device must have direct communication with the vapor space in the tank when fully loaded.

(iii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

15. In § 173.135, paragraph (a)(9) would be revised to read as follows:

§ 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.

(a) * * *

(9) Specification MC 304, MC 307, MC 330 or MC 331 (§§ 178.340, 178.342, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank must be fabricated from steel or stainless steel.

(ii) The design pressure of the cargo tank must be as prescribed in § 178.340–1(l) of this subchapter.

(iii) Each cargo tank, except Specification MC 330 and MC 331 cargo tanks, must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(v) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

16. In § 173.136, paragraph (a)(8) would be revised to read as follows:

§ 173.136 Methyl dichlorosilane and trichlorosilane.

(a) * * *

(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

17. In § 173.141, paragraph (a)(8) would be revised to read as follows:

§ 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.

(a) * * *

(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

18. In § 173.145, paragraph (a)(7) would be revised to read as follows:

§ 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

(a) * * *

(7) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure of the cargo tank must be as prescribed in § 178.340–1(l) of this subchapter.

(ii) Each cargo tank must be equipped with steel pressure relief valves conforming to § 178.341–10 or § 178.342–10 of this subchapter.

(iii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Bottom outlets are not authorized.

(v) Tanks must be fabricated from steel or stainless steel.

* * * * *

19. In § 173.148, paragraph (a)(5) would be revised to read as follows:

§ 173.148 Monoethylamine.

(a) * * *

(5) Any cargo tank motor vehicle as prescribed in § 173.119(e)(3).

* * * * *

20. In § 173.154, paragraph (a)(18) would be removed and reserved; paragraph (a)(4) would be revised, to read as follows:

§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

(a) * * *

(4) Specification MC 303, MC 304, MC 306, MC 307, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 percent or more water, equally distributed within the cargo tank; however, Specifications MC 311 and MC 312 cargo tanks are also authorized for potassium nitrate solutions.

(ii) An insulated Specification MC 307 or MC 311 cargo tank designed for operation at temperatures up to 250 °F. is authorized for the transportation of ammonium nitrate with 15 percent or more water in solution at a maximum temperature of 240 °F., except that transportation by vessel is not authorized.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

(iv) A cargo tank may have heating coils if an inorganic heating medium is used.

(v) Only a Specification MC 304 or MC 307 cargo tank motor vehicle is authorized for transportation by vessel.

* * * * *

(18) [reserved]

* * * * *

21. In § 173.190, paragraph (b)(4) would be revised to read as follows:

§ 173.190 Phosphorus, white or yellow.

* * * * *

(b) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading must be completely immersed in water or be completely blanketed with an inert gas. Loading temperature must not exceed 140 °F.

(ii) The cargo tank must have insulation at least 4 inches thick, or at least 2 inches thick if the tank is equipped with an exterior heating jacket. Interior heating coils are not authorized.

(iii) Bottom outlets are not authorized.

(iv) An empty cargo tank motor vehicle may not be offered for transportation unless the tank is cleaned, or is filled to capacity with water having a temperature not exceeding 140 °F.

* * * * *

22. In § 173.206, paragraph (c)(3) would be revised to read as follows:

§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.

* * * * *

(c) * * *

(3) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The material must be in molten condition when loaded and solidified before being moved over a public highway. Outage must be 5 percent or more at a sodium temperature of 208 °F.

(ii) The design pressure must be at least 150 psig.

(iii) The tank must be equipped with exterior heating coils fusion-welded to the tank shell and properly stressed relieved.

(iv) Each cargo tank must be equipped with pressure relief devices conforming to § 178.337–9 of this subchapter.

* * * * *

23. In § 173.224, paragraph (a)(4) would be revised to read as follows:

§ 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Cargo tanks are authorized for:

(A) Diisopropylbenzene hydroperoxide not over 60 percent strength in a nonvolatile solvent.

(B) Paramenthane hydroperoxide not over 60 percent strength in a nonvolatile solvent.

(C) Pinane hydroperoxide not over 45 percent strength in a nonvolatile solvent.

(ii) Specifications MC 311 and MC 312 cargo tanks are also authorized for cumene hydroperoxide not over 90 percent strength in a nonvolatile solvent.

(iii) Bottom outlets are not authorized.

24. In § 173.245, paragraphs (a)(30) and (a)(31) would be removed and reserved; paragraph (a)(29) would be revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(29) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Specification MC 303 and MC 306 cargo tanks fabricated from Type 316 stainless steel not less than 0.100 inch thick are authorized only for monoethanolamine, primary amyl alcohol, phosphoric acid, and solutions thereof.

(ii) A Specification MC 306 cargo tank fabricated of aluminum is authorized only for monoethanolamine and primary amyl alcohol.

(iii) Each cargo tank must conforming to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(30)–(31) [reserved]

* * * * *

25. In § 173.247, paragraph (a)(12) would be revised to read as follows:

§ 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimethyl acetyl chloride.

(a) * * *

(12) Specification MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

(iii) Cargo tanks made from aluminum are not authorized.

* * * * *

26. In § 173.247a, paragraph (a)(3) would be revised to read as follows:

§ 173.245a Vanadium tetrachloride and vanadium oxytrichloride.

(a) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for vanadium oxytrichloride padded with an inert non-soluble gas adequate to exclude the presence of air.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(iv) Not authorized for transportation by vessel.

(v) Cargo tanks made of aluminum are not authorized.

* * * * *

27. In § 173.248, paragraph (a)(6) would be revised to read as follows:

§ 173.248 Spent sulfuric acid, or spent mixed acid.

(a) * * *

(6) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 78.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

28. In § 173.249, paragraph (a)(1) and (a)(6) would be revised to read as follows:

§ 173.249 Alkaline corrosive liquids, n.o.s; alkaline liquids, n.o.s.; alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution; potassium hydroxide solution.

(a) * * *

(1) In packagings prescribed in § 173.245, except paragraph (a)(29).

* * * * *

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Specification MC 303 cargo tanks must be fabricated from steel or stainless steel. Specification MC 303 cargo tanks fabricated of steel are authorized for alkaline corrosive liquid, n.o.s., and alkaline liquid, n.o.s. only. Not authorized for transportation by vessel.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Specification MC 306 cargo tanks must be fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

29. In § 173.249a, paragraph (d)(1) would be revised, and a new paragraph (d)(6) would be added, to read as follows:

§ 173.249a Cleaning compound, liquid; coal tar dye, liquid; dye intermediate, liquid; mining reagent, liquid; and textile treating compound mixture, liquid.

(d) * * *

(1) In specification packagings as prescribed in § 173.245, except paragraph (a)(29).

* * * * *

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Specification MC 303 cargo tanks must be made from steel or stainless steel and are not authorized for transportation by vessel.

(iii) Specification MC 306 cargo tanks must have tanks fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

30. In § 173.250a, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 173.250a Benzene phosphorus dichloride and benzene phosphorus thiodichloride.

(a) * * *

(1) In specification packagings prescribed in § 173.245, except paragraph (a)(29), which are made of or lined with materials compatible with the lading.

(2) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

31. In § 173.252, paragraph (a)(4) would be revised to read as follows:

§ 173.252 Bromine.

(a) * * *

(4) Specification MC 310 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The total volume of bromine loaded into a cargo tank must be at least 88 percent and not more than 96 percent of the volume of the tank.

(ii) Tank shell and heads must be at least ⅜ inch thick, excluding lining, cladding or corrosion allowance.

(iii) Each tank must have a nickel cladding material on the inside surface comprising at least 20 percent of the total thickness, or be lined with lead at least 3/16 inch thick. The cladding material must conform to ASME SB–162. The composite plate must conform to ASME SA–265.

(iv) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(v) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

32. In § 173.253, paragraph (a)(6) would be revised to read as follows:

§ 173.253 Chloroacetyl chloride.

(a) * * *

(6) Specification MC 310, MC 311 and MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be fabricated from at least 99 percent nickel, or Type 316 stainless steel.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchaper are authorized.

* * * * *

33. In § 173.254, paragraph (a)(5) would be revised to read as follows:

§ 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311, MC 312 (§§ 178.340, 173.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343.2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

34. In § 173.255, paragraph (a)(5) would be revised to read as follows:

§ 173.255 Dimethyl sulfate.

(a) * * *

(5) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 176.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter.

* * * * *

35. In § 173.257, paragraph (a)(4) would be revised to read as follows:

§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

36. In § 173.262, paragraphs (a)(11) and (b)(4) would be revised to read as follows:

§ 173.262 Hydrobromic acid.

(a) * * *

(11) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(b) * * *

(4) Cargo tank motor vehicles as prescribed in paragraph (a)(11) of this section.

* * * * *

37. In § 173.263, paragraph (a)(10) would be revised to read as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited, sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(10) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be lined with rubber, or other equally acid-resistant material of equivalent strength and durability, except that an unlined tank made from Type 304 or Type 316 stainless steel is authorized for sodium chlorite solutions not exceeding 42 percent strength.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

38. In § 173.264, Note 1 to paragraph (a)(14) would be removed; paragraphs (a)(14) and (b)(3) would be revised to read as follows:

§ 173.264 Hydrofluoric acid; White acid.

(a) * * *

(14) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined, except that an unlined cargo tank is authorized for hydrofluoric acid solutions of 60 percent to 65 percent concentration provided the lading is inhibited so that the corrosive effect on steel is not greater than that of 65 percent hydrofluoric acid.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(b) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this

subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of ths subchapter are authorized.

* * * * *

39. In § 173.265, paragraph (a)(4) would be revised to read as follows:

§ 173.265 Fluorosilicic acid (hydrofluorosilicic acid) (hydrofluorsilicic acid).

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter.

* * * * *

40. In § 173.266, paragraph (f)(2) would be revised to read as follows:

§ 173.266 Hydrogen perioxide solution in water.

* * * * *

(f) * * *

(2) Specification MC 310, or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be fabricated from aluminum conforming with Aluminum Association designation 1060, 1260, 5254, or 5262 alloy, and have a minimum wall thickness of 0.50 inches.

(ii) The design pressure must be at least 40 psig.

(iii) Each tank must be designed and fabricated so that the internal surfaces can be effectively cleaned and passivated. All openings must be located on the top of the tank.

(iv) Bottom outlets are not authorized.

(v) A cargo tank in hydrogen peroxide service may be used in hydrogen peroxide service only and the cargo tank specification plate must be so marked. Each such cargo tank must also be marked in letters not less than 1 inch high "FOR HYDROGEN PEROXIDE ONLY" in additon to and near the marking prescribed in § 172.328 of this subchapter.

41. In § 173.267, paragraph (a)(7) would be revised to read as follows:

§ 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).

(a) * * *

(7) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

42. In § 173.268, paragraph (b)(3) would be revised to read as follows:

§ 173.268 Nitric acid.

* * * * *

(b) * * *

(3) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

43. In § 173.271, paragraph (a)(8) would be revised to read as follows:

§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxcychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(8) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be:

(A) Fabricated from mild steel, stainless steel, or at least 99 percent nickel (with all cast metal parts of the tank in contact with the lading at least 96.7 percent nickel); or

(B) Clad with Type 316 stainless at least 20 percent as thick as the tank parent metal; or

(C) Lined with lead at least 1/32 inch thick, or nickel at least 99 percent pure and at least 1/32 inch thick, at all points including rivets, welds and other joints, and edges of tank plates.

(ii) A tank fabricated from, or clad with, Type 316 stainless steel is authorized only for phosphorous oxychloride, phosphorous trichloride, and thiophosphoryl chloride.

(iii) A tank fabricated from mild steel or austenitic stainless steel, without cladding or lining, is authorized only for phosphorous trichloride service.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

44. In § 173.272, paragraphs (i)(25) and (i)(28) would be removed and reserved; paragraphs (c), (d), (e), (f) and (i)(21) would be revised, to read as follows:

§ 173.272 Sulfuric acid.

* * * * *

(c) *Sulfuric acid concentration of 51 percent or less:* Authorized packaging is described in paragraphs (i)(1), (16), (21), (24), and (26) of this section.

(d) *Sulfuric acid concentration of greater than 51 percent to not over 65.25 percent:* Authorized packaging is described in paragraphs (i)(1)–(16), (21), and (27)–(29) of this section.

(e) *Sulfuric acid concentration of greater than 65.25 percent to not over 77.5 percent:* Authorized packaging is described in paragraphs (i)(1)–(16), (20)–(22), and (29) of this section.

(f) *Sulfuric acid concentration of greater than 77.5 percent to not over 95 percent:* Authorized packaging is described in paragraphs (i)(1)–(22), and (29) of this section.

* * * * *

(i) * * *

(21) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A cargo tank lined with rubber or equally acid-resistant material of equivalent strength and durability is authorized.

(ii) An unlined steel cargo tank is authorized for sulfuric acid of 65.25 percent or greater concentration, provided the corrosive effect on steel is not greater than that of 65.25 percent sulfuric acid measured at 100 °F.

(iii) The temperature of the lading may not exceed the design temperature of the cargo tank marked on the cargo tank specification plate.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(25) [reserved]

* * * * *

(28) [reserved]

* * * * *

45. In § 173.273, paragraphs (a)(5) and (b)(2) would be revised to read as follows:

§173.273 Sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following condtions:

(i) Each cargo tank must be equipped with a pressure relief system conforming to § 178.340–10 of this subchapter and consisting of a spring-loaded pressure relief valve.

(ii) A tank equipped with interior heating coils is not authorized.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(b) * * *

(2) Specification MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be insulated.

(ii) A tank equipped with interior heating coils is not authorized.

(iii) Each cargo tank must be equipped with a pressure relief system conforming to § 178.340–10 of this subchapter and consisting of a spring-loaded pressure relief valve or a spring-loaded pressure relief valve and a frangible disc

installed in series with the relief valve. When the pressure relief system consists of the pressure relief valve and a frangible disc installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 150 percent of the design pressure.

* * * * *

46. In § 173.274, paragraph (a)(4) would be revised to read as follows:

§ 173.247 Fluosulfonic acid.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

47. In § 173.276, paragraph (a)(6) would be revised to read as follows:

§ 173.276 Anhydrous hydrazine and hydrazine solution.

(a) * * *

(6) Specification MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be fabricated from Type 304 or Type 347 stainless steel with molybdenum content not exceeding 1 percent.

(ii) Vapor space in each cargo tank must be filled with nitrogen gas at not less than atmospheric pressure.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(c) of this subchapter.

* * * * *

48. In § 173.277, paragraph (a)(9) would be revised to read as follows:

§ 173.277 Hypochlorite solutions.

(a) * * *

(9) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle (except that continued use of nonspecification cargo tanks is authorized if they were used to transport hypochlorite solutions prior to January 1, 1983), subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

49. In § 173.280, paragraph (a)(8) would be revised to read as follows:

§ 173.280 Trichlorosilanes.

(a) * * *

(8) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be made of steel or stainless steel.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

50. In § 173.287, paragraph (b)(8) would be revised to read as follows:

§ 173.287 Chromic acid solution.

(b) * * *

(8) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

51. In § 173.289, paragraphs (a)(1) and (a)(4) would be revised to read as follows:

§ 173.289 Formic acid and formic acid solutions.

(a) * * *

(1) In packagings prescribed in § 173.245, except (a)(14), (a)(29), and Spec. 5A (§ 178.81 of this subchapter).

* * * * *

(4) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

52. In § 173.292, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 173.292 Hexamethylene diamine solution.

(a) * * *

(1) In packagings as prescribed in § 173.249, except paragraph (a)(6).

(2) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Each Specification MC 306 cargo tank must be fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iii) Each Specification MC 303 cargo tank must be fabricated from steel or stainless steel.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

53. In § 173.294, paragraph (a)(3) would be revised to read as follows:

§ 173.294 Monochloroacetic acid, liquid or solution.

(a) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be fabricated from mild steel, Type 304 or Type 316 stainless steel, at least 99 percent nickel, titanium conforming to ASME SA–265, or suitably lined with nickel or stainless steel.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

54. In § 173.295, paragraph (a)(10) would be removed and reserved; paragraph (a)(9) would be revised, to read as follows:

§ 173.295 Benzyl chloride.

(a) * * *

(9) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Stabilized benzyl chloride must be transported in steel cargo tanks.

(ii) Unstabilized benzyl chloride must be anhydrous and free from impurities such as iron, and must be transported in a tank fabricated from at least 99 percent nickel. All cast metal parts of the tank in contact with the lading must be fabricated from at least 96.7 percent nickel.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(10) [reserved]

* * * * *

55. In § 173.296, paragraph (a)(2) would be revised to read as follows:

§ 173.296 Di iso octyl acid phosphate.

(a) * * *

(2) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

56. § 173.297, paragraph (a)(1) would be revised to read as follows:

§ 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.

(a) * * *

(1) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle subject to the following conditions:

(i) Each cargo tank must be rubber lined.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

§ 173.300 [Amended]

57. In § 173.300, paragraph (i) would be amended by removing the reference "173.315(a)(1)" and inserting in its place "173.315(a)".

58. In § 173.315, Note 4 and paragraph (5) of note 17 following paragraph (a), and paragraphs (a) introductory text, (h)(4), (i)(1) and (k)(5) would be revised; and paragraphs (n) and (o) would be added, to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) A compressed gas offered for transportation in a cargo tank motor vehicle or a portable tank must be prepared in accordance with this section, § 173.32 and subpart E of Part 180 of this subchapter; for cryogenic liquids, see § 173.318 (for marking requirements see §§ 172.326 and 172.328 of this subchapter). A compressed gas must be loaded and offered for transportation in conformance with the following table:

* * * * * *

Note 4.—Material must be steel. See paragraph (d) of this section for minimum thickness and corrosion allowance requirements.

* * * * *

Note 17.—* * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks.

* * * * *

(h) * * *

(4) Each opening for a pressure gauge, except on a tank used exclusively for the transportation of carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid must be restricted at or inside the tank by an orifice no larger than 0.060 inch in diameter. For carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service, the pressure gauge need only be used during the filling operation.

(i) * * *

(1) The safety relief valves on each tank must have a total relieving capacity as determined by the flow formulas contained in Section 5 of CGA Pamphlet S–1.2. These relief valves must have a total relieving capacity sufficient to prevent a maximum pressure in the tank of more than 120 percent of the design pressure. The flow capacity testing and rating must be in accordance with Section 5 of CGA Pamphlet S–1.2 and witnessed and certified by an Authorized Inspector. For an insulated tank, the required relieving capacity of the relief valves must be the same as for an uninsulated tank, unless the insulation will remain in place and will be effective under fire conditions. In this case, each insulated tank must be covered by a sheet metal jacket of not less than 16 gauge thickness. An MC 330 cargo tank that has relief valves sized by Fetterly's formula dated November 27, 1982, may be continued in service. Copies of this formula may be obtained from the Bureau of Explosives.

* * * * *

(k) * * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks;

* * * * *

(n) Each MC 330 and MC 331 cargo tank used to transport a flammable gas, anhydrous ammonia or hydrogen chloride, refrigerated liquid must have each liquid or vapor discharge opening equipped in accordance with § 178.337–11 of this subchapter.

(o) *Chlorine cargo tanks.* Each cargo tank motor vehicle used for the transportation of chlorine must conform to the following:

(1) No piping, hose, or other means of loading or unloading may be attached to any valve, except at the time of loading or unloading. No hose, piping, or tubing used for loading or unloading may be mounted or carried on the motor vehicle. Except at the time of loading or unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter once every five loadings or once a week, whichever occurs first. Prior to each loading, the cargo tank must be inspected and the angle valves and gasketed joints must be examined and tested at a pressure of not less than 50 psig to determine that they are not leaking and are in proper condition for transportation. Any leaks must be corrected before the cargo tank is offered for transportation.

(3) Excess flow valves on the cargo tank must conform to § 178.337–11(a)(4) of this subchapter.

59. In § 173.318, paragraph (b)(1)(iii) would be revised and paragraphs (g)(3) would be added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(1) * * *

(iii) The rated relieving capacity for each pressure relief valve, pressure control valve and frangible disc must be as determined by the flow formulas in paragraph 5.3.4.4 of CGA Pamphlet S–1.2. The flow capacity testing and rating must be in accordance with Section 5 of Pamphlet S–1.2 and must be witnessed and approved by an Authorized Inspector.

* * * * *

(g) * * *

(3) Each cargo tank motor vehicle used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. The record required by § 177.840(h) of this subchapter may be used for this determination. If the examination indicates that the actual holding time of the cargo tank, after adjustment to reflect an average ambient temperature of 85 °F., is less than 90 percent of the marked rated holding time (MRHT) for the cryogenic liquid marked on the specification plate or adjacent thereto (see § 178.338–18(b) of this subchapter), the tank may not be refilled with any flammable cryogenic liquid until it is restored to its marked rated holding time value or it is re-marked with the actual marked rated holding time determined by this examination. If the name of the flammable cryogenic liquid that was transported and its marked rated holding time is not displayed on or adjacent to the specification plate, this requirement may be met by deriving the MRHT of the cargo tank for that flammable cryogenic liquid and comparing that derived MRHT with the actual holding time after adjustment.

60. In § 173.346, paragraph (a)(12) would be revised to read as follows:

§ 173.346 Poison B liquids not specifically provided for.

(a) * * *

(12) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.342, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with

internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

61. In § 173.347, paragraph (a)(3) would be revised to read as follows:

§ 173.347 Aniline oil.

(a) * * *

(3) Any cargo tank motor vehicle as prescribed in § 173.346(a)(12).

* * * * *

62. In § 173.352, paragraph (a)(5) would be revised to read as follows:

§ 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s..

(a) * * *

(5) Any cargo tank motor vehicle as prescribed in § 173.346(a)(12), except that the tank must be at least 0.250 inch thick and bottom outlets are not authorized.

* * * * *

63. In 173.353, paragraph (e) would be revised to read as follows:

§ 173.353 Methyl bromide and methyl bromide mixtures.

* * * * *

(e) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(1) The design pressure must be at least 250 psig.

(2) The tank must have sufficient outage so that it will not become filled with lading at 130 °F.

(3) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

64. In § 173.354, paragraph (a)(5) would be revised and Note 1 and footnote 1 would be removed to read as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(5) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Authorized for motor fuel antiknock compound only.

* * * * *

65. In § 173.358, paragraph (a)(14) would be revised to read as follows:

§ 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.

(a) * * *

(14) Specification MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Lading must be under no pressure except its own vapor pressure.

(ii) Only a Specification MC 330 or MC 331 cargo tank is authorized for hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate or tetraethyl pyrophosphate, liquid.

(iii) Each Specification MC 310, MC 311 and MC 312 cargo tank must have a minimum shell and head thickness of 3/16 inch for a steel tank and 0.266 inch for an aluminum tank. Each such tank must be designed for a lading weight of at least 13 pounds per gallon.

(iv) The design pressure must be at least 25 psig.

(v) Transportation is authorized by private motor carrier only.

(vi) Bottom outlets equipped with self-closing stop valves conforming to § 178.340-(11)(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

66. In § 173.359, paragraph (a)(16) would be revised to read as follows:

§ 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures; organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).

(a) * * *

(16) Specification MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Lading must be under no pressure except its own vapor pressure.

(ii) Each Specification MC 310, MC 311 and MC 312 cargo tank must have a minimum shell and head thickness of 3/16 inch for a steel tank and 0.266 inch for an aluminum tank. Each such tank must be designed for a lading weight of at least 13 pounds per gallon.

(iii) The design pressure must be at least 25 psig.

(iv) Transportation; is authorized by private motor carrier only.

(v) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

67. In § 173.369, paragraph (a)(14) would be revised to read as follows:

§ 173.369 Carbolic acid (phenol), not liquid.

(a) * * *

(14) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) The tank must have sufficient outage so that it will not become filled with lading at 130 °F.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

* * * * *

68. In § 173.373, paragraph (a)(6) would be revised to read as follows:

§ 173.373 Ortho-nitroaniline and paranitroaniline.

(a) * * *

(6) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for ortho-nitroaniline loaded in a liquefied state at a temperature not over 180 °F.

(ii) Each cargo tank must be made of steel and insulated.

(iii) The design pressure must be at least 25 psig.

(iv) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

(v) Not authorized for transportation by vessel.

69. In§ 173.374, paragraph (a)(4) would be revised to read as follows:

§ 173.374 Nitrochlorobenzene, meta or para.

(a) * * *

(4) Specification MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for para nitrochlorobenzene, solid.

(ii) Each cargo tank must be insulated and equipped with heating coils.

(iii) The design pressure must be at least 25 psig.

(iv) Not authorized for transportation by vessel.

* * * * *

PART 176—CARRIAGE BY VESSEL

70. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

71. In § 176.76, paragraph (b) would be revised to read as follows:

§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(b) * * *

(1) A cargo tank motor vehicle containing hazardous materials may be transported—

(i) On a carfloat or trailership if the material is authorized aboard a cargo vessel by § 172.101 of this subchapter, or

(ii) On a passenger ferry vessel or railroad car ferry vessel if the material is authorized aboard a passenger vessel by § 172.101 of this subchapter.

(2) [Reserved]

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

72. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

73. Part 177, Subpart A of the table of sections would be amended by revising the headings for §§ 177.800, 177.801, 177.802, and 177.814 to read as follows:

Subpart A—General Information and Regulations

Sec.

177.800 Purpose and scope.

177.801 Unacceptable hazardous materials shipments.

177.802 Inspection.

* * * * *

177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.

* * * * *

74. Sections 177.800, 177.801, 177.802 and their headings would be revised to read as follows:

§ 177.800 Purpose and scope.

(a) This part prescribes requirements, in addition to those contained in Parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common or contract carriers by motor vehicle.

(b) It is the duty of each motor carrier to make the prescribed regulations effective and to thoroughly instruct employees in relation thereto.

§ 177.801 Unacceptable hazardous materials shipments.

A hazardous material that is not prepared for transportation in accordance with the subchapter may not be accepted for transportation or transported by motor vehicle.

§ 177.802 Inspection.

(a) Records, equipment, packagings and containers under the control of a motor carrier, insofar as they affect safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department.

(b) Methods of manufacture, packaging, and storage of hazardous materials, insofar as they affect safety in transportation by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department and the initial carrier.

(c) A duly authorized representative of this Department may enter upon, inspect and examine the records and properties of motor carriers operating in commerce for the purpose of determining compliance with this subchapter.

75. Section 177.814 and heading would be revised to read as follows:

§ 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.

Each owner of a cargo tank motor vehicle and a motor carrier must comply with the reporting and record retention requirements contained in § 180.317 of this subchapter.

76. Section 177.824 would be revised to read as follows:

§ 177.824 Retesting and inspection of cargo tanks.

Except as otherwise provided in this subchapter, no motor carrier may operate a cargo tank motor vehicle containing a hazardous material unless the cargo tank motor vehicle is in conformance with the retest and inspection requirements set forth in subpart E of Part 180 of this subchapter. This paragraph does not apply to any cargo tank filled prior to the retest or inspection due date.

77. In § 177.840, paragraph (f) would be revised to read as follows:

§ 177.840 Compressed gases.

* * * * *

(f) No cargo tank motor vehicle used for transportation of chlorine may be moved, coupled or uncoupled, when any loading or unloading connections are attached to the vehicle, nor may it be left without the power unit attached unless the vehicle is chocked or equivalent means are provided to prevent motion. For additional requirements, see § 173.315(o) of this subchapter.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

78. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

79. Part 178, Subpart J of the table of sections would be amended by revising the headings for §§ 178.337, 178.340, 178.341, 178.342 and 178.343 to read as follows:

Subpart J—Specifications for Containers for Motor Vehicle Transportation.

Sec.

* * * * *

178.337 Specification MC 331; cargo tanks primarily for transportation of compressed gases as defined in the Compressed Gas Section.

* * * * *

178.340 General design and construction requirements applicable to Specification MC 306 (§ 178.341), MC 307 (§ 178.342) and MC 312 (§ 178.343) cargo tank motor vehicles.

178.341 Specification MC 306; cargo tank motor vehicle.

178.342 Specification MC 307; cargo tank motor vehicle.

178.343 Specification MC 312; cargo tank motor vehicle.

* * * * *

80. In § 178.337, the heading would be revised to read as follows:

§ 178.337 Specification MC 331; cargo tanks primarily for transportation of compressed gases as defined in the Compressed Gas Section.

* * * * *

81. In § 178.337–1, paragraphs (a)(3) and (e) would be revised to read as follows:

§ 178.337–1 General requirements.

(a) * * *

(3) Made of steel or aluminum; however, if aluminum is used, the cargo tank must be insulated and the hazardous material to be transported must be compatible with the aluminum (see §§ 173.315(a) Table Note 11, 178.337–1(e) and 178.337–2(a)(1) of this subchapter); and

* * * * *

(e) *Insulation.* (1) Compliance with the requirements for use and performance of insulation is required (see §§ 173.315(a)

Table Note 11 and 178.337-1(a)(3) of this subchapter).

(2) Each tank intended for chlorine; carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service must have suitable insulation of such thickness that the overall thermal conductance is not more than 0.08 Btu per square foot per degree F. differential per hour. The conductance must be determined at 60 °F. Insulation material used on tanks for nitrous oxide, refrigerated liquid must be noncombustible. Insulation material used on tanks for chlorine must be corkboard or self-extinguishing polyurethane foam, with minimum thickness of 4 inches.

* * * * *

82. In § 178.337-2, paragraph (c) would be revised to read as follows:

§ 178.337-2 Material.

* * * * *

(c) A cargo tank in anhydrous ammonia service must be constructed of steel. The use of copper, silver, zinc or their alloys is prohibited. Baffles made from aluminum may be used only if joined to the tank by a process not requiring postweld heat treatment of the tank.

83. Section 178.337-3 would be revised to read as follows:

§ 178.337-3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, inertial loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be calculated in accordance with Appendix G of Section VIII of the ASME Code.

(3) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed 25 percent of the minimum specified tensile strength of the metal or the maximum stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to the internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce a force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle that will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank shell exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S=\{S_t+S_l\}/2+\{[S_r-S_l]^2/4+S_s^2\}^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_t = The circumferential tensile stress due to internal pressure, in psi.

S_l = All of the tensile and compressive stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.

S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) A tank shell or head thickness less than that specified in paragraph (c) of this section may be used if the tank is supported by a frame or other form of structural support, provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated; except that steel less than 5/16 inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank. A corrosion allowance of at least 20 percent of the minimum shell and head thickness or 0.100 inch, whichever is less, must be added to the thickness requirement for a cargo tank used in chlorine or sulfur dioxide service. The head and shell thickness for chlorine tanks must be at least 5/8 inch, including corrosion allowance.

(e) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed on the head must conform with the requirements of paragraph (a) of this section.

(1) A lighweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(2) Except as prescribed in §§ 178.337–3(e)(1) and 178.337–13(d), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a paid not less than ¼ inch thick may be used when the shell or head is over ¼ inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

84. In § 178.337–4, the first sentence in paragraph (b) would be revised to read as follows:

§ 178.377–4 Joints.

* * * * *

(b) Welding procedure and welder performance must be in accordance with Section IX of the ASME Code. * * *

* * * * *

85. In § 178.337–6, paragraph (a) would be revised to read as follows:

§ 178.377–6 Closure for manhole.

(a) A cargo tank must be provided with a manhole conforming to paragraph UG–46(g)(1) and other requirements of the ASME Code.

* * * * *

86. In § 178.337–8, paragraph (b) would be revised to read as follows:

§ 178.377–8 Outlets.

* * * * *

(b) Outlets on chlorine cargo tanks must conform with § 178.337–1(c)(2).

87. In § 178.337–9, the section heading, paragraph (a) heading, and paragraphs (b) and (d)(1) would be revised to read as follows:

§ 178.337–9 Pressure relief devices, piping, values, hose and fittings.

(a) *Pressure relief devices.* * *

(b) *Piping, valves, hose, and fittings.*

(1) The burst pressure of all piping, pipe fittings, hose and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service. For chlorine service, see paragraph (b)(7) of this section.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 1000° F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each *hose coupling* must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) *Piping and fittings* must be grouped in the smallest practicable space and protected from damage as required by § 178.337–10.

(6) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used on a cargo tank, except that hose may be tested before or after installation on the tank.

(7) *Chlorine cargo tanks.* Cargo tanks used to transport chlorine must conform with the following:

(i) No hose, piping or tubing used for loading or unloading may be mounted or carried on the cargo tank motor vehicle.

(ii) Angle valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(A) For a cargo tank manufactured before January 1, 1975, to either Dwg. 104–4, dated May 5, 1958, or Dwg. 104–5, dated September 1, 1972.

(B) For cargo tank manufactured on or after January 1, 1975, to Dwg. 104–5, dated September 1, 1972.

(iii) Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

* * * * *

(d) *Refrigeration and heating coils.* (1) Refrigeration and heating coils must be securely anchored, with provision for thermal expansion. The coils must be pressure tested externally to the tank test pressure, and internally to either the tank test pressure or twice the working pressure of the heating/refrigeration system, whichever is higher. A tank may not be placed in service if any leakage occurs or other evidence of damage is found. The refrigerant or heating medium to be circulated through the coils must not be capable of causing any adverse chemical reaction with the tank in the event of leakage. The unit furnishing refrigeration may be mounted on the motor vehicle.

* * * * *

88. Section 178.337–11 would be revised to read as follows:

§ 178.337–11 Emergency discharge control.

(a) *Excess flow valves, back flow check valves and stop valves.* (1) When required by § 178.337–8(a)(2), an excess flow valve or back flow check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank.

(i) Each internal self-closing stop valve or access flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are ruptured.

(ii) Each self-closing valve or excess flow valve must be located inside the tank or at a point outside the tank where the line enters or leaves the tank. The valve seat must be located inside the tank or within a welded flange, its companion flange, a nozzle or a coupling. The installation must be made so as to assure that any undue strain which causes a failure requiring the functioning of the valve will not impair the operation of the valve.

(iii) All parts of the valve inside the tank, or within a nozzle, flange, companion flange, or coupling must be made of material not subject to corrosion or other deterioration in the presence of the lading.

(iv) Any liquid level gauging device must be constructed so that the outward flow of the tank lading does not exceed the flow through a 0.060 inch diameter opening.

(v) Each excess flow valve must close automatically at the rated flow of gas or liquid, as specified by the valve manufacturer. The flow rating of the piping, fittings, valves, and hose on each side of the excess flow valve must be at

least that of the excess flow valve. If branching or any other restriction is incorporated in the system so that the flow rating is reduced to less than that of the excess flow valve at the tank, additional excess flow valves must be located where the flow rates are reduced. The additional valves must have sufficient flow rating so that total capacity equals or exceeds the excess flow valve capacity.

(vi) An excess flow valve may be designed with a bypass, not to exceed a 0.040-inch diameter opening, to allow equalization of pressures.

(vii) On a tank over 3,500 gallons water capacity, each internal self-closing stop valve must be provided with remote means of automatic closure, both mechnical and thermal, that are installed at the ends of the tank in at least two, diagonally opposite locations. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. If the discharge connection at the tank is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in that area will activate the emergency control system. Fusible elements may not have a melting point exceeding 250 °F.

(viii) On a tank of 3,500 gallons water capacity or less, each internal self-closing stop valve must be provided with at least one remote means of automatic closure, which may be mechanical, installed at one end of the tank, away from the discharge connection area.

(2) Each liquid or vapor discharge opening in a cargo tank intended for the transportation of a flammable liquid; flammable compressed gas; hydrogen chloride, refrigerated liquid; or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop valve. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

(3) Unless otherwise specified in paragraph (c) of this section, each outlet of a cargo tank intended for the transportation of a nonflammable gas (except carbon dioxide, refrigerated liquid) must be provided with an internal self-closing stop valve or an automatic excess flow valve. Each outlet of a cargo tank intended for the transportation of a flammable liquid; a flammable liquefied gas; hydrogen chloride, refrigerated liquid; or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop valve.

(4) Excess flow valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(i) For a cargo tank manufactured before January 1, 1975:

(A) A valve conforming to either Dwg. 101–4, dated May 16, 1969, or Dwg. 101–5, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to either Dwg. 101–3, dated May 16, 1973, or Dwg. 101–5, dated September 1, 1973, must be installed under each gas angle valve.

(ii) For a cargo tank manufactured on or after January 1, 1975:

(A) A valve conforming to Dwg. 101–6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to Dwg. 106–5, dated September 1, 1973, must be installed under each gas angle valve.

(b) *Shut-off valves.* Each filling and discharge line must be provided with a manual stop valve located as close to the tank a practicable. However, if an automatic internal self-closing stop valve is used, the manual stop valve must be located in the line outboard of the hose connection. A single so-called "stop-check" or excess flow valve may not be used to satisfy the requirements of both this paragraph and of paragraph (a)(4) of this section, except as provided in paragraph (c) of this section.

(c) The requirements in paragraph (a) of this section do not apply to:

(1) A vapor or liquid discharge opening of less than 1¼ inch NPT equipped with an excessive flow valve together with a manually operated external self closing stop valve, in place of a remotely controlled internal self-closing stop valve.

(2) A vapor or liquid discharge opening of 1¼ inch NPT equipped with an excess flow valve together with a manually operated external stop valve installed before October 1, 1984.

(3) An engine fuel line, on a truck-mounted tank, of not over ¾ inch NPT equipped with a valve having an integral excess flow valve.

89. In § 178.337–14, paragraph (b) would be revised to read as follows:

§ 178.337–14 Gauging devices.

* * * * *

(b) *Pressure gauges.* (1) See § 173.315(h) of this subchapter.

(2) Each cargo tank used in carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service must be provided with a suitable pressure gauge. A shut-off valve must be installed between the pressure gauge and the tank.

* * * * *

90. Section 178.337–15 would be revised to read as follows:

§ 178.337–15 Pumps and compressors.

(a) *Liquid pumps or gas compressors,* if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power takeoff or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

(b) A liquid chlorine pump may not be installed on a cargo tank intended for the transportation of chlorine.

91. In § 178.338–18, the first and second sentences of paragraph (a) would be revised to read as follows:

§ 178.337–18 Marking.

(a) The tank vehicle manufacturer must supply, and the owner must obtain, a tank manufacturer's data report as required by the ASME Code, and a certificate stating that the completed cargo tank motor vehicle conforms in all respects with Specification MC 331 and the ASME Code. The certificate must be signed by a responsible official of the manufacturer and an Authorized Inspector. * * *

* * * * *

92. Section 178.338–3 and heading would be revised to read as follows:

§ 178.338–3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, internal loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(3) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed 25 percent of the minimum specified tensile strength of the metal or the maximum stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce a force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle that will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank shell exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S = (S_t + S_l)/2 + [((S_t - S_l)^2)/4 + S_s^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_t = The circumferential tensile stress due to internal pressure, in psi.

S_l = All of the tensile and compressive stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.

S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) A tank shell or head thickness less than that specified in paragraph (c) of this section may be used if the tank is supported by a frame or other form of structural support, provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated; except that steel less than 5/16 inch thick may not be used for the shell or heads unless the tank is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed on the head must conform with the requirements of paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(2) Except as prescribed in §§ 178.338-3(e)(1) and 178.338-338-13(a), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head is over 3/16 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

93. In § 178.338-3, paragraph (b) would be revised to read as follows:

§ 178.338-8 Pressure relief devices, piping, valves, and fittings.

* * * * *

(b) * * *

(1) The burst pressure of all piping, pipe fittings, hoses and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing materials may not be lower than 1000 °F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of treads.

(3) Each *hose coupling* must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(6) Each valve must be suitable for the tank design pressure at the tank design service temperature.

(7) All fittings must be rated for the maximum tank pressure and suitable for the coldest temperature to which they will be subjected in actual service.

(8) All piping, valves and fittings must be grouped in the smallest practicable space and protected from damage as required by § 178.338–10.

(9) When a pressure-building coil is used on a tank designed to handle oxygen or flammable ladings, the vapor connection to that coil must be provided with a valve or check valve as close to the tank shell as practicable to prevent the loss of vapor from the tank in case of damage to the coil. The liquid connection to that coil must also be provided with a valve.

94. Section 178.338–17 would be revised to read as follows:

§ 178.338–17 Pumps and compressors.

(a) *Liquid pumps and gas compressors*, if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power takeoff or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank. Proper precautions must be taken to assure that no grease or oil contacts the lading when such pumps or compressors are used in oxygen, refrigerated liquid service.

(b) A valve or fitting made of aluminum with internal rubbing or abrading aluminum parts that may come in contact with oxygen in the cryogenic liquid form may not be installed on any cargo tank used to transport oxygen, cryogenic liquid.

95. In Part 178, §§ 178.340, 178.341, 178.342 and 178.343 and their headings would be revised to read as follows:

§ 178.340 General design and construction requirements applicable to Specification MC 306 (§ 178.341), MC 307 (§ 178.342), and MC 312 (§ 178.343) cargo tank motor vehicles.

§ 178.340–1 General requirements.

(a) Specification MC 306, MC 307, and MC 312 cargo tank motor vehicles must conform with this section in addition to the requirements of the applicable specification contained in § 178.341, § 178.342, or § 178.343.

(b) All specification requirements are minimum requirements.

(c) *Definitions.* The following terms apply to §§ 178.340, 178.341, 178.342 and 178.343.

"Appurtenance" means any cargo tank accessory attachment that has no lading retention or containment function and provides no structural support to the cargo tank.

"Baffle" means a device that deflects, checks or regulates fluid motion in a tank.

"Bottom damage protection zone" means the bottom ⅕ of a cargo tank, the area that is most vulnerable to damage as a result of collision with another vehicle or object.

"Bulkhead" means a tank head shared by two cargo tanks.

"Charging line" means a hose, tube, pipe, or similar device used to pressurize a tank with material other than the lading.

"Companion flange" means one of two mating flanges where the flange faces are in contact or separated only by a thin leak sealing gasket.

"Connecting structure" means the structure joining two cargo tanks.

"Constructed and certified in conformance with the ASME Code" means a cargo tank constructed, inspected, certified and stamped by an Authorized Inspector.

"Constructed in accordance with the ASME Code" means a cargo tank having a design pressure below 15 psig or other design features authorized by DOT that fall outside the scope of the ASME Code, and thus cannot be certified and stamped as an ASME pressure vessel. Notwithstanding this limitation on design pressure, such tank must meet all the requirements of the ASME Code, except as modified by the applicable specification and be constructed by a manufacturer holding a current ASME certificate of authorization.

"Design pressure" See § 178.340–1(l).

"Fail-safe device" means a device designed to fail sacrificially under load in order to prevent damage to any lading retention part or device.

"Flange" means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment. For size and shape, see ANSI B16.5.

"Inspection pressure" means the pressure used to determine leak tightness of the tank when testing with pneumatic pressure.

"Internal self-closing stop valve" means a self-closing stop valve designed so that the valve seat and the self-stored energy source are located inside the tank, or within a welded flange, its companion flange, a nozzle or a coupling attaching the stop valve to the tank.

"Lading" means the hazardous material contained in a cargo tank.

"Loading/unloading connection" means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose or device is attached.

"Loading/unloading outlet" means the tank outlet used for normal loading/unloading operations.

"Loading/unloading stop valve" means the stop valve farthest from the tank loading/unloading outlet to which the lading loading/unloading connection is attached.

"Manufacturer" means any person engaged in the manufacture or assembly of a cargo tank or cargo tank equipment, including any person who imports a cargo tank or cargo tank equipment for resale in the United States.

"Maximum allowable working pressure" or "MAWP" See § 178.340–1(k).

"Multispecification cargo tank motor vehicle" means a cargo tank motor vehicle equipped with cargo tanks fabricated to more than one cargo tank specification.

"Nozzle" means the subassembly consisting of a pipe section with a welded or forged flange on one end in which the flange is an integral part of the neck extension.

"Outlet" means any opening in the shell or head of a tank, including the means for attaching a closure; except that the following are not outlets: A threaded opening securely closed during transportation with a threaded plug, a flanged opening securely closed during transportation with a bolted or welded blank flange, or a manhole.

"Outlet stop valve" means the stop valve at the tank loading/unloading outlet.

"Pipe coupling" means a fitting with internal or external threads on both ends.

"Rear bumper" means the structure designed to prevent a vehicle or object from underriding the rear of a motor vehicle. See § 393.86 of this title.

"Rear-end tank protection device" means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

"Rollover damage protection zone" means the upper ⅔ of a cargo tank, the area that is most vulnerable to damage in the event of an overturn.

"Self-closing stop valve" means a stop valve held in the closed position by means of a self-stored energy, which opens only by application of an external force and which closes when the external force is removed.

"Shell" means the circumferential portion of a tank defined by the basic design radii excluding the closing heads.

"Stop valve" means a valve that stops the flow of lading.

"Sump" means a protrusion from the bottom of a tank shell designed to facilitate complete unloading of the lading.

"Tank" means a receptacle, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

"Test pressure" means the pressure to which a tank is subjected to determine pressure integrity.

"Toughness of material" means the capability of a material to absorb relatively large quantities of energy and is represented by the area under the stress strain curve indicating the energy absorbed per unit volume of the material up to the point of rupture.

"Vacuum tank" means a tank that is loaded by reducing the pressure in the tank to below atmospheric pressure.

"Variable specification cargo tank" means a cargo tank that is constructed in accordance with one specification, but which may be altered to meet another specification by changing relief devices, closures, lading discharge devices, and other lading retention devices.

"Void" means the space between tank heads or bulkheads and a connecting structure.

(d) A manufacturer of a cargo tank must hold a current ASME certificate of authorization.

(e) All construction must be certified by an Authorized Inspector.

(f) Each cargo tank must be designed and constructed in conformance with the requirements of the applicable cargo tank specification. Each cargo tank with an internal design pressure of 15 psig or greater must be "constructed and certified in conformance with the ASME Code", except as limited or modified by the applicable cargo tank specification. Each cargo tank with an internal design pressure less than 15 psig must be "constructed in accordance with the ASME Code", except as limited or modified by the applicable cargo tank specification.

(g) Requirements relating to parts and accessories on motor vehicles, which are contained in Part 393 of the Federal Motor Carrier Safety Regulations of this title, are incorporated into these specifications.

(h) Any additional requirement prescribed in Part 173, 177, or 180 of this subchapter that pertain to the transportation of specific ladings are incorporated into these specifications.

(i) *Cargo tank motor vehicle composes of multiple cargo tanks.*

(1) A cargo tank motor vehicle composed of more than one cargo tank may be constructed with the cargo tanks made to the same specification or to different specifications. Each cargo tank must conform in all respects with the specification for which it is certified.

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must conform with the structural design requirements in § 178.340–3. Any void within the connecting structure must be vented to the atmosphere by a drain of at least 1 inch inside diameter which shall be kept open at all times. The connecting structure must have inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure and cargo tank surfaces. Each drainage and inspection opening must be accessible.

(j) *Variable specification cargo tank.* A cargo tank that may be physically altered to conform to another cargo tank specification must have the required physical alterations to convert from one specification to another clearly indicated on the variable specification plate.

(k) *Maximum Allowable Working Pressure (MAWP).* The MAWP for each cargo tank must be greater than or equal to the largest of the following:

(1) The MAWP, as stated in the ASME Code;

(2) Vapor pressure of the most volatile lading, at 115 °F. (expressed in psig); or

(3) The maximum pressure used to load or unload the lading.

(l) *Design Pressure.* The design pressure for each cargo tank must be greater than or equal to the largest of the following:

(1) The minimum pressure prescribed in the individual specification;

(2) The pressure prescribed for the lading in Part 173; or

(3) 1.2 times the sum of the MAWP, excluding loading and unloading pressure, plus the maximum static pressure exerted by the lading at the maximum lading density.

§ 178.340–2 Material and material thickness.

(a) All material for shell, heads, bulkheads, and baffles must be metal compatible with the lading intended to be transported therein and must conform to Section II, Parts A and B, of the ASME Code.

(b) *Minimum thickness.* (1) The minimum thickness for the shell and heads must be in accordance with the ASME Code and must be such that the maximum stress levels specified in § 178.340–3 (b), (c) or (d) of this subpart are not exceeded.

(2) For mild steel, in no case may the shell and head thickness be less than 0.110 inch, with a guaranteed minimum tensile strength of 45,000 psi and a guaranteed elongation of 20 percent.

(3) For material other than the mild steel, the minimum thickness for the shell and heads must be obtained from the following formula, but in no case may the thickness be less than 0.090 inch:

$$e_1 = (92.2e_o)/(R_{m1}A_1)^{1/3}$$

Where:

e_o = Required thickness of the reference steel (See § 178.340–2 (b)(2)), in inches;

e_1 = Equivalent thickness of the material used, in inches;

R_{m1} = Specified minimum tensile strength of the material used, in psi; and

A_1 = Specified minimum percentage elongation of the material used, in percent times 100 (i.e., if 20% use 20.0)

(4) If the maximum allowable stress value is based on actual tensile strength, yield strength or elongation of the material used to fabricate the tank—

(i) The tensile strength, yield strength or the elongation values may not be greater than 120 percent of the minimum specified in the ASME Code; and

(ii) The test records and certification of test results must be approved by an Authorized Inspector and retained by the tank manufacturer for a period of not less than 15 years and made available to any duly identified representative of the Department or the owner of the tank.

(c) *Corrosion or abrasion protection.* A cargo tank or a part thereof, subject to thinning by corrosion, mechanical abrasion, or any other action, must be protected by providing the tank or part with a suitable increase in thickness of material, a lining, or some other suitable method of protection.

(1) *Corrosion allowance.* Material added for corrosion allowance need not be of uniform thickness if different rates of attack can reasonably be expected for various areas of the tank.

(2) *Lining.* Lining material must consist of a nonporous, homogeneous material not less elastic than the parent metal and substantially immune to attack by the lading. The lining material must be imperforate when applied, and bonded or attached by other appropriate means. Any joint or seam in the lining must be made by fusing the materials together, or by other satisfactory means.

§ 178.340-3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, inertial loadings, and the effect of temperature gradients resulting from loading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be calculated in accordance with Appendix G of Section VIII of the ASME Code.

) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle which will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S=(S_x+S_z)/2+[((S_y-S_z)^2)/4+S_s^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement in psi.

S_y = The circumferential tensile stress due to internal pressure, in psi.

S_z = All of the tensile and compression stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.

S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) If a tank is supported by a vehicle frame or other form of structural support, a tank shell or head thickness less than that specified in paragraph (c) of this section may be used provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank.

(1) Structural members, the suspension subframe, accident protection devices and external rings should be used as sites for attachment of appurtenances and other accessories to the cargo tank when practicable.

(2) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading rention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(3) Except as prescribed in paragraphs (e)(1) and (e)(2) of this section, the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading rention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than $\frac{3}{16}$ inch thick may be used when the shell or head is over $\frac{3}{16}$ inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

§ 178.340-4 Joints.

(a) All joints between tank shell, heads, baffles, baffle attaching rings, and bulkheads must be welded in conformance with the ASME Code.

(b) Where practical all welds must be easily accessible for inspection.

§ 178.340-5 Manhole Assemblies.

(a) Each cargo tank must be accessible through a manhole at least 15 inches in diameter.

(b) Unless otherwise provided in the applicable individual specification, each manhole must have a secure closure that is structurally capable of withstanding, without leakage or permanent deformation, static internal fluid pressures of at least 36 psig, or test pressure, whichever is greater.

(c) Each manhole cover must be fitted with a safety device that prevents the manhole cover from opening fully when internal pressure is present.

(d) Each manhole and filler cover must be secured with fastenings that will prevent opening of the covers as a result of vibration under normal transporation conditions or shock impact due to an accident.

§ 178.340-6 Supports and anchoring.

(a) A cargo tank with a frame not integral to the tank must have the tank secured by restraining devices to eliminate any motion between the tank and frame that may abrade the tank shell due to the stopping, starting, or turning of the vehicle. The design calculations of the support elements must include the stresses indicated in § 178.340-3(b). Such restraining devices must be readily accessible for inspection and maintenance, except that insulation and jacketing are permitted to cover the restraining devices.

(b) A cargo tank designed and constructed so that it constitutes in whole or in part the structural member used in lieu of a frame must be supported in such a manner that the resulting stress levels in the tank do not exceed those specified in § 178.340-3(a). The design calculations of the support elements must include the stresses indicated in § 178.340-3(b).

§ 178.340-7 Circumferential reinforcements.

(a) A tank with a shell thickness of less than 3/16 inch must be circumferentially reinforced with bulkheads, baffles, or ring stiffeners, or any combination thereof, in addition to the tank heads.

(1) Circumferential reinforcement must be located so that the thickness and tensile strength of the shell material in combination with the frame and circumferential reinforcement produces structural integrity at least equal to that prescribed in §§ 178.340-3(a) and (b).

(2) Circumferential reinforcement must be located within 1 inch of points where discontinuity in longitudinal shell sheet alignment exceeds 10 degrees unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.340-3(a).

(b) No reinforcement may cover any circumferential joint.

(c) A baffle or baffle attachment ring, if used as a required reinforcement member, must produce structural integrity at least equal to that prescribed in § 178.340-3.

(d) *Stiffening rings.* (1) Stiffening rings, when used to conform with this section, must be as prescribed in the ASME Code.

(2) Stiffening rings must be of the type that can be visually inspected. Hat shaped or open channel rings precluding visual inspection of the tank shell are prohibited.

§ 178.340-8 Accident Damage Protection.

(a) *General.* Each cargo tank and its associated piping, closures, and values must be designed and constructed to minimize the potential for the loss of lading due to an accident. The cargo tank design and construction must take into consideration forces relating to puncture, abrasion, crush, dynamic pressure, and impact and inertial loadings:

(1) Any projection from the cargo tank shell that retains lading, e.g., domes, sumps, washouts, must be designed, constructed, and installed so as to minimize the possibility of impact during an accident which may adversely affect the lading retention integrity of the cargo tank. Such projections must be constructed from a material of a toughness equivalent to that of the tank shell and with a thickness at least equal to that specified by the appropriate cargo tank specification. Any projection that extends more than two inches from the tank shell must have accident damage protection devices as specified in this section, or when not so protected, the projection must:

(i) Be 125 percent as strong as the otherwise required accident damage protection device, or

(ii) Conform with the requirements of paragraph (a)(3) of this section.

(2) Outlets, valves, closures, associated piping, or any devices that if damaged in an accident could result in a loss of lading from the cargo tank must be protected by accident damage protection devices as specified in this section, or when not so protected these parts must:

(i) Be 125 percent as strong as the otherwise required accident damage protection device; or

(ii) Conform with the requirements of paragraph (a)(3) of this section.

(3) Accident damage protection devices attached to the shell of a cargo tank must be designed, constructed, and installed so as to maximize the distribution of loads to the shell and minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Each accident damage protection device must be designed to prevent loss of the lading retention capability of the cargo tank by failure of the device. Accident induced stress resulting from the accident damage protection device requirements in combination with the stresses from the tank operating at the design pressure may not result in a tank shell stress greater than 75 percent of the ultimate strength of the tank shell material.

(4) Piping that extends beyond an accident damage protection device must be equipped with a stop-valve and fail-safe device located within the accident damage protection device to prevent any accidental loss of lading. The fail-safe device must be located in the piping system outboard of the stop-valve. The fail-safe device must be designed to prevent damage to the stop-valve and to any piping between the tank outlet and the stop-valve due to loads transferred by the piping in an accident.

(5) All manhole covers, filling covers, washout covers, piping and stop-values that retain lading during transportation must be designed and fabricated to withstand all applicable dynamic and inertial loads resulting from an accident in which the cargo tank would be expected to retain its containment integrity without loss of lading.

(6) *Minimum road clearance.* The minimum allowable road clearance of any cargo tank component or protection device located between any two adjacent axles on a vehicle or vehicle combination shall be at least one-half inch for each foot separating such axles, and in no case less than 12 inches.

(b) *Bottom damage protection.* Each outlet, projection or piping located in the bottom damage protection zone that could be damaged in an accident thereby resulting in the loss of lading must be protected by a bottom damage protection device or must be 125 percent as strong as the otherwise required bottom damage protection device.

(1) A bottom damage protection device must be able to withstand or deflect away from the cargo tank an

impact equivalent to an energy of 275,000 foot-pounds applied to the bottom damage protection device at any point from any direction (front, side, rear or bottom) over an area not greater than 6 square feet, based on the ultimate strength of the material.

(2) A lading discharge opening equipped with an internal self-closing stop valve need not conform with paragraph (b)(1) of this section provided it is protected so as to reasonably assure against the accidental loss of lading. Protection for lading discharge piping must be provided by a fail-safe device located outboard of each internal self-closing stop valve and within 4 inches of the major radius of the tank shell. The fail-safe device must break under strain at no more than 80 percent of the strength of the shell material and leave the internal self-closing stop valve and its attachment to the tank intact and capable of retaining lading.

(c) *Rollover Damage Protection.* Each closure for an opening, including but not limited to filling, manhole, or inspection openings, and each valve, fitting, pressure relief device, or other accessory located in the rollover damage protection zone must be protected by being enclosed inside the body of the tank, by being enclosed inside a rollover damage protection device, or by being 125 percent as strong as the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand a load normal and tangential to the tank shell equal to at least twice the weight of the loaded cargo tank motor vehicle, based on the ultimate strength of the material used. These design loads may be considered independently. If more than one rollover protection device is used, each device must be capable of carrying at least one-fourth the required total tangential load and its proportionate share of the load normal to the tank shell. The design must be proven capable of carrying the required loads by calculations, tests or a combination of tests and calculations.

(2) A rollover damage protection device that would otherwise allow the accumulation of liquid on the top of the tank, must be provided with a drain that directs the liquid to a safe point of discharge away from any structural component of the cargo tank motor vehicle.

(d) *Rear-end tank protection.* Each cargo tank shall be provided with a rear-end tank protection device to protect the cargo tank and piping in the event of a rear-end collision and minimize the possibility of any part of the colliding object damaging the tank. The outboard surface of the rear-end tank protection device shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while in transit. This protection device must be designed to successfully absorb (i.e. incur no damage that will cause leakage of lading) the impact of the cargo tank motor vehicle loaded at its rated payload, with a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the materials used. Such impact must be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle. The rear-end tank protection device must be of a width and height adequate to protect the cargo tank, and all the valves, fittings and piping located at the rear of the cargo tank, from damage that could result in loss of lading.

§178.340-9 Pumps, piping, hoses and connections.

(a) Each loading or unloading pump mounted on a cargo tank motor vehicle must be provided with an automatic means to prevent the pressure from exceeding the design pressure of the tank and tank-mounted equipment.

(b) Each hose, piping, stop valve, lading retention fitting, and closure for each cargo tank must be designed for a bursting pressure of at least 100 psig, and not less than four times the cargo tank design pressure. Each hose coupling must be designed for a bursting pressure of not less than 120 percent of the design bursting pressure of the hose and must be so designed that there will be no leakage when connected.

(c) Suitable provision must be made to allow for and prevent damage due to expansion, contraction, jarring, and vibration. Slip joints may not be used for this purpose.

(d) Any heating device, when installed, must be so constructed that the breaking of its external connections will not cause leakage of the tank lading.

(e) Any gauging, loading, or charging device, including associated valves, must be provided with an adequate means of secure closure to prevent leakage.

(f) Each loading/unloading or charging line must be constructed with sufficient strength, or be protected by a fail safe device, such that any load applied by loading/unloading or charing lines connected to the cargo tank cannot cause damage resulting in loss of lading from the cargo tank.

(g) Use of a nonmetallic pipe, valve or connection that is not as strong and heat resistant as the tank material is authorized only if such attachment is located outboard of the product retention system.

§ 178.340-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent tank rupture or collapse under any condition of overpressurization or vacuum resulting from tank heating, cooling, loading or unloading.

(b) *Type and construction of relief systems and devices.* (1) Each cargo tank must be provided with a primary pressure relief system consisting of one or more spring-loaded pressure relief valves. A secondary pressure relief system consisting of another spring-loaded pressure relief valve in parallel with the primary pressure relief system may be used to augment the total venting capacity of the cargo tank. Non-reclosing pressure relief devices are not authorized in any cargo tank except when in series with a spring-loaded pressure relief valve.

(2) If a frangible disc is inserted in series with a spring-loaded valve, the space between the frangible disc and the value must be provided with a suitable tell-tale indicator to permit detection of any frangible disc pinholing or leakage which may cause a malfunction of the pressure relief system. The frangible disc must rupture at a tank pressure within the range specified in paragraph (d)(1) of this section.

(3) Each pressure relief system must be designed to prevent loss of lading from the system in case of pressure surges, vehicle upset or accident. Each pressure relief system must be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation. Each pressure actuated relief system must function in the event of sustained pressure rise in excess of the prescribed set pressure.

(4) Each spring-loaded pressure relief valve must be constructed and installed in a manner to prevent unauthorized adjustment of the relief setting.

(5) No shut-off valve of other device that could prevent venting through the pressure relief system may be installed in a pressure relief system.

(6) The pressure relief system must be mounted, shielded and drained so as to eliminate the accumulation of material that could impair the operation or discharge capability of the system by freezing, corrosion or blockage.

(c) *Location of relief devices.* Each pressure relief device must communicate with the vapor space of the tank in a position as near as possible to the longitudinal and transverse center of the tank. The discharge from any device must be unrestricted. Protective devices which deflect the flow of vapor are permissible provided the required vent capacity is maintained.

(d) *Settings of pressure relief system*—(1) *Primary pressure relief systems.* Unless othewise prescribed in the applicable individual specification, each primary pressure relief valve must be set to function at design pressure. For all tanks, the spring-loaded value must close after discharge at a pressure not less then 90 percent of the set-to-discharge pressure and remain closed at lesser pressures.

(2) *Secondary pressure relief system.* Each spring-loaded pressure relief valve used as a secondary relief device may not be set-to-discharge at a pressure greater than 125 percent of the design pressure of the cargo tank.

(e) *Venting capacity of pressure relief systems.* The pressure relief system (primary and secondary, including any piping) in each tank must have sufficient venting capacity to limit the tank internal pressure to a maximum of 130 percent of the tank's design pressure. This total venting capacity may not be less than that shown in Table I of this paragraph.

(1) *Primary pressure relief systems.* Unless otherwise specified in the applicable individual specification, the primary pressure relief system must have a minimum venting capacity of 12,000 SCFH per 350 square feet of exposed tank area, but in any case at least one fourth the required total venting capacity for the cargo tank.

(2) *Secondary pressure relief system.* If the primary pressure relief system does not provide the required total venting capacity, additional capacity must be provided by a secondary pressure relief system.

TABLE I.—Minimum Emergency Vent Capacity in Cubic Feet; Free Air/Hour (14.7 psia and 60 °F.)

Exposed area square feet	Cubic feet, free air per hour
20	15,800
30	23,700
40	31,600
50	39,500
60	47,400
70	55,300
80	63,300
90	71,200
100	79,100
120	94,900
140	110,700
160	126,500
180	142,300
200	158,100
225	191,300
250	203,100
275	214,300
300	225,100
350	245,700
400	265,000
450	283,200
500	300,600
550	317,300
600	333,300
650	348,800
700	363,700
750	378,200
800	392,200
850	405,900
900	419,300
950	432,300
1,000	445,000

Note 1: Interpolate for intermediate sizes.

(f) *Certification of pressure relief devices.* The manufacturer of any pressure relief device, including valves, frangible discs, vacuum vents and combination devices, must certify that the device model was designed and tested in accordance with this section and the appropriate cargo tank specification. The certificate must contain sufficient information to describe the device and its performance. The certificate must be signed by a responsible official of the manufacturer and the Authorized Inspector who approved the flow capacity certification.

(g) *Rated flow capacity certification test.* (1) Each pressure relief device model must be successfully flow capacity certification tested prior to first use. Devices having one design, size and set pressure are considered to be one model. The testing requirements are as follows:

(i) At least 3 devices of each specific model must be flow capacity tested at a pressure not greater than 130 percent of the design pressure of the cargo tank. For a device to be certified, the capacities of the devices tested must fall within a range of plus or minus 5 percent of the average for the devices tested.

(ii) The rated flow capacity of a device model may not be greater than 90 percent of the average value for the devices tested.

(iii) The rated flow capacity derived for each device model must be approved by an Authorized Inspector.

(h) *Marking of pressure relief devices.* Each pressure relief device must be permanently marked with the following:

(1) Manufacturer's name;

(2) Model number;

(3) Set-to-discharge pressure, in psig; and

(4) Rated flow capacity, in SCFH at the rating pressure, in psig.

§ 178.340–11 Tank Outlets.

(a) Each tank outlet that may contain lading in any tank attitude must be equipped with an stop valve or other leak tight closure in accordance with the following (such tank outlets, closures and associated piping must be protected in accordance with § 178.340–8):

(1) Each loading/unloading outlet must be equipped with a external self-closing stop valve located as close as possible to the tank shell or with an internal self-closing stop valve that is located inside the tank, within a welded flange, its companion flange, a nozzle or a coupling. Each internal or external self-closing stop valve must be fitted with a remotely activated means of closure located more than 10 feet from the stop valve, as specified below. Cable linkage to these closures must be corrosion resistant and effective in all types of environment and weather. Any loading/unloading connecton extending beyond the self-closing stop valve must be fitted with another manually or mechanically operated stop valve at the end of such connection.

(i) For cargo tanks intended for flammable, pyrophoric, oxidizing or Poison B liquids, the remote means of closure must be activated for closure by manual or mechanical means and in case of fire by an automatic heat activated means. Thermally activated closures must activate at a temperature not over 250 °F.

(ii) For cargo tanks intended exclusively for a lading other than those mentioned in paragraph (a)(1)(i) of this section, the remote means of closure may be actuated by manual or mechanical means only.

(2) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop valve or other leak tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop valve at the end of such connection.

(b) A loading/unloading outlet designed and installed so that a ruptured loading/unloading line would not result in release of lading by gravity or pressure need not be equipped with a self-closing stop valve.

§ 178.340-12 Gauging devices.

Each cargo tank, except a tank intended to be filled by weight, must be equipped with a gauging device that indicates the maximum permitted liquid level to an accuracy of 0.5 percent. Gauge glasses are not permitted.

§ 178.340-13 Pressure tests.

(a) Each tank must be pressure tested in accordance with this section and § 178.341-13(a), § 178.342-13(a) or § 178.343-13(a), as applicable.

(b) Each tank must be tested hydrostatically or pneumatically. Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure. Every closure, except the pressure relief device and a loading and unloading venting device rated at less than the prescribed test pressure must be in place during the test. If the venting device is not removed during the test such device must be rendered inoperative by a clamp, plug or other equally effective restraining device, which may not prevent the detection of leaks, or damage the device, and which must be removed immediately after the test is completed.

(1) *Hydrostatic method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, the temperature of which may not exceed 100 °F. The tank must then be pressurized as prescribed in the applicable specifications. The pressure must be gauged at the top of the cargo tank. The cargo tank must hold the prescribed test pressure for at least 10 minutes during which time the tank must be inspected for leakage, bulging or other defect.

(2) *Pneumatic method.* A pneumatic test may be used in place of the hydrostatic test. Due regard must be taken because of the potential hazard involved in a pneumatic test. The cargo tank must be pressurized with air or similar gas. Test pressure must be reached gradually by increasing the pressure to one-half of test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until test pressure is reached and held for at least 5 minutes. The pressure must then be reduced to inspection pressure which must be maintained while the entire cargo tank surface is inspected for leakage or other sign of defects. The inspection method must consist of coating the entire surface of the tank, particularly each joint, with a solution of soap and water or other equally sensitive method. Suitable safeguards must be provided to protect employees and other persons should a failure occur.

(c) The cargo tank with all its accessories in place and operable must be leak tested at not less than 80 percent of design pressure, or 3 psig, whichever is higher, with the pressure maintained for at least 5 minutes.

(d) Any cargo tank that leaks, bulges or shows any other sign of defect while being tested in accordance with paragraphs (b) and (c) of this section must be suitably repaired and successfully retested. The retest after any repair must use the same method of test under which the cargo tank was originally rejected.

§ 178.340-14 Marking.

(a) *General.* The manufacturer shall certify that each cargo tank motor vehicle has been designed, constructed and tested in accordance with the applicable Specification MC 306, MC 307 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this part) cargo tank requirements, and the ASME Code. The certification shall be accomplished by marking the tank as prescribed in paragraphs (b) and (c) of this section and by preparing the certificate prescribed in § 178.340-15.

(1) *Multi-cargo tank motor vehicle.* Each cargo tank of a multi-tank cargo tank motor vehicle must be marked as prescribed in paragraph (b) of this section. For each cargo tank fabricated to the requirements of a different specification, details pertaining to the multispecification cargo tank motor vehicle configuration must be clearly indicated on the manufacturer's certificate and on the specification plate.

(2) *Variable specification cargo tank.* The alterations that must be performed in order for the tank to be modified from one specification to another must be clearly indicated on the manufacturer's certificate and on the variable specification plate.

(b) *Nameplate.* On the left side near the front of each tank, a corrosion resistant metal nameplate must be permanently affixed, by brazing or welding around its perimeter. The nameplate must be plainly marked, in English, by stamping, embossing, or other means of forming letters into the metal of the plate, in characters at least 3/16 inch high. The following information, in addition to that required by the ASME Code, must be included (parenthetical abbreviations may be used):

(1) DOT Specification number MC XXX (DOT MC XXX), where "XXX" is replaced with the applicable specification number.

(2) Original test date (Orig. Test Date).

(3) Tank design pressure, in psig (Design Pressure).

(4) Tank test pressure, in psig (Test Pressure).

(5) Tank design temperatures range, in degrees Fahrenheit (Design Tem. —— °F to —— °F).

(6) Nominal water capacity, in gallons (Water Cap.)

(7) Maximum design density of lading, in pounds per gallon (Max. Design Density Lading).

(8) Material specification number shell (Mat. Spec.—shell yyy * * *), where "yyy" is replaced with the alloy designation and "* * *" by the alloy type).

(9) Material specification number—heads (Mat. Spec.—heads yyy * * *), see paragraph (b)(8) of this section.

(10) Minimum thickness—shell, in inches (Min. Thick—shell top ——, side ——, bottom ——).

(11) Minimum thickness—heads, in inches (Min. Thick—head).

(12) Weld material (Weld Mat.).

(c) *Specification plate.* An additional plate, a corrosion resistant metal specification plate, must be affixed as prescribed by paragraph (d) or (e) of this section. The specification plate must be marked in English, by stamping, embossing, or other means of forming letters into the metal of the plate, in characters at least 3/16 inch high, with the information specified in paragraph (b) of this section and, in addition, the following (parenthetical abbreviations may be used):

(1) Cargo tank motor vehicle manufacturer (CTM Veh. Mfr.).

(2) Cargo tank motor vehicle certification date (CTM Veh. Cert. Date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT Mfr.);

(4) Cargo tank date of manufacturer (CT Date of Mfr.).

(5) Maximum design static pressure, in psig (Max. Design Static Press.).

(6) Exposed surface area, in square feet.

(7) Maximum weight of lading, in pounds (Max. Lading Wt.).

(8) Maximum loading rate, in gallons per minute at maximum loading pressure, in psig, (Max. Load. Rate —— gpm at —— psig).

(9) Maximum unloading rate, in gallons per minute at maximum unloading pressure in psig, (Max. Unload Rate —— gpm at —— psig).

(10) Lining material (Lining).

(11) Heating system design pressure, in psig, if applicable (Heating Sys. Press).

(12) Heating system design temperature, in degrees Fahrenheit, if applicable (Heating Sys. Temp).

(d) *Uninsulated cargo tanks.* For a cargo tank motor vehicle without an insulation jacket, having one or more cargo tanks all made to the same specification and not separated by any void space, the nameplate specified in paragraph (b) of this section is not require, provided—

(1) A specification plate is permanently affixed, by brazing or welding around its perimeter, to each cargo tank on the left side near the front, a place readily accessible for inspection; and

(2) The information required on the specification plate by paragraph (c) of this section must be listed from front to rear in the order of the corresponding cargo tanks.

(e) *Insulated cargo tanks.* For a cargo tank motor vehicle, with an insulation jacket, having one or more cargo tanks all made to the same specification and not separated by any void space, the nameplate specified in paragraph (b) of this section must be affixed to each tank. In addition,—

(1) A specification plate must be welded, brazed or riveted to the jacket or to an integral supporting structure on the left side near the front, in a place readily accessible for inspection; and

(2) The information required on the specification plate by paragraph (c) of this section is listed from front to rear in the order of the corresponding cargo tanks.

(f) *Variable specification cargo tank.* Each variable specification cargo tank must have a corrosion resistant metal variable specification plate permanently affixed, by brazing or welding, in a place readily accessible for inspection near the specification plate. The mounting of this variable specification plate must be secure and allow it to be configured so that only the plate identifying the applicable specification under which the tank is being operated is legible. The variable specification plate must be plainly marked, in English, in characters at least 3/16 inch high. The following information must be included (parenthetical abbreviations are authorized):

DOT Specification MC XXX (DOT MC XXX) where "XXX" is replaced with the applicable specification number.

Equipment required	Required rating—to meet the applicable specification
Pressure relief devices:	
Pressure actuated type	
Fusible type	
Frangible type	
Lading discharge devices	
Top	
Bottom	

Equipment required	Required rating—to meet the applicable specification
Pressure unloading fitting	
Closures:	
Manhole	
Fill openings	
Discharge openings	

(1) If no change of the information appearing in the specification plate is required, the letters "NC" must follow the rating required. If cargo tank is not so equipped, the word "None" must be inserted.

(2) *Color Coding.* The equipment that is changed or added to conform with the applicable specification and the appropriate variable specification plate must be identified using the following colors:

Specification	Color
MC 306	Red.
MC 307	Green.
MC 312	Yellow.
Nonspecification	Blue.

(3) Those parts to be changed or added must be stamped with the appropriate MC Specification.

(4) Any alteration or modification to a cargo tank so that it can be used as a variable specification tank must be clearly indicated on the variable specification plate and on the manufacturer's certificate.

§ 178.340–15 Certification.

(a) The manufacturer of a cargo tank motor vehicle made to any of these specifications must furnish the owner, at or before the time of delivery, the following:

(1) A certificate signed by a responsible official of the manufacturer and an Authorized Inspector certifying that the cargo tank motor vehicle is designed, fabricated, tested and completed in conformance with the applicable specification. The certificate must include drawings, sketches and other information to indicate the location, make, model and size of each stop valve and pressure relief device and the arrangement of all piping associated with the cargo tank motor vehicle.

(2) For a cargo tank required to be "constructed in conformance with the ASME Code", a certificate certifying compliance with the ASME Code signed by an Authorized Inspector, and including the ASME Code required forms.

(3) For a cargo tank not requiring ASME Code certification, a certificate signed by a responsible official of the manufacturer and an Authorized Inspector certifying that the cargo tank is "constructed in accordance with the ASME Code".

(4) For a variable specification cargo tank, a certificate signed by a responsible official of the manufacturer and an Authorized Inspector that the cargo tank is constructed for variable specification service. The certificate must include all the information required and marked on the variable specification plate.

(b) In the case of a cargo tank motor vehicle manufactured in two or more stages, each manufacturer who performs a manufacturing operation on the incomplete vehicle or portion thereof shall furnish to the succeeding manufacturer, at or before the time of delivery, a certificate covering the particular operation performed by that manufacturer and any certificates received from previous manufacturers. The certificates must include sufficient sketches, drawings, and other information to indicate the location, make, model and size of each valve and the arrangement of all piping associated with the tank. Each certificate must be signed by a responsible official of the manufacturing firm for the portion of the complete cargo tank motor vehicle represented thereby, such as basic tank fabrication, insulation, jacket, or piping. The final manufacturer shall furnish the owner with all certificates, as well as the documents required by paragraph (a) of the section.

(c) The owner shall retain the data report, certificates, and related papers in accordance with § 180.317 of this subchapter.

§ 178.341 Specification MC 306; cargo tank motor vehicle.

§ 178.341–1 General requirements.

(a) Each Specification MC 306 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) Design pressure: The design pressure of each cargo tank must be no lower than 3 psig and no higher than 14.9 psig.

(c) Vacuum loaded cargo tanks may not be constructed to this specification.

(d) Each cargo tank must be "constructed in accordance with the ASME Code".

(e) Each cargo tank must have a cross sectional design capable of being analyzed either mathematically, or by experimental method contained in UG–101 of Section VIII of the ASME Code, or

by other methods acceptable to the Associate Director for HMR, MTB.

§ 178.341-2 Material and thickness of material.

The type and thickness of material for MC 306 cargo tanks must conform with § 178.340-2.

§ 178.341-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.341-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.341-5 Manhole assemblies.

Each manhole on each cargo tank must conform with § 178.340-5.

§ 178.341-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.340-6.

§ 178.341-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform with § 178.340-7.

§ 178.341-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.341-9 Pumps, piping, hoses and connections.

Each pump on each cargo tank motor vehicle must conform with § 178.340-9.

§ 178.341-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10, and this section.

(b) *Type and construction.* In addition to the pressure relief devices required in § 178.340-10, each MC 306 cargo tank must be equipped with one or more vacuum relief devices. Pressure and vacuum relief devices must prevent the loss of lading through the device in the event of vehicle overturn.

(c) *Pressure settings of relief valves.* The setting of each pressure relief valve must be in accordance with § 178.340-10(d). Each tank must be equipped with one or more vacuum relief devices set to open at no more than 6 ounces vacuum.

(d) *Venting capacities.* (1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than the cargo tank test pressure. The total venting capacity, rated at no greater than the cargo tank test pressure, must be at least that specified in the Table in § 178.340-10(e).

(2) The primary pressure relief valve must have a minimum venting capacity of at least 6000 SCFH, of free air, rated at not greater than the test pressure.

(3) If the cargo tank is designed to be loaded or unloaded with the dome cover closed, the pressure relief system must limit the vacuum to 1 psi and the cargo tank pressure to the design pressure, based on the maximum product loading rate as indicated on the specification plate. Unless automatic protection against overfilling is made, the pressure relief system must also have sufficient liquid capacity to prevent the pressure from exceeding the tank design pressure in case of accidental overfilling.

§ 178.341-11 Outlets.

All outlets on each tank must conform with § 178.340-11, except that external self-closing stop valves are not authorized as an alternative to internal self closing stop valves on loading/discharge outlets.

§ 178.341-12 Gauging devices.

Any gauging device must conform with § 178.340-12.

§ 178.341-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be 5.0 psig or 1.5 times the design pressure, whichever is greater.

(2) Using the pneumatic test method, the test pressure must be 5 psig or 1.5 times the design pressure, whichever is greater. The inspection pressure must be 3 psig or the design pressure, whichever is greater.

§ 178.341-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.340-14.

§ 178.341-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

§ 178.342 Specification MC 307; cargo tank motor vehicle.

§ 178.342-1 General requirements.

(a) Each Specification MC 307 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) The design pressure of each cargo tank must be at least 25 psig. Any cargo tank built to this specification must be constructed, certified and stamped in conformance with the ASME Code. The external design pressure for a cargo tank loaded by vacuum must be at least 15 psig.

(c) Each tank must be of circular cross-section.

§ 178.342-2 Material and thickness of material.

The type and thickness of tank material must conform with § 178.340-2. The knuckle radius of the head must be at least three times the material thickness. For butt-welded heads the straight flange must be at least three times the material thickness. For heads with pressure on the convex side the material thickness prescribed in section 178.340-2(b) must be increased by 67 percent, unless such heads are braced to prevent excessive distortion.

§ 178.342-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.342-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.342-5 Manhole assemblies.

Each manhole on each cargo tank must conform with § 178.340-5, except that closures for manholes must be capable of withstanding internal fluid pressures of 40 psig or 1.5 times the design pressure of the tank, whichever is greater.

§ 178.342-6 Supports and anchoring.

The supports and anchoring on each cargo tank motor vehicle must conform with § 178.340-6.

§ 178.342-7 Circumferential reinforcements.

The circumferential reinforcement for each cargo tank must conform with § 178.340-7.

§ 178.342-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.342-9 Pumps, piping, hoses and connections.

Each pump on each cargo tank must conform with § 178.340-9.

§ 178.342-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10.

(b) If pressure loading or unloading devices are provided, the relief device must have adequate vapor and liquid

capacity to limit the tank pressure to 130 percent of design pressure at maximum loading rate. Such limits must be included on the metal specification plate.

§ 178.342-11 Outlets.

All outlets on each tank must conform with § 178.340-11.

§ 178.342-12 Gauging device.

Any gauging device must conform with § 178.340-12.

§ 178.342-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be at least 40 psig or 1.5 times the design pressure, whichever is greater. Inspection pressure for the pneumatic test is the tank design pressure.

§ 178.342-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.340-14.

§ 178.342-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

§ 178.343 Specification MC 312; cargo tank motor vehicle.

§ 178.343-1 General requirements.

(a) Each Specification MC 312 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) The design pressure of each cargo tank must be at least 15 psig.

(c) The design pressure for each cargo tank loaded by vacuum must be at least 25 psig internal and 15 psi external.

(d) Each cargo tank must be "constructed and certified in conformance with the ASME Code."

(e) Each tank must be of circular cross section.

§ 178.343-2 Material and thickness of material.

The tank material must conform with § 178.340-2, except that the minimum thickness for the reference steel must be 0.125 inch, or 0.110 inch if stronger steels are used.

§ 178.343-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.343-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.343-5 Manhole assemblies.

Each manhole on each tank must conform with § 178.340-5.

§ 178.343-6 Supports and anchoring.

The supports and anchoring on each cargo tank motor vehicle must conform with § 178.340-6.

§ 178.343-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform with § 178.340-7.

§ 178.343-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.343-9 Pumps, piping, hose and connections.

Each pump on each cargo tank must conform with § 178.340-9.

§ 178.343-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10.

(b) If pressure loading or unloading devices are provided, the relief valve must have adequate vapor and liquid capacity to limit tank pressure to 130 percent of design pressure at maximum inlet loading rate.

§ 178.343-11 Outlets.

All outlets on each cargo tank must conform with § 178.340-11.

§ 178.343-12 Gauging devices.

Any gauging device must conform with § 178.340-12.

§ 178.343-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be at least 1.5 times the design pressure. When using the pneumatic test method the inspection pressure is the design pressure.

§ 178.343-14 Marking.

Each cargo tank motor vehicle must be marked and certified in accordance with § 178.340-14.

§ 178.343-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

96. A new part 180 would be added to Subchapter C of Title 49 to read as follows:

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

Subpart A—General

Sec.

180.1 Purpose and scope.
180.2 Applicability
180.3 General requirements.

Subpart B-D—[Reserved]

Subpart E—Qualification and Maintenance of Cargo Tanks

180.401 Applicability.
180.403 Definitions.
180.405 Qualification of cargo tanks.
180.407 Requirements for test and inspection of cargo tanks.
180.409 Minimum qualifications for inspectors and testers.
180.411 Acceptable results of tests and inspections.
180.413 Repair or modification of cargo tanks.
180.415 Test and inspection marking.
180.417 Reporting and record retention requirements.

Subpart F—[Reserved]

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

Subpart A—General

§ 180.1 Purpose and scope.

This part prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter.

§ 180.2 Applicability.

(a) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

(b) Any person who performs a function prescribed in this part is considered subject to the regulations of this subchapter when that person—

(1) Makes any representation indicating compliance with one or more of the requirements of this part; or

(2) Reintroduces a packaging into commerce that bears markings indicating compliance with this part.

§ 180.3 General requirements.

(a) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or an exemption pertaining to this part issued under Subchapter B of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired, or

retested, as appropriate, in accordance with this part, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter.

(b) The representations, markings, and certifications subject to the prohibitions of paragraph (a) of this section include:

(1) Identifications that include the letters "DOT" or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT";

(3) Test dates displayed in association with specification, registration, approval, or exemption markings indicating conformance to a test or retest requirement of this subchapter, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter;

(4) Documents indicating conformance to the testing, inspection, maintenance or other continuing qualification requirements of this part; and

(5) Sales literature, including advertising, indicating that the packaging or container represented therein conforms to requirements contained in Subchapter B or C of this chapter.

Subpart B–D—[Reserved]

Subpart E—Qualification, Maintenance and Use of Cargo Tanks

§ 180.401 Applicability.

This subpart prescribes requirements, in addition to those contained in Parts 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic testing of a cargo tank.

§ 180.403 Definitions.

In addition to the definitions contained in §§ 171.8 and 178.340–1 of this subchapter, the following definitions apply to this subpart.

"Owner" means the owner of a cargo tank motor vehicle used for the transportation of hazardous materials, or his authorized agent.

"Modification" means any change to a cargo tank's original design and construction.

"Rebarrelling" means replacing more than 25 percent of the shell material of a cargo tank.

"Repair" means any work done to return a cargo tank to its original design and construction, or to a condition prescribed for that cargo tank specification in effect at the time of repair.

"Stretching" means any change in length, width or diameter of the cargo tank, or any change to a cargo tank motor vehicle's undercarriage that may affect the cargo tank's structural integrity, for example, lengthening the wheel base of the cargo tank motor vehicle.

§ 180.405 Qualification of cargo tanks.

(a) *General:* Unless otherwise provided in this subpart, each cargo tank used for the transportation of a hazardous material must be an authorized packaging.

(b) To qualify as an authorized packaging, each cargo tank must conform with this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and an applicable specification in effect on the date the initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, or MC 338 (§ 178.340, § 178.341, § 178.342, § 178.343, § 178.337, § 178.338 of this subchapter).

(c) *Cargo tank specifications no longer authorized for construction.* (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this Part, provided tank construction began before the date listed in Column 2:

Column 2	Column 1
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.

(2) A cargo tank of a specification listed in paragraph (c)(1) above, may have its pressure relief devices and outlets modified as follows:

(i) A Specification MC 300, MC 301, MC 302, MC 303 or MC 305 cargo tank, to conform with a Specification MC 306 cargo tank (See §§ 178.341–10 and 178.341–11 of this subchapter).

(ii) A Specification MC 304 cargo tank, to conform with a Specification MC 307 cargo tank (See §§ 178.342–10 and 178.342–11 of this subchapter).

(iii) A Specification MC 310 or MC 311 cargo tank, to conform with a Specification MC 312 cargo tank (See §§ 178.343–10 and 178.343–11 of this subchapter).

(iv) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank (See §§ 178.337–8 and 178.337–9 of this subchapter).

(d) *MC 338 cargo tanks.* The owner of a cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of a cryogenic liquid shall remove the exemption number stenciled on the cargo tank and stamp the specification plate (or a plate placed adjacent to the specification plate) "DOT MC 338" followed by the exemption number, for example, "DOT MC 338–E ****". (Asterisks to be replaced by the exemption number.) The cargo tanks must be re-marked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is re-marked in this manner must retain at its principal place of business a copy of the last exemption in effect. No new construction of cargo tanks pursuant to such exemptions is authorized.

(1) The holding time must be determined, as required in § 178.338–9 of this subchapter, on each cargo tank or on at least one cargo tank of each design. Any subsequent cargo tank manufactured to the same design, if not individually tested, must have the optional test regimen performed during the first shipment (see §§ 178.338.9 (b) and (c) of this subchapter). For the purpose of performing the holding time test, the term "same design" means cargo tanks having the same manufacturer, same drawings, same dimensions (of length, diameter, and volume), same materials of construction, and the same insulation system.

(2) the holding time determined by test for one authorized cryogenic liquid may be used as the basis for establishing the holding time for the other authorized cryogenic liquids.

(e) *MC 331 cargo tanks.* The owner of a MC 331 (§ 178.337 of this subchapter) cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of ethane, refrigerated liquid; ethane-propane mixture, refrigerated liquid; or hydrogen chloride, refrigerated liquid shall remove the exemption number stenciled on the cargo tank and stamp the exemption number on the specification plate (or a plate placed adjacent to the specification plate), immediately after the DOT Specification, for example, "DOT MC 331–E****". (Asterisks to be replaced by the exemption number.) The cargo tank must be re-marked prior to the expiration date of the examption. During the period the cargo tank is in service, the owner of a cargo tank that is re-marked in this manner must retain at its principal place of business a copy of the last exemption in effect.

(f) *MC 306, MC 307, MC 312 cargo tanks.* An Authorized Inspector and the owner of a MC 306, MC 307 or MC 312 cargo tank motor vehicle constructed in accordance with and used under an exemption issued before (effective date of final rule) that authorizes a condition

specified in paragraph (f)(1) of this section must determine and certify that the cargo tank motor vehicle conforms with the exemption and the specification in effect at time of manufacture.

(1) The determination must indicate conformance with each of the following conditions that apply:

(i) A vacuum-loaded cargo tank constructed after August 1, 1981, or the date specified in the applicable exemption, must have an ASME Code stamped specification plate indicating a minimum internal design presure of 25 psig, and a minimum external design pressure of 15 psig.

(ii) A cargo tank having an outlet equipped with an external self-closing stop valve must have the stop valve and associated piping protected within the vehicle's rear-end tank protection device, the vehicle frame or an equally adequate accident damage protection device (See § 178.340–8 of this subchapter.) The external self-closing stop valve must be equipped with a remotely actuated means of closure consisting as follows:

(A) For a cargo tank used in other than corrosive service, the remote means of closure must be activated for closure by manual or mechanical means and, in case of fire, by an automatic heat activated means.

(B) For a cargo tank used in corrosive service, the remote means of closure may be actuated by manual or mechanical means only.

(iii) A cargo tank having an unreinforced portion of the shell exceeding 60 inches must have the circumferential reinforcement located so that the thickness and tensile strength of shell material in combination with the frame and circumferential reinforcement produces a structural integrity at least equal to that prescribed in § 178.340–4 of the specification in effect at time of manufacture.

(iv) A cargo tank having a projection from the tank shell or head that may contain lading in any tank position is authorized, provided such projection is as strong as the tank shell or head and is located within the motor vehicle's rear-end tank protection or other appropriate accident damage protection device.

(v) A cargo tank constructed of nickel, titanium, or other ASME sheet or plate material in accordance with an exemption.

(2) The owner of a cargo tank for which a determination had been made that the cargo tank is in conformance with paragraph (f)(1) of this section shall complete a written certification, in English, signed by the owner and an Authorized Inspector, containing at least the following information:

(i) A statement certifying that each cargo tank conforms with paragraph (f)(1) of this section;

(ii) The applicable DOT exemption number, the applicable specification number and the owner's and manufacturer's serial number for the cargo tank;

(iii) A statement setting forth any modifications made to bring the cargo tank into conformance with paragraph (f)(1) of this section, or the applicable specification;

(iv) A statement identifying the person certifying the cargo tank and the date of certification.

(3) The owner of a certified cargo tank shall remove the exemption number stenciled on the cargo tank and must durably mark the specification plate (or a plate placed adjacent to the specification plate) "DOT MC +++ E****####" (where "+++" is to be replaced by the applicable specification number, "* * * *" by the exemption number and "# # # #" by the alloy.)

(4) During the period the cargo tank is in service, and for one year thereafter, the owner of a cargo tank that is certified and re-marked in this manner must retain on file at its principal place of business a copy of the certificate and the last exemption in effect.

(g) *Cargo tank manhole closures.* (1) On or before (5 years after effective date of final rule), each owner of a cargo tank authorized for the transportation of a hazardous material must have the cargo tank equipped with a secure closure on each manhole. The manhole closure must be structurally capable of withstanding for at least 5 minutes, without leakage or permanent deformation, a static internal fluid pressure of at least 36 psig or the cargo tank test pressure, whichever is greater.

(2) The owner of a cargo tank requiring retrofit of the manhole closure must retrofit at least 20 percent of the affected cargo tanks each year beginning in 198X.

(h) *Flammable cryogenic liquids.* Each cargo tank used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. (See § 173.318(g)(4) of this subchapter.)

(i) A specification cargo tank that no longer meets the applicable specification may not be used to transport hazardous materials unless the cargo tank is repaired and retested in accordance with §§ 180.313 and 180.307 prior to being returned to hazardous materials service. If the cargo tank is not brought into conformance with the applicable specification requirements, but it conforms with § 173.24 of this subchapter, it may be used to transport a material not required by this subchapter to be in a DOT specification cargo tank; however, in this event, the specification plate on the cargo tank must be removed, obliterated or covered in a secure manner with the blue non-specification plate described in § 178.340–14(b)(2)(ii) of this subchapter.

(j) *DOT specification cargo tanks with no marked design pressure or a marked design pressure of less than 3 psig.* (1) An MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank manufactured before (effective date of final rule),

(i) Which has a pressure relief system set at 3 psig, may be marked or re-marked with a design pressure of not greater than 3 psig; or

(ii) May be marked or re-marked with a design pressure based on the design requirements contained in § 178.340–1(1) of this subchapter.

(2) An MC 310 or MC 311 cargo tank manufactured before (effective date of final rule), may be marked or re-marked with a design pressure based on the design requirements contained in § 178.340–1(1) of this subchapter.

§ 180.407 Requirements for test and inspection of cargo tanks.

(a) *General.* (1) A cargo tank constructed in accordance with a DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for shipment unit the test or inspection has been successfully completed. This paragraph does not apply to any cargo tank filled prior to the test or inspection due date.

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure.

(3) A person witnessing or performing a test or inspection specified in this section must meet the minimum qualifications prescribed in § 180.409.

(4) Each cargo tank which has successfully passed a test or inspection specified in this section must be marked in accordance with § 180.415.

(5) A cargo tank that fails a prescribed test or inspection must:

(i) Be repaired and retested in accordance with § 180.413; or

(ii) Be removed from hazardous materials service and the specification plate removed, obliterated or covered in a secure manner with the blue non-

specification plate specified in § 178.340-14(f)(2) of this subchapter.

(b) *Conditions requiring test and inspection of cargo tanks.* Without regard to any other test or inspection requirements, a cargo tank must be tested and inspected in accordance with this section if:

(1) The cargo tank shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation.

(2) The cargo tank has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

(3) The cargo tank has been out of hazardous materials transportation service for a period of one year or more.

(4) The cargo tank has been modified from its orginal design specification.

(5) The Department so requires based on the existence of probable cause that the cargo tank is in an unsafe operating condition.

(c) *Periodic test and inspection.* Each cargo tank must be tested and inspected as specified in the following table by a trained and experienced inspector meeting the qualifications in § 180.409.

Test or inspection	Period	Cargo tank specification	Configuration (see Note 1)	Service (see Note 2)
Inspections:				
External Visual and Testing	1 year	All	All	All.
Internal Visual	1 year	All except MC 330, MC 331, MC 338.	Insulated, baffles or internal stiffening rings.	All.
	1 year	All	All	Lading corrosive to tank.
	5 years	All except MC 338	All	All.
Lining	1 year	All	Lined	Lading corrosive to tank.
Tests:				
Leakage	1 year	All except MC 338	All	All.
Pressure (hydrostatic or pneumatic).	1 year	All except MC 338	Insulated with no manhole or insulated and lined.	All.
	2 years	MC 330, MC 331	All	Chlorine.
	5 years	All others	All	All.
Thickness over entire tank	2 years	All except MC 338	Unlined	Lading corrosive to tank.

Note 1.—"Configuration" means the internal and external design of a DOT Specification cargo tank.

Note 2.—"Service" means the hazardous materials being transported in a DOT Specification cargo tank.

(d) *External visual inspection and testing.* (1) The external visual inspection and testing must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded or abraded areas, dents, distortions, defects in welds and any other conditions, including leakage, that might render the tank unsafe for transportation service;

(ii) The piping, valves, and gaskets must be carefully inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the tank unsafe for transportation service;

(iii) All devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets;

(iv) All emergency devices and valves including self-closing stop valves and excess flow valves, must be free from corrosion, distortion, erosion and any damage that will prevent safe operation. Remote closure devices for controlling self-closing stop valves must be inspected for corrosion or defects and functioned to demonstrate proper operation;

(v) Missing bolts, nuts and fusible links must be replaced, and loose bolts and nuts must be tightened;

(vi) All required markings on the cargo tank must be legible;

(vii) The cargo tank motor vehicle must conform with Part 393 of this title (the Federal Motor Carrier Safety Regulations) and, where appropriate, Part 571 of this title (the Federal Motor Vehicle Standards);

(viii) All major appurtenances on the cargo tank including, but not limited to, the fifth wheel assembly, suspension system attachments, and connecting structures, must be inspected for any corrosion or damage which might prevent safe operation.

(2) All spring-loaded pressure relief valves must be removed from the cargo tank for inspection and testing. Each spring-loaded pressure relief valve must open and reseat to a leak-tight condition at the pressure prescribed in the applicable cargo tank specification.

(3) Corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i) (2), (3), (4), (6) and (7) of this section.

(4) The inspector must record the results of the external visual examination as specified in § 180.417(b).

(e) *Internal visual inspection.* (1) The internal visual inspection must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe the transportation service.

(ii) If lined, the lining material must be inspected for defects. Tank liners must be inspected as specified in § 180.407(f).

(2) Corroded or abraded areas must be thickness tested in accordance with paragraphs (i) (2), (3), (4), (6) and (7) of this section.

(3) Degraded or defective areas of the tank liner must be removed and the tank shell or head below the defect must be inspected. Corroded areas must be thickness tested in accordance with § 180.407(i).

(4) The inspector must record the results of the internal visual inspection as specified in § 180.417(b).

(f) *Lining inspection.* The integrity of the lining on all lined cargo tanks must be verified at least once each year as follows:

(1) Rubber lining must be tested in accordance with the RMA Protection Bulletin 13.

(2) Linings made of other than rubber must be tested using equipment and procedures prescribed by the lining manufacturer.

(g) *Pressure retest.* (1) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every five years. The test pressure must be at least one and one-half times the heating system design pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

(2) *Test Prodecure.* (i) As part of the pressure test, the Authorized Inspector must perform an external and internal visual inspection, except that on MC 338 cargo tank an internal inspection is not required.

(ii) Each cargo tank must be tested hydrostatically or pneumatically to the minimum internal pressure specified in the following table:

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306.	3 psig.
MC 306 (manufactured after the effective date of the final rule).	5 psig or 1.5 times the design pressure, whichever is greater
MC 304, 307	40 psig or 1.5 times the design pressure, whichever is greater.

Specification	Test pressure
MC 310, 311, 312	5 psig or 1.5 times the design pressure, whichever is greater.
MC 330, 331	1.5 times either the design pressure or the re-rated pressure, whichever is applicable.
MC 338	1.25 times either the design pressure or the re-rated pressure, whichever is applicable.

(iii) Each owner of DOT Specification cargo tanks that must be pressure tested every five years must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 198X.

(iv) Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure.

(v) All closures except pressure relief devices must be in place during the test. All prescribed loading and unloading venting devices rated at less than test pressure may be removed during the test. If retained, the devices must be rendered inoperative by clamps, plugs, or other equally effective restraining devices. Restraining devices may not prevent detection of leaks or damage the venting devices and must be removed immediately after the test is completed.

(vi) *Hydrostatic test method.* Each cargo tank, including its domes, must be filled with water or other liquid having similar viscosity, at a temperature not exceeding 100 °F. The cargo tank must then pressurized to not less than the pressure specified in paragraph (g)(2)(ii) of this section. The pressure must be gauged at the top of the cargo tank. The cargo tank must hold the prescribed test pressure for at least 10 minutes during which time it shall be inspected for leakage, bulging or any other defect.

(vii) *Pneumatic test method.* The cargo tank must be pressurized with air or a similar gas. The pneumatic test pressure in the cargo tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until the required test pressure has been reached. The test pressure must be held for at least 5 minutes. The pressure must then be reduced to the design pressure, which must be maintained during the time the entire cargo tank surface is inspected. During the inspection, a suitable method must be used for detecting the existence of leaks. This method must consist either of coating the entire surface of all joints under pressure with a solution of soap and water, or using other equally sensitive methods. When a pneumatic test is performed, suitable safeguards should be provided to protect employees and other persons should a failure occur.

(3) When testing an insulated cargo tank, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after test pressure is reached, or the vacuum integrity cannot be maintained in the insulation space. If an MC 338 cargo tank used for the transportation of a flammable gas or oxygen, refrigerated liquid is opened for any reason, the cleanliness must be verified prior to closure using the procedures contained in § 178.338–15 of this subchapter.

(4) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, liquefied petroleum gas, or any other hazardous material that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with section V of the ASME Code and CGA Technical Bulletin TB–2. This paragraph does not apply to cargo tanks that do not have manholes. (See § 180.417(c) for reporting requirements.)

(5) *Acceptance criteria.* A cargo tank that leaks, fails to retain test pressure or pneumatic inspection pressure, shows distortion, excessive permanent expansion, or other evidence of weakness that might render the cargo tank usafe for transportation service, may not be returned to service.

(6) The inspection must record the results of the pressure test as specified in § 180.417(b).

(h) *Leakage test.* (1) Each cargo tank shall be leak tested on an annual basis. The cargo tank, with all valves and accessories in place and operative, must be tested at not lest than 80 percent of the tank design pressure. The pressure must be maintained for at least 5 minutes.

(2) Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," 40 CFR Part 60 Appendix A, is an acceptable alternate test.

(3) A cargo tank that fails to retain test pressure may not be returned to service as a specification cargo tank.

(4) The inspector must record the results of the leakage test as specified in § 180.417(b).

(i) *Thickness testing.* (1) The shell and head thickness of all unlined cargo tanks used for the transportation of a material corrosive to the tank must be measured at least once every 2 years, except that cargo tanks measuring less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, must be tested annually.

(2) Measurements must be made using a device capable of accurately measuring thickness to 0.002 of an inch.

(3) Any person performing ultrasonic thickness testing must be qualified as a NDT Level II Technician in acoordance with the ASNT Recommended Practice SNT–TC–IA.

(4) Ultrasonic testing must be performed in accordance with section V (SE–114) of the ASME Code for ultrasonic testing.

(5) Thickness testing must be performed on the following areas, as a minimum:

(i) Areas of the tank shell and heads and any piping that retains lading;

(ii) Areas of high shell stress such as the bottom center of the tank;

(iii) Areas near openings;

(iv) Joints;

(v) Shell reinforcements;

(vi) Appurtenance attachments;

(vii) Fifth wheel assembly attachments;

(viii) Suspension system attachments and connecting structures; and

(ix) Known thin areas in the tank shell and nominal liquid level lines.

(6) An owner of a cargo tank that no longer conforms with the minimum prescribed thickness may not return the cargo tank to hazardous materials service. The tank's specification plate must be removed, obliterated or covered in a secure manner with the blue non-specification plate described in § 178.340–14(f)(2) of this subchapter.

(7) The inspector must record the results of the thickness test as specified in § 180.417(b).

§ 180.409 Minimum qualifications for inspectors and testers.

(a) *Visual inspection and test.* Persons performing or witnessing the prescribed inspections and tests must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed.

(b) *Thickness test.* Persons performing thickness testing must be qualified in accordance with ASNT Level II for ultrasonic testing.

(c) *Pressure test.* Persons performing the pressure test must be trained and experienced in ASME Code testing. If the person performing such a test is not an Authorized Inspector, the test must be witnesed and certified by an Authorized Inspector.

§ 180.411 Acceptable results of tests and inspections.

(a) *Corroded or abraded areas.* The minimum thickness may not be less than that prescribed in the applicable specification.

(b) *Dents, cuts, digs and gouges.* (See CGA Pamphlet C–6 for evaluation procedures.)

(1) For dents at welds or that include a weld, the maximum allowable depth is ½ inch. For dents away from welds, the maximum allowable depth is 1/10 of the greatest dimension of the dent, but in no case may the depth exceed one inch.

(2) No cut, dig or gouge may be greater than 4 inches in length. The minimum thickness remaining beneath the cut dig or gouge may not be less than that prescribed in the applicable specification.

(c) *Weld or structural defects.* Any cargo tank with a weld defect or a structural defect must be taken out of hazardous materials service until repaired.

(d) *Leakage.* All sources of leakage must be properly repaired prior to returning a tank to hazardous materials service.

(e) *Relief valves.* Any pressure relief valve that fails to open and reclose at the prescribed pressure must be repaired or replaced.

(f) *Liner integrity.* Any defect shown by the test must be properly repaired.

(g) *Pressure test.* Any tank that fails to meet the acceptance criteria as found in the individual specification that applies must be properly repaired.

§ 180.413 Repair or modification of a cargo tanks.

(a) Any repair or modification of a cargo tank must be performed in conformance with the requirements of this section.

(b) *Repair.* A cargo tank that fails a prescribed test or inspection contained in § 180.407 may be repaired, provided that repairs are made in accordance with the following:

(1) All cracks and other defects that are found must be repaired as follows:

(i) MC 306, MC 307 and MC 312 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks must be repaired in accordance with the original specification or with the MC 306 specification in effect at the time of repair;

(iii) MC 304 cargo tanks must be repaired in accordance with the original specification or with the MC 307 specification in effect at the time of repair;

(iv) MC 310 and MC 311 cargo tanks must be repaired in accordance with the original specification or with the MC 312 specification in effect at the time of repair;

(v) MC 338, cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and section VIII of the ASME Code under which the cargo tank was built. Each cargo tank having cracks and defects requiring welded repairs must meet all of the requirements of § 178.337–16 of this subchapter, except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(2) Prior to any repair work the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(3) No cargo tank may be repaired in a manner to cause leakage or cracks or the likelihood of leakage or cracks; for example, cracks may result from areas of stress concentration due to sharp fillets, reversal of stresses or shrinkage of cooling metal in welding operations.

(4) All repairs on a cargo tank involving welding on the shell or head must be certified by an Authorized Inspector in accordance with the following:

(i) All ASME Code "U" stamped cargo tanks, cargo tanks manufactured after (the effective date of the final rule), and all other DOT Specification cargo tanks with a design pressure of 15 psig or greater, must be in accordance with the National Board Inspection Code.

(ii) All DOT Specification cargo tanks with a design pressure of less than 15 psig, which were manufactured before (the effective date of the final rule), must be repaired:

(A) By a cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp;

(B) By a repair facility holding a valid National Board Certificate authorizing the use of the "R" stamp; or

(C) Under the direct supervision of an Authorized Inspector, provided the Authorized Inspector witnesses the repair and subsequent testing of the repair and then certifies the repair as being acceptable.

(5) The suitability of any repairs affecting the structural integrity of the cargo tank must be determined by the testing prescribed in the applicable specification.

(6) Each owner of a cargo tank must retain at its principal place of business all records of repairs made to each tank during the time the tank is in service and for one year thereafter.

(c) *Repair or replacement of piping, valves, hoses or fittings.* In the event of repair or replacement, any piping, valve, or fitting must be tested in accordance with the provisions of the applicable specification before the cargo tank is returned to hazardous materials service. Piping, valves and fittings must be tested after installation; hoses may be tested either before or after installation on the cargo tank.

(d) *Modification, stretching and rebarrelling.* Modification, stretching or rebarrelling of a cargo tank is authorized if:

(1) The modification, stretching or rebarrelling conforms with the requirements of the specification in effect at the time of such work. Modification, stretching, or rebarrelling must be performed as follows:

(i) For Specification MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks in accordance with Specification MC 306;

(ii) For Specification MC 304 cargo tanks in accordance with Specification MC 307;

(iii) For Specification MC 310 and MC 311 cargo tanks in accordance with Specification MC 312;

(iv) For Specification MC 330 cargo tanks in accordance with Specification MC 331.

(2) The person performing the modification, stretching or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's venting and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety

regulations for any newly installed safety equipment;

(iv) Have a current certificate of authorization from the ASME for section VIII (Division 1) pressure vessel construction, or a current certificate from the National Board;

(v) Pressure retest each cargo tank in accordance with § 180.407(g);

(vi) Change the existing specification plate to reflect the cargo tank as modified, or remove the existing specification plate and attach a new specification plate to the cargo tank;

(vii) On a variable specification cargo tank, install a new variable specification plate; and

(viii) Certify that the modified, rebarreiled or stretched cargo tank has been designed, constructed and tested in accordance with the applicable specification by issuing a new manufacturer's certificate.

§ 180.415 Test and inspection markings.

Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section. The inspector or Authorized Inspector must durably and legibly mark, in English, each cargo tank with the test date (month and year) followed by the type of test or inspection. The marking must be in letters and numbers at least 1¼ inches high near the specification plate. The type of test or inspection may be abbreviated as follows: *V* for external visual inspection and test; *I* for internal visual inspection; *P* for pressure retest; *L* for lining test; and *T* for thickness test. For example, the marking "10–85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

§ 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a cargo tank shall retain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. The owner shall retain the documents throughout his ownership of the cargo tank and for one year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photo copies of these documents for at least one year.

(2) Each motor carrier who uses a specification cargo tank must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized in paragraph (a)(3) (i) or (ii) of this section and retain the documents as specified in this paragraph. A motor carrier who is not the owner of a cargo tank must retain a copy of the vehicle certification report at its principal place of business for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. Upon a written request to, and with the approval of, the Regional Director, Office of Motor Carrier Safety, Federal Highway Administration, for the region in which a motor carrier has its principal place of business, a motor carrier may retain the certificate and related papers required by this paragraph at a regional or terminal office. The addresses and jurisdictions of the various Regional Motor Carrier Safety Offices are provided in § 390.40 of this title. The provisions of this section do not apply to a motor carrier leasing a cargo tank for less than 30 days.

(3) *DOT Specification cargo tanks manufactured before (effective date of final rule)*—(i) *Non-ASME Code stamped cargo tanks.* If an owner does not have a manufacturer's certificate for a cargo tank and he wishes to certify it as a specification cargo tank, the owner must perform appropriate tests and inspections, under the direct supervision of an Authorized Inspector, to determine if the cargo tank conforms with the applicable specification. Both the owner and the Authorized Inspector must certify that the cargo tank fully conforms with the applicable specification. The owner must retain the certificate, as specified in this section.

(ii) *ASME Code stamped cargo tanks.* If the owner does not have the manufacturer's certificate and data report required by the specification, the owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the Authorized Inspector must certify that the cargo tank fully conforms with the specification. The owner must retain such documents, as specified in this section.

(b) *Test or inspection reporting.* Each cargo tank which is tested or reinspected as specified in § 180.407 must have a written report, in English, prepared in accordance with this paragraph.

(1) The test or inspection report must include the following:

(i) Type of test or inspection performed and a listing of all items either tested or inspected (a checklist is acceptable);

(ii) Owner's and manufacturer's serial numbers;

(iii) DOT Specification;

(iv) Test Date (Month and year);

(v) Location of defects found and method used to repair each defect;

(vi) Name and address of person performing the test;

(vii) Disposition statement, such as "Cargo tank returned to service" or "Cargo tank withdrawn from service"; and

(viii) Dated signature of inspector and owner.

(2) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(c) *Additional requirements for Specification MC 330 and MC 331 cargo tanks.* (1) After completion of the pressure test specified in § 180.407(g)(4), each motor carrier operating a Specification MC 330 or MC 331 cargo tank in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause corrosion stress cracking, must make a written report containing the following information:

(i) Carrier's name, address of principal place of business, and telephone number;

(ii) Complete identification plate date required by Specification MC 330 or MC 331, including data required by ASEM Code;

(iii) Carrier's equipment number;

(iv) A statement indicating whether or not the tank was stress relieved after fabrication;

(v) Name and address of the person performing the test and the date of the test;

(vi) A statement of the nature and severity of any defects found, if any. In particular, information must be furnished to indicate the location of defects detected, such as in weld, a heat-affected zone, the liquid phase, the vapor phase, or the head-to-shell seam. If no defect or damage was discovered, that fact must be reported;

(vii) A statement indicating the methods employed to make repairs, who made the repairs, and the date they were completed. Also, a statement of weather or not the tank was stress relieved after repairs and, if so, whether full or local stress relieving was performed;

(viii) A statement of the disposition of the cargo tank, such as "cargo tank

scrapped" or "cargo tank returned to service", and

(ix) A statement of whether or not the cargo tank is used in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause corrosion stress cracking. Also, if the cargo tank has been used in anhydrous ammonia service since the last report, a statement indicating whether each shipment of ammonia was certified by its shipper as containing 0.2 percent water by weight.

(2) A copy of the report must be retained by the carrier at its principal place of business during the period the tank is in the carrier's service and for one year thereafter. Upon a written request to, and with the approval of, the Director, Regional Officer of Motor Carrier Safety, Federal Highway Administration for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

(3) The requirement in paragraph (c)(1) of this section does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(d) *Supplying reports.* Each carrier offering a DOT Specification cargo tank for sale or lease must make available for inspection a copy of the most recent report made under this section to each purchaser or lessee. Copies of such reports must be provided to the purchaser, or the lessee if the cargo tank is leased for more than 30 days.

Subpart F—[Reserved]

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September 17, 1985

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57
Gassy Mines; Metal and Nonmetal Mining; Public Hearings

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Gassy Mines; Metal and Nonmetal Mining; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Public Hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for gassy metal and nonmetal underground mines. The hearings will be held in Carlsbad, New Mexico; Salt Lake City, Utah; and New Orleans, Louisiana, and are in response to requests received from the public. Each hearing will cover the major issues raised by commenters in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. However, immediately before each hearing begins, time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

October 22, 1985: Carlsbad, New Mexico
October 24, 1985: Salt Lake City, Utah
October 29, 1985: New Orleans, Louisiana

ADDRESSES: The hearings will be held at the following locations:

October 22, 1985: Best Western Motel Stevens, 1829 South Canal, Carlsbad, New Mexico 88220.
October 24, 1985: Salt Palace Center, Room C–102, 100 South West Temple, Salt Lake City, Utah 84101.
October 29, 1985: Hale Boggs Building, Room 1005, 500 Camp Street, New Orleans, Louisiana 70130.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On June 4, 1985, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 57, Subpart T, for gassy metal and nonmetal underground mines (50 FR 23612). All of the metal and nonmetal safety and health standards, including those for gassy mines, were recodified as Part 56 and 57 on January 29, 1985 (50 FR 4048). The comment period for the proposed rule on gassy mines closed on September 5, 1985. In the comments filed to the proposed rule, MSHA received requests to hold public hearings.

The purpose of the public hearings is to receive relevant comment and to answer questions concerning the proposal. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from interested parties, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of post-hearing comments, the record will remain open until November 22, 1985.

Issues

Commenters requested clarification of or changes to specific provisions of the proposed rule. Some of the provisions of the rule received extensive comment. These issues are outlined in this notice and MSHA specifically solicits additional comment on them, as well as any other issues raised in the proposal.

Mine Category or Subcategory

Proposed standard 57.30003 requires that all underground mines be placed into a category or subcategory and operated in accordance with the safety standards applicable to that category or subcategory. Each category and subcategory is defined in the proposal.

Commenters were opposed to the term "intermittently liberates methane," which is used in the definition of Categories III and IV mines. They recommended that "intermittently liberates methane" be replaced with a new term "hazardous concentrations of methane," for clarity. They suggested that the Agency use the following definition of "hazardous concentrations of methane":

> Hazardous concentrations of methane. A concentration of methane that is explosive *per se* or is capable of forming explosive mixtures if mixed with air as determined by Figure 22 in U.S. Bureau of Mines Bulletin No. 503 (4th Ed.) which is incorporated by reference.

Placement or Change in Placement, Notice and Investigation

Proposed standard 57.30004 sets forth procedures to be used by MSHA in determining category or subcategory placement, or change in placement.

Commenters recommended that the procedures allow mine operators to request a change in catetory placement, if mining conditions warrant.

Blasting From the Surface

Proposed standards 57.31601, 57.33603, and 57.38601 require that all development, production, and bench rounds be initiated electrically from the surface after all persons are out of the mine.

Commenters opposed the requirement for Subcategory I–A, I–C, and V–A mines that blasting be performed from the surface, with all persons out of the mine. Instead, they recommended that blasting be done on-shift with miners at fresh-air locations underground.

Permissible Equipment

Proposed standards 57.31303, 57.33304, and 57.38302 require that all electrical and diesel-powered equipment used in or beyond the last open crosscut be permissible. Proposed standard 57.33304 for Subcategory I–C mines permits only permissible electrical equipment underground. Commenters objected to the exclusion of diesel-powered equipment in Subcategory I–C mines.

Commenters opposed the requirement of "permissible" equipment for Subcategories I–A and V–A mines, where large-size equipment will be used. These commenters stated that some of this equipment is not available as permissible, and suggested that the Agency allow the use of equipment with "explosive-proof" components as an alternative.

Dated: September 12, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85–22212 Filed 9–16–85; 8:45 am]

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Tuesday
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Part V

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 458

Commercial and Apartment Conservation Service Federal Standby Plan; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 458

[Docket No. CE-RM-83-126]

Commercial and Apartment Conservation Service Federal Standby Plan

August 30, 1985.

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing this regulation to implement section 741(a) of the National Energy Conservation Policy Act (NECPA) which was added by the Energy Security Act (ESA). Section 741 is part of Title VII of NECPA, which established the Commercial and Apartment Conservation Service (CACS) Program. The CACS Program requires large gas and electric utilities to perform energy audits on request for eligible customers in small commercial buildings and most apartment buildings of five or more units. The CACS Program is intended to be carried out by these utilities in conformance with plans submitted to DOE by States. Where States choose not to submit plans, where a plan submitted is subsequently disapproved, or where an approved plan is being inadequately implemented, DOE is required to implement CACS directly under CACS Federal Standby authority. For regulated utilities, DOE implements Federal Standby by requiring those utilities to carry out programs under the CACS Federal Standby Plan. This final rule is the CACS Federal Standby Plan promulgated under section 741 of NECPA.

In developing this CACS Federal Standby Plan (CACS Standby Plan, Standby Plan or FSP), DOE has relied heavily on the final regulation for the CACS Program (48 FR 49622, October 26, 1983) and on comments submitted to the docket during the comment period. However, this final rule does differ from the CACS final rule since DOE is required to assume, when necessary, the responsibilities associated with directly administering the CACS Program.

Pursuant to section 741(a) of NECPA, regulated utilities are subject to the provisions of the CACS Standby Plan only after DOE issues an order directing a particular regulated utility to comply with the CACS Standby Plan.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT:

Shelly Launey or Bill Woodard, CE-222, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Room 6A-081, Washington, DC 20585 (202) 252-1650;

Vivian Lewis, GC-12, Office of General Counsel, U.S. Department of Energy, 1000 Independnce Avenue, SW, Room 6B-144, Washington, DC 20585 (202) 252-9513.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. General Discussion of Issues Raised
III. Discussion of Specific Comments and DOE Response
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act
VI. Environmental Impacts
VII. Paper Reduction Act

I. Introduction

The Commercial and Apartment Conservation Service (CACS) Program was established by Title VII of the National Energy Conservation Policy Act (NECPA), as added by the Energy Security Act (ESA), 42 U.S.C. 8281 *et seq.* The CACS Program, as mandated by statute, requires large electric and natural gas utilities (with retail sales greater than 750 million kWh and 10 billion cubic feet, respectively) to offer to perform energy audits for eligible customers in commercial and apartment buildings. Commercial buildings qualify for the audit if they consume less than 4,000 kWh per month, 1,000 therms of natural gas per month, and 100 million Btu's of any other fuel. Apartment buildings qualify if they contain five or more units and are centrally heated or cooled, or centrally metered for heating or cooling. The CACS Program is intended to be carried out by utilities in conformance with plans submitted to DOE by States. State participation, however, is voluntary.

For those States that elect to participate in CACS, the legislation requires detailed State planning and oversight activity. Section 741(a) of NECPA provides that, if a State does not have an approved plan, or if DOE determines, after notice and opportunity for a public hearing, that an approved plan is not being implemented adequately in a State, DOE must promulgate a plan that meets the requirements of the Act. Section 741(a) also provides that DOE must order each covered utility in such State to implement the CACS Federal Standby Plan within 90 days of that order. Thus, where States are unwilling or unable to carry out their role under the law, the legislation requires implementation of a CACS Standby Plan.

DOE has encouraged States to submit plans and adequately implement them, thus eliminating the need for Federal involvement in the local administration of this program. Nevertheless, since several States have informed DOE that they do not intend to submit CACS plans, DOE is issuing this CACS Standby Plan to carry out its responsibilities under NECPA.

A proposed Federal Standby Plan was issued December 31, 1984, and a public hearing was held on February 13, 1985. Eleven persons testified at the hearing and 37 written comments were submitted to the docket. These comments were carefully considered when the final rule was drafted.

Section 741(a)(1) of NECPA requires that the CACS Standby Plan meet the requirements of Section 722 for CACS plans. Thus, there is a great degree of uniformity between the CACS Standby Plan and the final regulation concerning State plans (10 CFR Part 458, Subparts B and C). The basic difference between the two rules is that in the CACS Standby Plan, DOE assumes the role and responsibility otherwise delegated to the State lead agency under the CACS final rule. This means that, wherever the State lead agency is the responsible party for a statutory element of the CACS Program, DOE has that responsibility under the CACS Standby Plan. It also means that where the CACS final rule provides the States with flexibility and discretion in implementing a provision, under the CACS Standby Plan DOE determines how to exercise such discretion. Thus, the CACS Standby Plan includes mandatory provisions from the final rule and also specifies how DOE has exercised the discretion given to States as program administrators in the CACS final rule.

When it was necessary to develop provisions not in the CACS final rule, DOE attempted to balance a number of objectives. These are:

(1) To provide adequate control and oversight by DOE, as the direct administrator of the CACS Program in States where Federal Standby is involved, to ensure safe, effective, and nondiscriminatory implementation of the program by affected utilities;

(2) To interpret DOE's role as the "lead agency" with enough specificity to provide for the rapid and comparatively uniform implementation of the plan by utilities in any given State;

(3) To provide utilities with enough flexibility to enable them to develop programs reflecting the economic and climatic conditions of their service area; and

(4) To minimize the administrative workload of both the affected utilities and DOE.

A major goal of the CACS final rule was to provide flexibility to the States. However, DOE cannot provide the same degree of flexibility to individual utilities in the CACS Federal Standby Plan. This is because, as program administrator, DOE must prescribe schedules, procedures, and alternatives that would otherwise have been prescribed by the lead agency in the State plan.

DOE's approach to the flexibility issue has been to vary the amount of flexibility allowed to utilities, depending upon the issue. The Standby Plan includes many requirements which may not be changed by utilities. There are also requirements and options in particular provisions which allow for variations or require utilities to submit additional information. These latter requirements and options are referenced throughout the rule, and are summarized in § 458.716. In this way, DOE hopes to enable utilities operating under a current CACS plan in one State to adopt a similar program in a State operating under the CACS Federal Standby Plan.

The discussion below addresses comments and concerns raised during the comment period. The preamble does not discuss the provisions of the CACS Federal Standby Plan which are identical or similar to those in the CACS final rule or the proposed Standby rule, unless the provisions were discussed in comments submitted to the docket. Throughout the discussion, the term "utilities" includes participating building heating suppliers, unless otherwise noted.

II. General Discussion of Issues Raised

Several general issues were raised which were not specifically related to the provisions of the rule. These included competition concerns, fuel switching, and exemptions and are discussed in detail below. By far the most frequent issues raised by commenters were those relating to potential anticompetitive abuses of the CACS Program. These were addressed by every commenter.

A. Competition

In the preamble to the proposed rule, DOE discussed suggestions submitted by the Small Business Administration (SBA) and the Alliance for Fair Competition (a group of small business trade associations) designed to prevent utilities from engaging in potentially anticompetitive practices. Specifically they recommended that: (1) A utility be required to enter into a contract to perform the audits rather than perform them with its own staff; (2) a utility be prohibited from making its audit results available to its own marketing department; (3) a utility be required to notify a customer's other fuel suppliers prior to the audit; and (4) a utility disclose any potential conflict of interest.

All 37 written comments and 11 oral statements addressed one or more of these recommendations. Generally, representatives of the utility industry objected to each recommendation and representatives of the small business sector supported them. In reviewing these comments, DOE was particularly interested in determining how widespread actual competitive abuses by utilities might be. In addition, DOE conducted its own study to determine the nature of utility/small business relationships as they relate to marketing and installing conservation products. A paper on this study, titled "Utility/Independent Business Cooperation in the Provision of Energy Conservation Services," examines the issue of competition between utilities and independent businesses and identifies opportunities for utility/independent business cooperation which avoid potentially unfair competition. It also includes four case studies of utilities which have initiated a variety of mutually beneficial relationships with contractors. These cooperative activities include shared advertising, appliance rebates, utility arrangement of installation services and contractual arrangements for conducting audits. The report identifies the elements that make these relationships work, problems which may have been encountered, and identifies considerations which are important for other utilities interested in similar cooperative arrangements. A copy of the report is available by writing: U.S. Department of Energy, Conservation and Renewable Energy, CE-222, 1000 Independence Avenue, SW., Washington, DC 20585.

Summaries of comments and a discussion of DOE's position on each of the SBA and the Alliance for Fair Competition recommendations follow.

(1) *Should utilities be required to contract out their audits?* Representatives of small business claimed that many of their members currently provide energy audits either independently or in conjunction with other sources. Because utility audits may be subsidized by ratepayers, while small businesses must charge full cost, the small businesses said they cannot compete effectively with the utility in providing audit services. While utilities did not necessarily object to contracting for audit services, they argued strongly for the right to determine for themselves the best approach for auditing. One utility claimed to have provided commercial audits for years and found, during the audits, that their customers often had questions regarding rates, classes of service and load management programs. The utility believed that only an experienced utility employee could adequately answer these questions. Another utility commenter suggested that requiring utilities to contract out audits was in itself anticompetitive. This commenter claimed that because there were no local firms which bid on conducting the utility's audits, the bids from firms outside the utility's service area included the cost of setting up a new business, which led to higher audit costs.

NECPA clearly assigned the responsibility to utilities for conducting audits. DOE does not believe it appropriate to reassign the responsibility given to utilities to other entities; nor do we believe the record supports such a change. Since the passage of NECPA in 1978, many utilities have gone to significant effort and expense to acquire auditing expertise. DOE believes it is in the customer's best interest for each utility to determine the most cost-effective means of meeting its audit responsibilities. Each situation requires a specific analysis of the utility's operating environment. Many utilities have decided or will decide that auditing will be most efficiently handled by contracting out the responsibility. DOE encourages utilities to consider this as an option. However, each utility deserves the opportunity to make its own determination. Therefore, DOE has made no changes to the final rule.

(2) *Should utilities be prohibited from making audit results available to their marketing department?* Representatives of small business contended that utilities should not be granted exclusive access to audit results. They claimed that because utilities already have considerable data on consumption, credit, etc., that sole access to audit results would give them control over the market for energy conservation activities. Another commenter asserted that access to audit results by unregulated utility supply and installation divisions would constitute a ratepayer subsidy of an unregulated activity and was therefore improper. Another commenter suggested that if utilities were permitted to use information obtained from the audits, that information should be open to the public and any small businessman who

elected to use it. A commenter from the electric utility industry noted that marketing is much broader than merely supply and installation—"Marketing encompasses all demand side strategies that bring the needs and wants of the consumer in better equilibrium with the industry's capability to produce electricity to the benefit of all involved. It is these demand side strategies which influence the utilities' ability to shape loads thereby improving financial performance, reducing capital requirements and increasing system utilization." The commenter further noted that the marketing department would likely be the office which would review before and after energy performance of a building necessary for program evaluation and an analysis of program costs and benefits.

The comments, however, brought forth no specific instances of actual abuse. Accordingly, at this time DOE is not adopting any regulatory restrictions in this area. The Department will, however, do everything within its authority to correct any actual abuses which are brought to its attention. Finally, DOE notes that marketing use of audit information could also be of proper interest to a utility's regulatory authority.

(3) *Should utilities be required to notify a customer's other fuel suppliers prior to the audit?* Not unexpectedly, most utilities and utility associations could see no need for such a requirement and characterized it as an unnecessary cost and record-keeping burden and a precondition in violation of § 458.706(b), which contains a general prohibition against preconditions for providing CACS Standby audits and discrimination among customers in providing audits. They believed that if customers want to involve their fuel suppliers, they are free to contact them directly and should not be second guessed on the contact they chose to make. Customers, for whatever reason, may not desire another fuel supplier involved.

On the other hand, many commenters believed that the inherent advantage utilities enjoyed under the umbrella of a CACS audit program should be balanced to some degree by additional protection (i.e., knowledge) for those fuel suppliers and utilities outside the CACS program. They did not believe that notification of alternate fuel suppliers would require an inordinate amount of effort on the part of the utility, but would contribute to fairer competition in an open market.

DOE recognizes that both sides of the argument are supportable to some degree. Therefore, DOE has determined that, while the utility should not be required to provide notice in every instance, the customer should be given the choice whether to initiate the notification process. Thus, the Standby Plan has been revised to require that the utility provide the space and the opportunity in its audit request form to allow its customers to request that the utility notify their alternate fuel supplier of their audit request. As the audit requests are received, the utility can provide written notification to the fuel supplier prior to or immediately following the audit.

(4) *Should utilities be specifically required to disclose any potential conflict of interest?* DOE was not convinced by the comments which supported the need for additional regulations regarding conflict of interest, nor that utility customers under the CACS program are less able to recognize a situation where a potential conflict of interest may exist. DOE believes that the prohibitions provided in §§ 458.705(d) and 458.706(g) adequately address this issue. Therefore, DOE has decided not to include in the CACS Standby Plan any additional specific requirements regarding conflict of interest.

B. Fuel Switching

The proposed rule did not permit fuel switching. That is, utility auditors were not permitted to provide costs and savings associated with a replacement heating or cooling system if that system used a different fuel type. Of the eight commenters who addressed this issue, five were in favor of permitting fuel switching. They claimed that a prohibition against fuel switching was not in the best interest of the customers, that it would result in a less accurate audit and would therefore detract from the credibility of the program. Opponents of fuel switching did not provide any rationale for their opposition.

Considerable discussion has been allotted to the fuel switching issue in previous Residential Conservation Service (RCS) and CACS rulemakings and there is no need here to repeat all of it. The Department's original position, however, has not changed. In the CACS rule, States were permitted to add measures which could include replacement heating or cooling systems of a different fuel type. If a State elected to add such measures, the State was wholly responsible for ensuring that measures were audited in a manner equitable to all. Under the Standby Plan, DOE must accept this responsibility for all Standby utilities. DOE does not have sufficient local experience or knowledge to judiciously assess the impact of fuel switching on each utility and its competitors. Therefore no changes have been made to the final rule; fuel switching is not permitted.

C. Exemptions

The proposed rule made no provision for exempting utilities from conducting a CACS program. However, two commenters raised this issue. One commenter requested that if exemptions were requested, they should be subject to public notice and comment. The other commenter requested that if exemptions were requested that the ratemaking authority be permitted to determine whether they be granted. In the CACS final rule, exemption requests were permitted if they were filed within six months of the effective date of the rule. This means that any exemption would have to have been filed within six months after December 5, 1984, which was the date the CACS rule became effective. Because NECPA made no other provisions for granting exemptions, DOE has made no changes to the final rule. Utilities may no longer request exemptions for any reason.

III. Discussion of Specific Comments and DOE Response

A. Section 458.705 CACS Standby Announcement

Proposed § 458.705(a) required Standby utilities to send out program announcements to each eligible customer no later than 90 days after the Federal Standby order is issued. Twelve commenters objected to this short time period, pointing out that it would not allow utilities enough time to obtain DOE approval of all the information and procedures to be submitted. DOE has no discretion to change this 90-day deadline, since it is required by section 741 of NECPA. However, DOE intends to minimize the constraints of this deadline by utilizing a prenotification process suggested by some of the commenters and also utilized under the RCS Federal Standby Plan. DOE will notify each utility covered by the FSP that it will be receiving a compliance order requiring the utility to implement a CACS program within 90 days. Such advance notification would provide utilities with lead time to begin developing their implementation procedures and information.

Proposed § 458.705(b) (now 458.705(c)) required utilities to provide an unconditional audit offer within one year after a conditional offer is provided. This provision differed from the two-year requirement in the CACS

program regulations but matched the one-year requirement under the RCS Federal Standby regulations. Several commenters maintained that the one-year interval would place an unnecessary strain on their resources and requested that this time period be changed to coincide with the two-year period under the CACS regulations. Since the implementation of the CACS program in most States will not significantly precede any CACS Standby activities ordered within the next year, DOE has decided to change this requirement to allow utilities two years after the conditional offers to complete their unconditional offers.

Proposed § 458.705(c) (now § 458.705(b)) required that the program announcement contain certain specific information. In the preamble to the proposed rule, DOE invited comments on whether information on available financial assistance (e.g., applicable State tax credits or other available financial incentives) should be required in the program announcement. All comments responding to this request opposed any change which would require information on specific financial assistance to be included in the program announcement. Commenters stated that due to the wide variety of customer needs and eligibilities, the program announcement would be an inappropriate conduit for this information and would probably be counter-productive in marketing the audit program. Consequently, DOE has not added any requirements to the content of the program announcement.

Proposed § 458.705(d) required that no advertising be included in the program announcement without the approval of the Assistant Secretary. This approval will be based upon the reasonable assurance that such advertising will not be anticompetitive or unfairly discriminate against any customer. Of the six commenters addressing this issue, one argued that advertising should be prohibited, while the others requested modifications which would either expand or limit utilities' flexibility concerning advertising. DOE believes that the inclusion of advertising in the program announcement should not be prohibited, and that a similar level of flexibility allowed to States under the CACS regulations should be retained by DOE under the Standby regulations. Therefore, the final rule permits advertising as long as DOE determines that it will be neither unfairly discriminatory nor anticompetitive.

Many commenters, as described earlier, requested that DOE require utilities to notify alternate fuel suppliers prior to conducting an audit if the building being audited used a heating fuel not supplied by the utility. DOE has determined that customers should be given the option whether a utility notifies an alternate fuel supplier. Therefore, the final rule has been modified to require utilities to include in their announcement, a place for customers requesting an audit to signify if they want their alternate fuel supplier notified. The customer must also include the name and address of the fuel supplier. The utility must notify the fuel supplier prior to or immediately after conducting the audit. For a further discussion of this issue, see section II.A.3.

B. Section 458.706 CACS Standby Audit

(1) Timing of a CACS Standby Audit

In the proposed § 458.706, DOE had set forth more specific audit requirements than were required in the CACS final rule. The proposal required utilities to respond to all audit requests within a specified period of time. For those utilities that provide only unconditional audit offers, DOE proposed to require that they provide the audit within 90 days of the customer's request. For those utilities that first conditionally offer audits to customers, DOE proposed to require that they provide the audit within 45 days of the customer's request in response to a subsequent unconditional offer. DOE received several comments suggesting that utilities should be expected to perform audits within a reasonable time after a request, and that 90 days was more reasonable than 45 days.

In this final rule, DOE has retained the audit response time provisions as proposed. Acting as the surrogate "State agency" for this CACS Plan, DOE has determined that these time provisions constitute a reasonable time for utilities to respond to audit requests. If a utility sends only unconditional audit offers, a customer could expect to wait up to six months before receiving an audit (90 days to announce the program and 90 days to respond to a request). However, if a utility initially sent conditional offers, a customer could wait up to 28½ months before receiving an audit (90 days to announce the program, two years to provide an unconditional offer, and 45 days to respond to a request). It is not reasonable to extend the possible wait for the latter customer to 30 months simply for the sake of a standardized response period. DOE allowed utilities the flexibility of phasing in their unconditional offers over a two-year period so that effective planning and scheduling of audits would result. Careful contingency planning can minimize unforeseen schedule disruptions and excess demands on resources.

(2) Operation and Maintenance (O and M) Procedures

Proposed § 458.706(e)(1)(ii) required auditors to provide an estimate, to the extent feasible, of the energy savings which result from the application of specified O and M procedures. Two commenters requested that this requirement be deleted. This requirement is also included in the CACS final rule. DOE believes the words "to the extent feasible" provide sufficient flexibility for auditors. If an auditor does not think it feasible to provide savings estimates for a particular procedure in a particular situation, he is not required to do so. Therefore no changes were made to the final rule.

(3) Consumption Data

Proposed § 458.706(e)(1)(i) required that auditors provide a report showing "the type, quantity, and rate of energy consumption" of the audited building. Seven commenters expressed concern about acquiring fuel data for fuels not provided by the auditing utility. Four commenters suggested that it was the customer's responsibility to provide the fuel data and that providing the fuel data should be a precondition to receiving the audit. Without the fuel data, these commenters argued, auditors would not be able to provide useful or accurate audit results. Two commenters suggested that auditors only be required to provide audit results based on their utilities' records. Another commenter suggested that the auditor should only be required to conduct the audit if the alternate fuel data was available. Another commenter suggested that DOE clarify that utilities are neither prohibited from nor required to obtain fuel data from other utilities.

DOE recognized the importance of complete and accurate fuel consumption data in order to provide useful audit results. However, the Department has consistently maintained in all RCS and CACS rulemakings that there should be no preconditions, other than that under § 458.706(c), to providing eligible customers with a CACS audit. NECPA clearly intended that the audit service be made as easily available to eligible customers as possible. Therefore, DOE has not permitted utilities to require alternate fuel consumption data from eligible customers as a precondition to providing the audit. Utilities are

encouraged to use whatever means is appropriate to acquire complete consumption data. Moreover, because most CACS eligible customers will be paying complete or partial audit costs, DOE believes it is in their best business interest to contribute as fully as possible to ensuring complete and accurate audit results. Therefore no changes have been made to the final rule.

(4) Audit Validation

Proposed § 458.706(d)(2) required that all Standby utilities use validated audits. These audits could have been previously validated by DOE (see Appendix III) or they could be validated by the utility using procedures contained in Appendix II. For a further discussion and explanation of the audit validation process and of the information that is required to be submitted to DOE, the following document is available: "CACS Audit Validation Procedures for Federal Standby," August 1985. Write to: U.S. Department of Energy, Conservation and Renewable Energy, CE–222, 1000 Independence Ave. SW., Washington, DC 20585. Several commenters stated that they assumed that "a self-validated audit by a utility implies approval by DOE and relieves the utility of subsequent responsibility originating from the self-validation process." To a limited extent, DOE can approve procedures which a utility uses to validate its audit. DOE cannot approve, however, the actual validation process conducted by the utility. Regardless of this distinction, the utility must always accept full responsibility for the audit results it provides.

One commenter noted that the validation procedures required a breakdown of energy end use by fuel type, while the audit did not. The commenter requested that the requirement for this breakdown be deleted from the validation procedures. Although DOE assumed that energy end use data would be incorporated into the audit, it was not specifically required. DOE also recognizes, however, that it may not always be necessary to have a breakdown of energy end uses to calculate savings for all measures. In some cases, groups of energy end uses may be sufficient. The final rule has therefore been changed to reflect this (§ 458.716(b)(5)).

(5) Prohibitions

Proposed § 458.706(g)(1) prohibited auditors from providing costs and savings for conservation devices unless they are defined in § 458.104 as program measures. Two commenters objected to this because they believed the auditor needed the flexibility to respond to customer inquiries. In addition, auditor judgement and experience, they suggested, should prevail when necessary.

DOE recognizes the conflict inherent in this prohibition. However, in order to ensure that unfair competition does not occur as a result of utilities marketing products which are not subject to the same requirements for audit validation requirements of § 458.707, DOE has retained this prohibition. In this way, audited customers, small business competitors and competing utilities are assured that costs and savings provided will be based only on validated calculations and only for measures which are generally assumed to pay back within seven years. No change was made to the final rule.

(6) Tenant Information

The proposed rule required the utility to provide "information developed by the audit relating to operation and maintenance procedures and program measures which is applicable to individual apartments" (§ 458.706(e)(1)(v)). The multi-family building owner has to agree to distribute the information to his tenants as a precondition to receiving the audit (§ 458.706(c)). Nine commenters expressed concern about the utility's responsibility to prepare and to distribute this information. Several commenters stated it was not the utility's responsibility to ensure distribution of the information to tenants. Another commenter stated that DOE had no authority to expand the original legislative provision which required multi-family buildings owners to distribute information developed by the audit applicable to individual dwelling units.

Comments indicated there appears to be reluctance by utilities to prepare tenant information as well as confusion regarding what DOE expects the information to be. DOE has expressed concern throughout CACS rulemakings that multi-family building owners will be unlikely to participate in the CACS program if they are fully responsible for ensuring that their tenants receive applicable portions of a CACS audit. In an effort to ensure greater participation by this sector, DOE has attempted to remove all unnecessary barriers. DOE envisions a general energy conservation brochure for apartment dwellers which may be customized by climate zone or by various building characteristics. Althouth the audit may only evaluate a few specific apartments, it is reasonable to assume that these apartments are representative of others in the building. The brochure should be designed to show tenants how they can more efficiently use energy within their apartments. It should address all program measures and O&M procedures which are applicable to an individual apartment.

DOE still believes the utility is in a better position to prepare such information than the building owner. If a brochure is not made available to the building owner, the owner's only other recourse is to distribute all or part of the audit results to his tenants. If the building owner must be responsible for determining which part of the audit report, if any, is appropriate for his tenants and then duplicating and distributing it, he may decide not to request an audit.

DOE has attempted to ease the burden on utilities of preparing the tenant information brochure by preparing one for use by any utility which requests it. The brochure entitled, "Tips for an Energy-Efficient Apartment" was written with the help and suggestions of several utilities. It offers general conservation information in the following areas: heating, air conditioning, lighting, water, and appliances. Utilities that wish to receive a copy of the brochure may write to: Office of Public Affairs, Mail Stop 1E–218, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

If any utility elects to use or modify the brochure, it can then print copies as necessary. Once a utility receives certification from a multi-family building owner that he will distribute the information to the tenants and the utility provides the building owner with a sufficient number of copies, the utility has no further responsibility to ensure distribution of the information. No changes were made to this requirement in the final rule.

(7) Additional Information Requirement

The proposed rule required auditors to provide an explanation of how to find more specific information on the purchase, financing and installation of program measures (§ 458.706(e)(1)(iv)). Section 458.706(g)(2) prohibits auditors from recommending suppliers, contractors or lenders. Two commenters stated that these two requirements conflicted with each other. Other commenters stated that the first requirement might force utilities to develop a "yellow pages" type listing to avoid claims that the utility was acting anticompetitively.

DOE does not believe that such a conflict exists. The requirement to provide an explanation for how to find

more information is not intended to result in specific recommendations. Instead, it is intended to give customers generic information on the type of service or product which may meet the customers' needs and on where to look for that service or product. For instance, the CACS audit process may show that significant savings are possible in the area of lighting beyond what can be shown in the audit report. The auditor might discuss with the customer the role a lighting engineer might play and assist the customer in locating some. Therefore, no changes were made to the final rule.

C. Section 458.707 Adding and/or Deleting Measures.

The proposed rule permitted utilities to add or delete measures from the list in Appendix III (see § 458.104) with DOE approval, if certain criteria were met. Two commenters addressed this section. One commenter requested that utilities not be allowed to add any measure which the utility supplies or installs. Some utilities have long been in the business of supplying or installing products or services. As long as these products meet the criteria listed in § 458.707(a), DOE will permit utilities to include additional measures in the audit. The criteria in § 458.707(a) are intended to ensure that only measures which will enhance the energy-efficiency of an audited building are included. Some of these measures may also be supplied or installed by covered utilities and, regardless of the existence of the CACS program, utilities will continue to supply and install them. Therefore, no changes have been made to the final rule.

Another commenter requested that the criteria for adding a measure be the same as those of deleting a measure. The only criterion used to justify exclusion of a measure was whether the measure has a payback period of over seven years. On the other hand, the criteria for adding measures are that the measure has a payback period of seven years or less and that replacement measures have to replace measures of the same fuel type. For a more complete discussion of fuel switching, see section 2 under General Discussion. As described there, DOE has not changed its position on fuel switching and therefore has made no changes in § 458.707(a) of the final rule.

D. Section 458.708 Auditor Qualifications.

The proposed rule listed qualifications which auditors needed to meet. One commenter stated that the requirements were unnecessarily rigorous. Two other commenters stated that it was not necessary to require all auditors to meet all criteria. This, they felt, would preclude a utility from tailoring its audit workforce to meet specific, individual needs.

DOE does not believe that the criteria are overly burdensome nor that it is unreasonable for all auditors to have some knowledge in each of the areas described. Section 458.708(a) requires "a general knowledge," "a familiarity," or an "understanding" of a variety of systems and measures. DOE believes there is sufficient flexibility built into these criteria so that utilities can easily tailor their program needs to fit the program requirements. Although we recognize that it is often preferable to have auditors who are specialized in particular areas, it is not unreasonable to expect these auditors to have a "general understanding" of the entire audit process as long as that process is applicable to the building and system types found within the utility service area. Therefore no changes were made to the final rule.

Three commenters stated that there were no steam systems in the small commercial or apartment buildings in their area and requested that auditor qualifications be tailored to match the requirements of the energy systems and buildings in each area. DOE agrees that when a specific auditor qualification criterion is inappropriate for a specific utility, the utility should not have to train its auditors in that area. The final rule has been modified to incorporate such an approach. Section 458.708 now permit a utility to delete specific auditor qualifications if it submits to DOE local data to justify such a deletion.

One commenter stated that most furnaces and boilers would benefit from a combustion tuneup. Because the tuneup is a standard recommendation, they felt that "a working ability to calculate the steady state efficiency" was excessive. DOE believes that while an auditor may be able to recommend a boiler or furnace tuneup in most cases, a working ability to determine steady state efficiency is an important part of understanding how the efficiencies of these systems are affected by high stack (vent) temperatures and by excess air. For the replacement furnace or boiler measure, no reasonable recommendation can be made without knowing the efficiency of the existing furnace or boiler. Unless this measure is deleted (see § 458.707(b)), the need for auditors to have this knowledge is important. Therefore, no changes will be made to the final rule; but if a utility decides to delete replacement boilers and furnaces, they may request an exception to this requirement as described in § 458.716.

Two commenters requested that we delete the requirement that utilities submit to DOE the number of full-time auditors (§ 458.708(c)(4)). One of these commenters claimed to have no full-time auditors. The other commenter suggested that this information would be more appropriately submitted as part of the annual report. DOE has reconsidered this requirement and determined that the number of *full-time* auditors does not necessarily reflect the commitment of a utility to complete audits expeditiously. Therefore the phrase "full-time" has been deleted from § 458.708(c)(4).

E. Section 458.710 Subsequent Customers.

The proposed CACS Standby Plan required utilities to retain a copy of each Standby audit report for 10 years, to make such reports available to subsequent customers, and to inform subsequent customers of the availability of these audit reports. A few utilities objected to being required to provide previous audit results to subsequent customers, noting that changes in the operation and occupancy of the building may make the previous audit results irrelevant, and that release of such information could pose confidentiality problems.

DOE originally addressed this concern in the proposed Standby Plan by specifically requiring the utilities to provide a copy of the audit *report* rather than a copy of the audit *results*. DOE believes that an audit report need not contain confidential information. Since the legislation requires that previous audit reports be made available to subsequent customers, DOE does not have the option to remove this requirement. However, under § 458.710(d), if the customer agrees, a utility may perform a new audit of a building rather than provide the report of a previous audit. Therefore, no changes were made to the final rule.

F. Section 458.711 Participating Building Heating Suppliers.

The proposed rule outlined requirements for heating suppliers to participate in CACS. Heating suppliers could request that the Assistant Secretary waive all but two program requirements. Two commenters noted that if the quality and integrity of the CACS program are to be maintained, heating suppliers should not be exempt from conducting validated audits. DOE agrees that there should be a consistency in the quality of audits

performed under this program, and has modified the final rule accordingly.

G. Section 458.715 Reporting and Recordkeeping.

The proposed rule specified certain information that must be submitted with each annual report. Section 458.715(b)(6) requires utilities to submit "the number and description of complaints received." One commenter requested deletion of this item since everyday minor complaints would be of little interest to DOE and noncompliance is already reported directly to DOE. Because DOE is responsible for administering the program under Federal Standby and the number and nature of everyday complaints can sometimes indicate problems, DOE has not deleted this requirement.

Another commenter requested that the requirement to keep records on file for 10 years be changed to 5 years (§ 458.715(c)). Since section 731(a)(3) of NECPA specifically requires audit reports to be maintained for 10 years, no change has been made to the final rule.

H. Appendix I—Applicability Criteria

The proposed rule contained several applicability criteria which were intended to define objectively situations where program measures would be unlikely to perform as intended and therefore would be unlikely to be cost-effective. They were intended to provide assistance to the auditor at the audit site by making preliminary determinations about the cost-effectiveness or utility of specific measures in specific situations. Measures which did not meet the applicability criteria did not need to be included in the audit.

The proposed rule stated that installation of a measure, to be applicable, could not violate a Federal, State, or local law or regulation. One commenter objected to this because it placed utilities in the position of interpreting codes. This was never DOE's intent. Instead, DOE intended to ensure that the CACS rule would not supersede local codes or regulations and the auditors would not have to evaluate measures which the customer could not legally install. For instance, if a State or local building code prohibited the modification of the flue or vent of an existing heating system, vent dampers would not meet the applicability criteria in that area and auditors would not need to be trained to evaluate them. No changes were deemed necessary to the final rule to reflect this intent.

Another commenter requested that the applicability criteria for thermosyphon air panels and solaria sunspaces be modified to limit these measures to climate zones with more than 2000 heating degree days or less than 2000 cooling degree days. This criterion would allow auditors in Florida and Hawaii to eliminate these measures from their audits statewide. It would also allow auditors in parts of Georgia, Mississippi, Louisiana, Texas, Arizona, and California to eliminate these passive solar measures from some service areas. Because DOE found these measures generally not cost-effective in the RCS program in areas of less than 2000 heating degree days, DOE agrees with the commenter and has modified the applicability criteria accordingly.

I. Appendix III—List of DOE-Validated Audits

For the convenience of Standby utilities, DOE has included in Appendix III a list of those audits which were validated by DOE. In June 1984, DOE offered a CACS audit validation service to lead agencies. Lead agencies could recommend to DOE an audit for validation from a commercial auditing firm or utility. The process of ensuring the accuracy of each calculation was a very time-consuming and comprehensive process. Of the firms and utilities recommended to us, only three have an audit which has been subsequently validated.

IV. Regulatory Impact Analysis

Section 3(c)(2) of Executive Order 12291 generally requires that an agency prepare a Regulatory Impact Analysis (RIA) for rules that are likely to have a major impact on the economy.

DOE prepared an RIA which was published in conjunction with the CACS final rule (48 FR 49622, October 26, 1983). Since the CACS Federal Standby Plan regulation is not a new program, but rather allows DOE to administer the program where States choose not to administer the program themselves, DOE determined that the CACS Standby Plan regulation is covered in the scope of the overall CACS Program analysis. A separate regulatory analysis was therefore not required for this rulemaking. Copies of the RIA (DOE/CE-0051) may be obtained by writing the Building Services Division at the address which appears at the beginning of this notice. A summary of the findings of the RIA was provided in the preamble of the CACS final rule.

DOE received one comment which asserted that the data used to project energy savings from and costs of the CACS program were "highly speculative." The commenter further stated that until another RIA is prepared, the CACS program should not be implemented. The commenter also requested that DOE urge Congress to repeal the program.

Since DOE addressed a similar comment in the preamble of the CACS final rule, it is unnecessary to respond fully to this latest comment. DOE, however, would like to point out again that despite the lack of sufficient data to calculate *precise* costs and savings for the program, the researchers used reasonable care in evaluating the data available and used professional judgment in selecting data values. In addition, DOE and the Administration have supported repeal of the CACS program in the past because the program was expected to be burdensome, overly restrictive, and often not cost effective. DOE and the Administration continue to support the program's repeal. Until the Congress repeals the CACS program, however, DOE will faithfully execute its responsibilities pursuant to NECPA. Consistent with Departmental and Administration policy, DOE has attempted to design these final regulations to meet the relevant requirements of NECPA while minimizing the burdens on affected parties.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that an agency prepare a regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification of that determination in the Federal Register.

In the NOPR of December 31, 1984, DOE certified that the proposed rule would not have a significant impact on a substantial number of small entities. DOE stated that this rule, under the provisions of Title VII of NECPA, imposes requirements on, and would therefore have its major impact on major utilities. DOE noted its interest in minimizing any anticompetitive effects of the regulations.

DOE has received several similar comments which disagreed with DOE's certification. The focus of these comments was to identify potential anticompetitive utility activities which might adversely affect small businesses. DOE is aware of the potential for some indirect impacts of these regulations and has developed the final regulations to minimize any potential adverse impacts on small entities, consistent with the requirements of the program and NECPA. It should also be noted that small entities are not subject to any

requirements under these regulations and will only participate indirectly in aspects of the program on a voluntary basis. Accordingly, DOE again certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), DOE prepared a Final CACS Supplemental to the Final Environmental Impact Statement (EIS) for the Residential Conservation Service Program (DOE/EIS–0050–FS in August 1983). The program analyzed in the EIS included the possible Federal role in promulgating a plan for utilities in States that refuse to or are unable to participate. The notice of availability was published in the **Federal Register** on November 4, 1983 (48 FR 50935). Copies may be obtained by writing: U.S. Department of Energy, Conservation and Renewable Energy, CE–115, 1000 Independence Avenue, SW, Washington, DC 20585. The subject matter of this rulemaking is within the scope of the CACS Environmental Impact Statement Supplement, and accordingly the impacts of this rulemaking were adequately addressed in the CACS EIS Supplement.

VII. Paperwork Reduction Act

The information collection requirements contained in §§ 458.715 and 458.716 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1910–1400.

List of Subjects in 10 CFR Part 458

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, and Utilities.

In consideration of the foregoing, the Department of Energy hereby amends Chapter II, Title 10, Part 458 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., September 9, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 458—COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM

1. The authority citation for Part 458 continues to read as follows:

Authority: Title VII of the National Energy Conservation Policy Act, Pub. L. 95–619, as added by Subtitle D of Title V of the Energy Security Act, Pub. L. 96–294, 94 Stat. 752–758 (42 U.S.C. 8281–8284); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565–613 (42 U.S.C. 7101–7352).

2. 10 CFR Part 458 is amended by adding and reserving Subpart F and by adding Subpart G to read as follows:

Subpart F—[Reserved]

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

Sec.

458.701 Purpose and scope.
458.702 Definitions.
458.703 Coverage.
458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan.
458.705 CACS Standby announcement.
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458.710 Subsequent customers.
458.711 Participating building heating suppliers.
458.712 Accounting and payment of costs.
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458.715 Reports and recordkeeping.
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Appendix I—Applicability Criteria.
Appendix II—CACS Audit Validation Procedures.
Appendix III—List of DOE Validated Audit Procedures.

Subpart F—[Reserved]

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

§ 458.701 Purpose and scope.

(a) This subpart contains the Commercial and Apartment Conservation Service Federal Standby Plan which DOE is required to promulgate in accordance with section 741 of NECPA. DOE will implement the CACS Standby Plan in a State when the State does not have an approved CACS State Plan within the necessary time limits or fails to implement adequately a DOE approved State Plan.

(b) The CACS Standby Plan contains the functions which Standby utilities will be required to perform under a DOE order issued under § 458.503(b). The core of the CACS Standby Plan is the offer and performance of an on-site energy audit of an eligible customer's building.

§ 458.702 Definitions.

The definitions in §§ 458.102–458.104 are applicable to this subpart. In addition, for purposes of this subpart, the term—

"CACS Federal Standby Plan" (hereinafter also "CACS Standby Plan" or "Standby Plan") means the plan set forth in this subpart.

"CACS Standby Announcement" means the offer of a CACS Standby audit which § 458.705 requires a Standby utility or a participating building heating supplier to provide to each eligible customer.

"CACS Standby Audit" means an on-site inspection of a commercial building or an apartment building which meets the requirements of § 458.706.

"Participating Building Heating Supplier" means a building heating supplier that has elected to participate in the Standby Plan pursuant to § 458.711.

"Standby Utility" means a covered regulated utility which has received an order under § 458.503(b) for implementation of a CACS Standby Plan.

§ 458.703 Coverage.

(a) Utilities subject to the CACS Standby Plan. All covered regulated utilities which provide utility service in a State where the Assistant Secretary has issued an order under § 458.503(b) for implementation of the CACS Standby Plan shall be subject to the CACS Standby Plan.

(b) Participating building heating suppliers. Any building heating supplier in a State where the Assistant Secretary has issued a Standby order which wishes to participate in the Standby Plan may so notify the Assistant Secretary in accordance with § 458.711.

§ 458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan.

(a) Each Standby utility and each participating building heating supplier shall comply with the Standby Plan upon receipt of an order under § 458.503(b).

(b)(1) Individuals or groups of individuals who wish to report possible noncompliance with the CACS Standby Plan may inform the Assistant Secretary.

(2) Each Standby utility and each participating building heating supplier shall inform its customers how to report possible noncompliance with the Standby Plan to the Assistant Secretary. The CACS Standby announcement distributed pursuant to § 458.705 must contain this information.

(c) The Assistant Secretary shall investigate any allegation of noncompliance or any complaint

submitted to DOE concerning the implementation of the CACS Standby Plan and may initiate reviews of the activities of Standby utilities or participating building heating suppliers to determine compliance with the Standby Plan.

§ 458.705 CACS Standby announcement.

(a) *Distribution*—(1) *Utilities.* Each Standby utility shall send each eligible customer a CACS Standby announcement no later than 90 days after the Assistant Secretary issues an order under § 458.503(b) for compliance with the Standby Plan, and shall repeat the announcement every two years thereafter until January 1, 1990.

(2) Participating building heating suppliers. Each participating building heating supplier shall send each eligible customer a CACS Standby announcement no later than 90 days after the Assistant Secretary approves its participation in the Standby Plan and shall repeat the announcement every two years thereafter until January 1, 1990.

(b) *Content.* A CACS Standby announcement must at a minimum include—

(1) An offer to perform the CACS Standby audit described in § 458.706;

(2) An explanation of how to request a CACS Standby audit. This explanation shall include for each customer the opportunity to identify any alternate fuel supplier which the customer desires the utility to notify of the audit request. If the customer identifies an alternate fuel supplier, the notification must take place prior to or immediately following the audit;

(3) The costs, if any, of receiving the CACS Standby audit which will be charged directly to the customer;

(4) An explanation of how complaints of possible non-compliance with the Standby Plan may be reported to the Assistant Secretary in accordance with § 458.704(b); and

(5) A notice to any customer who would be an eligible customer except for the fact that the customer's building had previously been audited by a covered utility or building heating supplier under an approved CACS State Plan or the Standby Plan. The notice must inform the customer of the availability, upon request and without charge, of the results of the previous audit and explain how to request the report.

(c) *Conditional audit offers.* The offer of a CACS Standby audit may, with the approval of the Assistant Secretary, be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. Utilities shall provide an unconditional offer within two years after a conditional offer. Standby utilities and participating building heating suppliers which wish to make the offer of a CACS Standby audit conditional shall submit a request to the Assistant Secretary in accordance with § 458.716.

(d) *Prohibitions.* (1) The CACS Standby audit announcement shall not include any advertising for the supply, installation or financing by any supplier, contractor or lender (including the regulated covered utility or participating building heating supplier) of any program measure, energy conserving operation and maintenance procedure or any other energy conserving product, unless the Assistant Secretary approves it pursuant to § 458.716. Any request submitted by a Standby utility or a participating building heating supplier under § 458.716 shall contain procedures which reasonably assure that such advertising will not be anticompetitive or unfairly discriminate against any person.

(2) Standby utilities and participating building heating suppliers are prohibited from unfairly discriminating among program measures, eligible customers, suppliers, contractors and lenders when providing information under this section.

§ 458.706 CACS Standby audit.

(a) *Timing of CACS Standby audit.*—(1) *Unconditional offers.* Each Standby utility and each participating building heating supplier that first unconditionally offers a CACS Standby audit to an eligible customer shall provide the audit within 90 days of the customer's request.

(2) *Conditional offers.* Each Standby utility and each participating building heating supplier that first conditionally offers a Standby audit to an eligible customer shall provide an audit within 45 days after a customer's request which responds to an unconditional offer.

(b) Prohibition against preconditions and discrimination. Each Standby utility and each participating building heating supplier is prohibited from—

(1) Requiring any preconditions for providing a CACS Standby audit to an eligible cutomer, except as provided in paragraph (c) of this section; and

(2) Discriminating unfairly among eligible customers in providing CACS Standby audits.

(c) Condition for receiving a CACS Standby audit of an apartment building. Each Standby utility and each participating building heating supplier shall require an eligible customer to certify, as a condition for receiving a CACS Standby audit of an apartment building, that the customer agrees to provide to each tenant, in a timely manner, the infomation relevant to individual apartment units included in the audit results pursuant to paragraph (e)(1)(v) of this section.

(d) *Content of a CACS Standby audit.*—(1) Each Standby utility and each participating building heating supplier shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, an on site audit which addresses all the program measures in § 458.104, any measures added under § 458.707(a) and all the operation and maintenance procedures in § 458.103, except as provided in paragraph (d)(3) of this section and § 458.707(b).

(2) Each Standby utility and each participating building heating supplier shall use CACS Standby audits which have been validated by DOE or by the utility. Procedures for validating audits must be in accordance with those set out in CACS Audit—*Validation Procedures*, Appendix II.

(3) The auditor shall determine in each CACS Standby audit the applicability of each program measure to the audited building based on the DOE applicability criteria in Appendix I to this part. A Standby utility or a participating building heating supplier may develop its own applicability criteria or modify the DOE applicability criteria and submit the new or modified criteria to the Assistant Secretary for approval in accordance with § 458.716. The utility shall include in its submission a description of the basis and purpose for the additional or different applicability criteria.

(e) *CACS Standby audit results.* (1) Each Standby utility and each participating building heating supplier shall provide the following information to each eligible customer who receives a CACS Standby audit:

(i) A report of the type, quantity, and rate of energy consumption of the audited commercial building or apartment building;

(ii) Identification and explanation of the energy conserving operation and maintenance procedures defined in § 458.103, which would be appropriate for the audited building, together with an estimate to the extent feasible of the energy savings expressed in units of energy and in dollars or a range of dollars, to result from the application of each of these procedures;

(iii) A report on the need, if any, for the purchase and installation of program measures included in the audit pursuant to § 458.104 and § 458.707 together with—

(A) An estimate of the total cost, expressed in dollars or a range of dollars, of the purchase and installation of each program measure included in the audit (except caulking and weatherstripping); and

(B) An estimate of the first year energy savings, expressed in units of energy and in dollars or a range of dollars, resulting from the installation of each program measure included in the audit;

(iv) An explanation of how to find more specific information on the purchase, financing and installation of program measures and information on other commercially available audit services; and

(v) In the case of a CACS Standby audit of an apartment building, information developed by the audit relating to operation and maintenance procedures and program measures which is applicable to individual apartments.

(2) If a Standby utility or a participating building heating supplier does not provide results of CACS Standby audits in person, it shall give the customer an opportunity to discuss the results of the audit with a qualified person.

(f) *Submissions.* Each Standby utility and each participating building heating supplier shall submit to the Assistant Secretary the following information in accordance with § 458.716:

(1) The audit validation procedures for each measure as described in paragraph (d)(2) of this section, unless the audit has been validated previously by DOE; and

(2) The informational brochure or material to be provided to tenants in apartment buildings in accordance with paragraph (e)(1)(v) of this section.

(g) *Prohibitions.* (1) Unless approved by the Assistant Secretary pursuant to § 458.716, an auditor is prohibited from estimating, as part of a CACS Standby audit, the energy and cost savings of installing any product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of program measures.

(3) A standby utility or a participating building heating supplier is prohibited from unfairly discriminating among program measures or eligible customers.

§ 458.707 Adding and/or deleting measures.

(a) A Standby utility or a participating building heating supplier may only add measures to the program measures listed in § 458.104 for the Standby audit, with the approval of the Assistant Secretary, if:

(1) The measure has a payback (P) of 7 years or less when the installed first cost (F) of the measure minus any applicable Federal and State tax credits (T), by the first year energy savings in dollars (S):

$$P = \frac{F-T}{S} \; ; \; P<7 \text{ years; and}$$

(2) A replacement measure replaces an existing measure of the same fuel type.

(b) A Standby utility or a participating building heating supplier may only exclude a program measure listed in § 458.104 from its CACS Standby audit, with the approval of the Assistant Secretary, if, when utility or building heating supplier derived data is used to determine the measure payback period, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) of the measure, less any applicable Federal and State tax credits (T), by the first year energy savings in dollars (S):

$$P = \frac{F-T}{S} \; ; \; P>7 \text{ years}$$

(c) In accordance with § 457.716, the utility or building heating supplier shall provide the Assistant Secretary with data to document each element in the formula in paragraph (a) or (b) of this section to support any proposed addition or exclusion of program measures under paragraphs (a) or (b) of this section.

(d) The utility or building heating supplier shall define any measures it proposes to add in accordance with § 458.716.

§ 458.708 Auditor qualifications.

(a) Each Standby utility and each participating building heating supplier shall provide an adequate number of auditors for the CACS Standby program who have successfully completed an auditor training program approved by DOE. The training program shall address the following auditor qualifications:

(1) A general understanding of commercial and apartment building construction, particularly a knowledge of the heating and cooling systems, heat transfer and related environmental effects the different types and applications of program measures, and any relevant State installation standards;

(2) The capability to conduct the audit including:

(i) A familiarity with the program measures and operation and maintenance procedures;

(ii) The ability to use the applicability criteria to determine which program measures to evaluate;

(iii) A proficiency in pertinent auditing procedures for each applicable program measure; and

(3) A general knowledge of utility rates.

(b) Specifically, the audit work force shall have:

(1) A working ability to calculate or determine the steady state efficiency of a furnance or boiler;

(2) A general knowledge of pneumatic, electrical and mechanical control systems and their applicability to automatic energy control systems;

(3) An understanding of the interrelationship between the various loads in the eligible building population including the ability to anticipate the corresponding effects on one load of changes to the other;

(4) A general knowledge of lamps and lighting systems used in commercial and multifamily buildings;

(5) A general knowledge of the functions and operating characteristics of steam systems in commercial and apartment buildings, as well as the various types and symptoms of steam system failure.

(6) An understanding of automatic energy control systems and the relationships among the occupants, the structure and the mechanical and lighting systems (energized systems); and

(7) General knowledge of the nature of solar energy and its applications.

(c) Paragraphs (a) and (b) of this section do not apply to any auditor who has performed audits in accordance with a DOE approved State CACS Plan or who has conducted onsite audits which conform to the requirements of §§ 458.709(b) and (c).

(d) Each Standby utility and each participating building heating supplier shall provide to the Assistant Secretary for approval the following information in accordance with § 458.716:

(1) The procedures for training auditors;

(2) A description of all training materials;

(3) A timetable for the implementation of the training procedures for auditors; and

(4) The number of auditors qualified to conduct CACS audits.

(e) In accordance with § 458.716, any Standby utility or participating building

heating supplier may request approval from the Assisitant Secretary to modify or delete one or more of the auditor qualifications set forth in paragraphs (a) and (b) of this section. The utlity must submit to DOE data showing that the area of expertise is inappropriate to the climate or building types existing in the utility's service areas.

§ 458.709 Ongoing programs.

(a) The Assistant Secretary shall have the discretion to allow a standby utility which is currently complying in good faith with a DOE approved CACS State plan to continue to operate under that plan in the State for which the Standby order has been issued under § 458.503(b). A utility which desires this opportunity must provide all required information to the Assistant Secretary in accordance with § 458.716.

(b) A Standby utility need not conduct a Standby audit for any commercial or apartment building which was audited previously pursuant to § 458.709(a) or which received an energy audit under 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

(c) (1) The Assistant Secretary shall have the discretion to determine that a Standby utility need not conduct a Standby audit for any commercial or apartment building for which the utility has performed a previous on-site audit if—

(i) The audit estimated the energy and cost savings that could result from all the program measures defined in § 458.104, except those excluded under § 458.707(b); and

(ii) A report of the audit is available for subsequent customers.

(2) A utility which meets the requirements under § 458.709(c)(1) must provide all required information to the Assistant Secretary in accordance with § 458.716.

§ 458.710 Subsequent customers.

(a) A Standby utility must retain in its files, for not less than 10 years from the date of the audit, a report of each audit performed pursuant to §§ 458.706 and 458.709.

(b) A Standby utility must make a report of the Standby audit for a building available to any customer who would be an eligible customer except for the fact that a Standby utility had previously audited the customer's building under the CACS Standby Plan or an approved CACS State Plan.

(c) A Standby utility must inform each subsequent customer of the availability of a report of a previous audit in accordance with § 458.705(b)(5).

(d) A Standby utility, with the agreement of the customer, may choose to reaudit a previously audited building instead of providing the report described in § 458.710(b).

(Reporting and record keeping requirements in paragraph (a) approved by the Office of Management and Budget under control number 1910–1400.)

§ 458.711 Participating building heating suppliers.

(a) *Participation.* (1) Any building heating supplier in a State for which a Standby order has been issued may participate in the Standby Plan in the State.

(2) A building heating supplier who wishes to participate in the Standby Plan may submit a written request to the Assistant Secretary.

(b) *Waiver of requirements.* (1) Except as provided in paragraph (b)(2) of this section, a participating building heating supplier may request in writing from the Assistant Secretary a waiver of any requirement of the Standby Plan on the basis of limited resources.

(2) The Assistant Secretary will not waive the following requirements for any participating building heating supplier:

(i) Section 458.704 (Procedures for investigating and enforcing compliance with the Standby Plan);

(ii) Section 458.706(d)(2) (Procedures for validating audits); and

(iii) Section 458.706(g) (Prohibitions for a Standby audit).

(c) *Withdrawal.* (1) Any participating building heating supplier may voluntarily withdraw from the Standby Plan by submitting a written notice to the Assistant Secretary.

(2) Prior to withdrawing, the participating building heating supplier shall notify any eligible customers who have requested a Standby audit and shall refer the customers to the appropriate Standby utility in the same service area.

§ 458.712 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a Standby utility which are attributable to the CACS Program, including any penalties paid under Subpart E of this part (Federal Standby Authority and Enforcement Provisions), shall be accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility.

(b) *Payment of costs.* Standby utilities shall treat costs as described in this paragraph and shall notify the Assistant Secretary how the costs described in paragraph (b)(2) of this section will be treated in accordance with § 458.716.

(1) All amounts expended by a utility for the CACS Standby announcement and all public education and program promotion directly related to providing information about the CACS program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility in the same manner as other current operating expenses of providing such utility service.

(2) The State Regulatory Authority shall specify the manner in which all other program costs will be recovered, except that the amount that may be charged directly to the owner of an apartment building for whom a CACS Standby audit is performed pursuant to § 458.706 must not exceed a total of $15 per apartment in the building or the actual cost of the CACS Standby audit, whichever is less, and there may be no charge for a report of a previous audit.

(3) In determining the amount to be charged directly to eligible customers as provided in paragraph (b)(2) of this section, the State Regulatory Commission shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the program which will result from such charge.

§ 458.713 Customer Billing.

Every charge to an eligible customer by a Standby utility or by a participating building heating supplier for any portion of the costs of carrying out a CACS Standby audit that is charged to the eligible customer for whom the audit is performed, and that is included on a bill for utility or fuel service submitted by the utility or building heating supplier, shall be stated separately from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed to require that charges for a CACS Standby audit must be included on a periodic utility or fuel bill.

§ 458.714 Coordination.

The Assistant Secretary shall contact annually the appropriate Federal, State, and local officials responsible for energy conservation programs within and affecting a State for which a CACS Standby order has been issued.

§ 458.715 Reports and recordkeeping.

(a) Each Standby utility and each participating building heating supplier shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all information submitted in accordance

with § 458.716. Each utility and building heating supplier shall submit an annual report no later than each July 1 thereafter, unless the initial six months report is required to be submitted less than 90 days prior to July 1, in which case the first annual report shall be submitted the following July 1.

(b) Each report must include the following information, as indicated:

(1) The approximate number of eligible customers;

(2) A copy of the CACS Standby announcement, if not previously submitted;

(3) The number of CACS Standby announcements distributed, including the number of those making conditional audit offers;

(4) The number and type of CACS Standby audits requested and provided for commercial building and multifamily buildings separately;

(5) The estimated costs of implementing the CACS program during the reporting period including revenues received for providing audit service; and

(6) The number and description of complaints received.

(c) Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall keep a copy of each Standby audit report for not less than 10 years from the date of the audit and shall make such reports available to the Assistant Secretary upon request.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as deemed essential to DOE's responsibilities under the CACS program—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the requirement of paragraph (c) of this section.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under OMB Control Number 1910-1400.)

§ 458.716 Information to be submitted to the Assistant Secretary.

(a) *Required submittals.* Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall submit the following to the Assistant Secretary for approval before carrying out this Standby Plan:

(1) A copy of the CACS Standby announcement;

(2) A copy of the information developed pursuant to § 458.706(e)(1)(v) to be given to apartment building customers as part of the audit results;

(3) Qualification procedures for auditors, a description of all training materials, and a timetable for implementing training procedures, as required by § 458.708(d), as well as the number of auditors which will be qualified to conduct audits; and

(4) Information on how program costs shall be treated, as required by § 458.712.

(b) *Optional submittals.* Any Standby utility or participating building heating supplier may submit information relating to the following to the Assistant Secretary for approval:

(1) If conditional audit offers are to be given in the first round of Standby announcements, pursuant to § 458.705(c), a description of the conditions that are to be used;

(2) If advertising is to be included in the Standby announcement, pursuant to § 458.705(d)(1), a description of the type of advertising to be allowed and the procedures developed to assure that the advertising will not result in any anticompetitive activity;

(3) If different applicability criteria than those set forth in Appendix I are to be applied during the audit, a description of the applicability criteria must be submitted including documentation which justifies and explains the changes;

(4) If additions or deletions to the list of program measures set forth in § 458.104 are to be made, the utility must submit adequate documentation incorporating the requirements of § 458.707. Documentation includes the source of each element in the following formula:

$$P = \frac{F - T}{S}$$

and an explanation of all assumptions used. The calculation or algorithm for S (first year energy savings in dollars) must be included. If measures are added, a definition of the new measures must be included;

(5) If a utility does not use a DOE validated audit procedure, it must validate its audit procedures in accordance with the requirements set out in Appendix II. Calculation procedures for all CACS measures (unless deleted in accordance with § 458.707) must be validated for both multifamily buildings that are centrally heated or cooled or centrally metered (for gas or electricity), and small commercial buildings. In order to verify properly the energy savings for CACS measures, the validation should first address a breakdown of energy end uses, or group of energy end uses, e.g., heating, cooling, fan, lighting, hot water, other by fuel type. Typically only one fuel will be used for a particular end use;

(6) If audits performed in an ongoing audit program for commercial or apartment buildings meet the requirements in § 458.709 and the utility wishes these audits to qualify as CACS audits, the utility shall submit the following in lieu of the information requested in paragraph (b)(5) of this section:

(i) Identification of an approved CACS State Plan and evidence that the utility is complying with it; or

(ii) If the utility is not operating under an approved Plan, a description of the audit as required under § 458.305 including a list of program measures included in the audit and a description of the procedures used to validate the audit; and

(7) If deletions or modifications to the auditor qualifications set forth in §§ 458.708(a) and (b) are to be made, the utility must submit with its request for approval adequate documentation to substantiate the proposed changes.

(Information collection requirements approved by the Office of Management and Budget under OMB Control Number 1910-1400.)

Appendix I—Program Measure Applicability Criteria

I. A program measure is applicable in a building if:

(a) The measure is not already present in good condition and the potential exists to save energy and/or reduce energy demand in the building by installing it. A replacement measure is applicable only if a less efficient device performing the same function, which is more than 5 years old, is already present in the building.

(b) Installation of the measure is not a violation of Federal, State, or local law or regulations.

II. Energy recovery systems (when waste heat from an air conditioner is used to assist in heating water) are applicable if:

- The building uses at least 50 gallons of hot water per day;
- The building has a source of waste heat of 3400–5800 Btu/hour (*e.g.*, the equivalent of waste heat from a two-ton air conditioner); and
- The building is located in an area with more than 2000 cooling degree days.

III. Furnace flue opening modifications are applicable if the furnace combustion air is taken from a conditioned area.

IV. Ceiling insulation is applicable if the differential between the existing insulation and the insulation level recommended by ASHRAE 90–80 exceeds R–11.

V. Lighting system modification to use daylighting is applicable if any electric lighting fixtures are located within 15 feet of an existing window or skylight in a commercial building or in common areas of an apartment building.

VI. Passive solar hearing thermosyphon air systems are applicable in areas with more than 2000 heating degree days or less than 2000 cooling degree days and if the building has a south-facing (+ or −45 ° of true south) wall free of a major obstruction to sunshine during the heating season.

VII. Solar domestic hot water systems are applicable if the building consumes more than 80 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented + or −45 ° of true south.

VIII. Solaria/sunspace systems are applicable to an apartment building if it has existing balconies, patios, or available adjacent ground area on the south-facing (+ or −45 ° of true south) wall and the building is located in an area with more than 2000 heating degree days or less than 2000 cooling degree days. Solaria/sunspace systems are not applicable to commercial buildings.

IX. Solar swimming pool heater replacements are applicable only for apartment buildings and only if the pool uses electricity or other nonrenewable energy for heating.

X. Window heat gain retardants are applicable to buildings which have glass on the south, east, or west sides if they are exposed to sunlight.

XI. Pipe and duct insulation is applicable to hot water pipes and to heating and cooling ducts which extend through unconditioned spaces.

Appendix II—CACS Audit Validation Procedures[1]

Each Standby Utility must provide the following information:

CACS Audit Validation Submittal

Cover Sheet

Name of Organization: _____
Contact Person:[2] _____
Title: _____
Phone Number: _____
Address: _____

Required Information

Each Standby utility must submit the following information for each energy end use and CACS program measure included in the audit it intends to use.

Energy End Use or Measure Name:

Difference Between Small Commercial and Multifamily Audits:

Methods and References Used for Validation of Each Energy End Use or Measure:

(Include title, author, chapter, page numbers, etc. of each reference used)

Appendix III—List of DOE Validated Audit Procedures

1. Enercom, Inc.

2. Xenergy, Inc. (all measures except solar replacement swimming pool heaters and passive solar heating systems).

3. Volt Energy Management Services (all measures except solar hot water heaters, solar replacement swimming pool heaters and passive solar heating systems).

[FR Doc. 85–22238 Filed 9–16–85; 8:45 am]

BILLING CODE 6450–01–M

[1] For a discussion and explanation of the audit validation process and of the information that is required to be submitted to DOE, the following document is available: "CACS Audit Validation Procedures for Federal Standby," (August 1985). Copies may be obtained by writing to: Department of Energy, Office of State and Local Programs, CE–222, 1000 Independence Ave., SW, Washington, DC 20585.

[2] Please provide the name of the person who can answer specific engineering questions about the audit procedure.

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